

Memorandum

To : Honorable Brad M. Sherman
Chairman

Date: October 21, 1992

From : Mary C. Armstrong
Legal

Subject: **Contribution Disclosure Opinion 92-12
Consent Calendar Inquiry From Board Member's
Staff Makes Item Adjudicatory**

At the meeting of September 30, 1992, you requested an opinion regarding the following:

With respect to an item which is on the Franchise and Income Tax Appeal's Consent Calendar, does an inquiry from a Board Member's staff asking a substantive question about the staff recommendation make the item an adjudicatory matter?

For the reasons stated below, we are of the opinion that an inquiry from a Board Member's staff asking a substantive question about the staff's recommendation makes the item an adjudicatory matter within the meaning of Government Code section 15626.

The provisions of Government Code section 15626 apply whenever the Board is rendering a decision in an adjudicatory proceeding pending before the Board. The term "adjudicatory proceeding" is defined in section 15626(h)(5) as any "matter for adjudication that has been scheduled and appears as an item on a meeting notice of the board ... as a contested matter for administrative hearing before the board members. A consent calendar matter is not included unless the matter has previously appeared on the calendar as a nonconsent item, or has been removed from the consent calendar for separate discussion and vote, or the item is one about which the member has previously contacted the staff or a party." (Emphasis added.) It is clear that an inquiry from a Board Member to Board staff regarding a consent calendar matter results in the matter becoming adjudicatory. We are of the opinion that an inquiry from a Board Member's staff would be considered to be on behalf of the Board Member. As such, an inquiry from a Board Member's staff would result in the item being considered

Hon. Brad M. Sherman

-2-

October 21, 1992

an adjudicatory proceeding for purposes of section 15626. (See also Contribution Disclosure Opinions 91-4, 91-22 and 92-8 for a further discussion of consent calendar items.)

Mary Armstrong

MCA:wk

cd092-12

cc: Contribution Disclosure Binder Distribution List

FILING INSTRUCTIONS

Remove and discard Contribution Disclosure Opinion (CDO) 92-13 currently in binder. Replace CDO 92-13 with attached documents, in the following order:

- 1) Letter dated April 23, 1993 to James R. Sutton, Law Offices of Nielsen, Merksamer, Parrinello, Mueller & Naylor, from Sr. Staff Counsel Mary C. Armstrong.
- 2) Amended CDO 92-13 dated April 23, 1993 to Chief Counsel E. L. Sorensen, Jr. from Staff Counsel Ani Kindall.
- 3) Former CDO 92-13 dated October 28, 1992 to James R. Sutton, Law Offices of Nielsen, Merksamer, Parrinello, Mueller & Naylor, from Sr. Staff Counsel Mary C. Armstrong.



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April 23, 1993

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Mr. James R. Sutton
Law Offices of Nielsen, Merksamer,
Parrinello, Mueller & Naylor
591 Redwood Highway, #4000
Mill Valley, California 94941

Re: Disqualification Under the Kopp Act
(Gov. Code § 15626)

Dear Mr. Sutton:

On October 28, 1992, we wrote to you in response to your request for an opinion regarding the question of whether a party involved in an adjudicatory proceeding before the Board who contributed to another candidate (e.g., a candidate for local, state or federal office other than the Board of Equalization) at the request of a Board Member would be required to disclose such a contribution under Government Code section 15626. In other words, if a Board Member asks a party to make a contribution to another candidate, may the member participate in the party's adjudicatory proceeding if the party in fact makes a contribution over \$250? Does the same conclusion apply when the member solicits a contribution from the party to another member?

Subsequent to our letter to you of October 28, 1992, we have re-examined the question of contributions made at the request of a Board Member to another candidate for public office and have concluded that the requirements of Government Code section 15626 regarding disclosure and disqualification would not be applicable to a Board Member who directs or solicits a contribution on behalf of another candidate.

A complete analysis of our opinion is contained in Amended Contribution Disclosure Opinion 92-13 (copy attached). The portion of our October 28, 1992 letter relating to Question 2 (contributions by a Political Action Committee) has not been amended and remains our opinion.

Mr. James R. Sutton

-2-

April 23, 1993

If you have further questions concerning this matter, we will be happy to discuss them with you.

Very truly yours,

A handwritten signature in cursive script that reads "Mary C. Armstrong". The signature is written in dark ink and is positioned above the typed name.

Mary C. Armstrong
Senior Staff Counsel

MCA:wk
cd092-13.amn

Attachment