

## Memorandum

To : Mr. E. L. Sorensen, Jr.  
Chief Counsel

Date: April 20, 1993

From : Ani Kindall  
Staff Counsel

Subject: Contribution Disclosure Opinion 93-5

A previously disqualified Board Member may vote on a matter 12 months after the last disqualifying contribution was received. A contribution from a political action committee is not attributed to a corporate party affiliated with the committee. Answers are applicable to Controller's deputy.

### Questions Presented:

1) May a Board Member who has received a contribution from a party and has therefore recused himself or herself from participating in an adjudicatory proceeding before the Board, vote on the same matter 12 months after the last contribution from the party was received?

2) Should a contribution of \$250 or more to a Board Member from a political action committee (PAC) be attributed to a corporate party affiliated with the PAC, requiring disqualification of the Board Member?

3) Would the answers to the above questions be the same for the Controller's deputy participating at a Board meeting on the Controller's behalf?

### Answers:

1) A Board Member who has received a contribution from a party and has therefore disqualified himself or herself from participating in an adjudicatory proceeding before the Board, may vote on the same matter 12 months after the last disqualifying contribution was received.

2) For purposes of disclosure or disqualification, contributions from a PAC should not be attributed to a corporate party affiliated with the PAC.

3) The above answers are the same for the Controller's deputy participating at a Board meeting on the Controller's behalf.

**Analysis:**

Question 1

Government Code section 15626(c) states:

No member shall make, participate in making, or in any way attempt to use his or her official position to influence, the decision in any adjudicatory proceeding pending before the board if the member knows or has reason to know that he or she received a contribution or contributions in an aggregate amount of two hundred fifty dollars (\$250) or more within the preceding 12 months from a party or he or her agent, or from any participant or his or her agent, and if the member knows or has reason to know that the participant has a financial interest in the decision, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9. (Emphasis added.)

If, within 12 months prior to an adjudicatory proceeding, a Board Member has received a contribution or contributions aggregating \$250 or more from a party to the proceeding, the Board Member is prohibited from participating in the proceeding. However, this disqualification is not permanent. The prohibition against participation required by the statute remains in effect for only 12 months from the time of the last disqualifying contribution. If an adjudicatory proceeding is continued beyond that time, the Board Member may participate and vote.

This interpretation of section 15626 is consistent with the way that the Fair Political Practices Commission (FPPC) interprets the conflict of interest provisions of the Political Reform Act (Government Code section 81000 et seq.). Section 84308 of the Political Reform Act, which deals with contributions to members of appointed boards or commission, is a statute similar to section 15626. Section 84308(c), in pertinent part, states:

No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a

proceeding ... if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party .... (Emphasis added).

The FPPC interprets section 84308(c) to mean that the officer may not participate for 12 months after he or she has received the disqualifying contribution. Once it has been more than 12 months from the last such contribution, the officer may participate and vote.

This same rule is also applied to the conflict of interest provisions found in Government Code section 87100 et seq. Pursuant to sections 87100 and 87103(c), a public official shall not "make, participate in making or in any way attempt to use his official position to influence a governmental decision" when the decision will have a financial effect on a source of income of \$250 or more "within 12 months prior to the time when the decision is made." The FPPC interprets this to mean that the official may participate in the matter once it has been more than 12 months since the last disqualifying contribution.

Based on the words "within the preceding 12 months" in section 15626 and the interpretation of similar statutes by the FPPC, we are of the opinion that 12 months after the last disqualifying contribution, a Board Member may participate in and vote on a matter from which the Member had previously disqualified himself or herself.

#### Question 2

"We have previously determined that section 15626 does not require contributions made by a political action committee (PAC) to be reported or aggregated with contributions made by a party, participant or agent. A PAC does not come within the definition of a party, participant or agent as those terms are defined in section 15626. As such, a contribution by a PAC does not require either disclosure or disqualification by the affected Board Member. This is true whether or not the same or a majority of the same persons in fact direct and/or control the corporation's and the PAC's contribution." (Quoting from Contribution Disclosure Opinion 92-13 - Question 2, also see Contribution Disclosure Opinions 91-1 and 91-2.)

Based on the conclusions reached in previous contribution disclosure opinions, a contribution from a PAC to a Board Member is not attributed to a corporate party affiliated with the PAC. A Board member who has received such a contribution

does not need to consider it when determining whether he or she may participate in the proceeding.

Question 3

Section 15626(g) says "if a deputy to the Controller sits at a meeting of the board and votes on behalf of the Controller, the deputy shall disclose contributions made to the Controller and disqualify himself or herself from voting pursuant to the requirements of this section." Therefore, the answers to the questions addressed in this memorandum are equally applicable to the Controller's deputy when he or she participates at a Board meeting on behalf of the Controller.

*Anu Armer Kundall*

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