

M e m o r a n d u m

To : Mrs. Janice Masterton
Chief, Board Proceedings Division (MIC:81)

Date: August 26, 1993

From : E. L. Sorensen, Jr.
Chief Counsel

Subject: **Contribution Disclosure Opinion 93-11**
Presence of Disqualified Board Members May Not Be Counted
for Purposes of Establishing a Quorum

Question Presented:

May the presence of Board Members disqualified pursuant to section 15626 be counted for purposes of establishing a quorum.

Answer:

In Contribution Disclosure Opinion (CDO) 91-24, we opined that "[i]f a Board Member or the State Controller is not participating pursuant to Section 15626, his or her presence can be counted for purposes of a quorum" (CDO 91-24, last paragraph, page 2.) The same advice was given in CDO 91-26. (CDO 91-26, fourth paragraph, page 1.) Upon further research and consideration of this issue, we have determined that the presence of disqualified Board Members may not be counted for purposes of establishing a quorum.

Analysis:

The opinions and advice letters issued by the Fair Political Practices Commission (FPPC) are often helpful in providing guidance for our interpretation and administration of Government Code section 15626. In In re Hudson (1978) 4 FPPC Opinions 13, the FPPC found that where three of five members of a city board of building review were disqualified pursuant to section 87100, only one of the three disqualified members could participate in the hearing in order to create a quorum. The FPPC said that "the board may bring back as many disqualified members as is necessary to establish a quorum." The Hudson opinion implies that disqualified members are normally not counted for purposes of establishing a quorum.

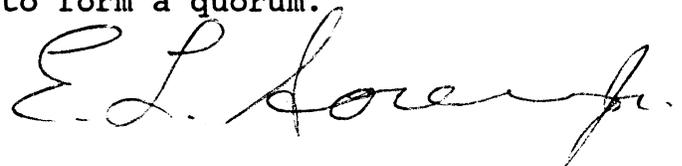
Later, when specifically asked who may be counted for a quorum, the FPPC said that: "When a member of a board or

commission is disqualified from participation in a decision by the provisions of section 87100, he or she may not be counted toward achieving a quorum." (Phillips Advice Letter 82-111.)

In 62 Ops. Atty. Gen. 698, 699 - 700 and fn. 2 (1978), the Attorney General says that "[a] quorum refers to the number of members present, not to the number of members actually voting on a particular question; however, the quorum members must be entitled to vote." "A member who is not entitled to vote because of a conflict of interest ... is not counted for purposes of establishing a quorum on a particular question."

We are of the opinion that the Board should apply the same analysis when determining what constitutes a quorum when Board Members have been disqualified under Government Code section 15626. Therefore, based on the authorities cited above, if a Board Member is ineligible to participate pursuant to section 15626, his or her presence cannot be counted for purposes of establishing a quorum. This memorandum supersedes the above cited portions of CDO 91-24 and CDO 91-26.

Finally, as a reminder, we note that when a disqualification under section 15626 leaves insufficient Members to form a quorum, and there exists no alternative source of decision, the Board Members should, by lot or some other random form of selection, determine which Member or Members should be brought back to form a quorum.



ELS:wk

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