

Memorandum

To : Honorable Gray Davis, Chairman
Honorable Brad Sherman, Member
Honorable Thomas W. Hayes, Member

Date: December 9, 1992

From : E. L. Sorensen, Jr.
Glenn Rigby

Subject: Application of Government Code Section 15626
to Members of the Franchise Tax Board
Contribution Disclosure Opinion 92-14

Question Presented

Do the disclosure/disqualification provisions found in Government Code Section 15626 apply to a member of the Franchise Tax Board (FTB) who is also a member of the State Board of Equalization (SBE) and has received a contribution of \$250 or more from a party, participant or agent, when the member is participating in a closed session of the FTB with respect to settlement of an administrative tax dispute which is pending as an appeal before the SBE.

Answer

For the reasons stated below, Government Code Section 15626 does not apply when a member of the FTB is participating in a closed session of the FTB with respect to settlement of an administrative tax dispute which is pending as an appeal before the SBE.

Analysis

Section 15626 was added to the Government Code in 1990 (Stats. 1990, ch. 84, SB 1738). Section 15626 is contained in chapter 1 of Part 9 of Division 3 of Title 2 of the Government Code, which deals with the SBE. Provisions dealing with the FTB are contained in Part 10 of Division 3 of Title 2 of the Government Code.

Section 15626 contains two main provisions which: (1) require disclosure of contributions to members of the SBE, and (2) which disqualify members of the SBE who have received

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contributions from participating in any adjudicatory proceedings pending before the SBE. The section also contains necessary definitions, general application, general provisions, and penalties.

The legislative history of Section 15626 indicates it was enacted by the Legislature in response to the concerns expressed by Senator Kopp (author of SB 1738) and others with respect to conflicts of interest which arise when members of the SBE receive contributions from persons who would be affected by adjudicatory decisions of the members acting as the Board. We have found nothing in the legislative history which indicates that the provisions of Section 15626 were intended to be applicable to other than SBE members while acting in their capacity as members of the SBE. Section 15626 is expressly directed and limited to adjudicatory proceedings pending before the SBE and to members of the Board involved in those adjudicatory proceedings (see § 15626(b)).

In our opinion, neither the express language of Section 15626 nor the legislative history can reasonably be interpreted or inferred to conclude that Section 15626 applies to members of the SBE who also serve as members of other boards or commissions (such as the FTB), when they are acting in their role, capacity and function as members of any other such board or commission.

ELS:GR:wk
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E. J. Lawrence, Jr.
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Allen L. King

cc: Contribution Disclosure Binder Distribution List