

**MEMORANDUM**

**To:** Honorable Brad Sherman  
Chairman

**Date:** January 4, 1994

**From:** Larry Augusta  
Assistant Chief Counsel

**Subject:** **Contribution Disclosure Opinion 94-1**

A person who lobbies employees of the board, but who does not have a financial interest in a pending decision, is not a "participant" within the meaning of §15626 (h) (3); nor do the person's lobbying activities make that person an "agent" within the meaning of §15656 (h) (4); consequently, contributions received from that person are not disqualifying.

You have asked our opinion on whether a certain contribution you received requires you to disqualify yourself from participating in the pending adjudicatory proceeding regarding Ticor Title Insurance Company. As we understand the facts, a person who was interested in the issue involved in the Ticor case, but who was not an employee or agent or otherwise associated with Ticor, lobbied an employee of the Board by contacting the employee and advocating a position with respect to the proper outcome of the decision in the case. Because of this lobbying, the person's name, and the person's advocacy, appeared in the file on the Ticor case.

In accordance with established procedure, Mrs. Masterton sent a contribution disclosure form to the person. Initially, the person declined to complete the form on the grounds he was not a party, participant or agent. Subsequently, however, the person voluntarily submitted a completed form as a courtesy to the Board.

During a hearing on the Ticor matter on June 23, 1993, the issue of whether the person was a participant was discussed on the record. Attorneys for Ticor testified on the record that the person was not an authorized agent of Ticor, and had no financial interest in the outcome of the Ticor case. At that time, Staff Counsel Mary Armstrong advised the Board on the record that the person was not a participant under Section 15626.

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The Ticor case was taken under submission at the June 23 hearing, and was rescheduled for the January 1994 Sacramento Board meeting in Sacramento. Subsequently, and in accordance with established procedure, Ms. Masterton sent requests for updates to all persons who filed contribution disclosures for the June meeting, including the person in question. The person responded by letter, stating that he was not a participant, reiterating that he had filed the June disclosure as a courtesy to the Board, and volunteering that he had made a \$300 contribution to you in August of 1993. He also reported that he made a contribution of \$100 to Member Fong.

Since the facts regarding the person's lack of a financial interest in the outcome of the Ticor case have not changed since June, we remain of the opinion that he is not a "participant" within the meaning of §15626 (h) (3). That section defines a participant to include only those persons who both support or oppose a particular decision in an adjudicatory proceeding before the Board, and have a financial interest. Since the person does not have a financial interest, he is not a participant, and receipt of a campaign contribution from that person would not disqualify you from participating in the Ticor case.

Likewise, the record in the case clearly shows that the person is not an "agent" of Ticor within the meaning of §15626(h) (4). His actions in lobbying the staff do not change that conclusion. Agents are those who represent parties or participants. Contacting staff does not make a person into an agent who is not otherwise an agent. Since the person in question is not an agent, receipt of a campaign contribution from that person would not disqualify you from participating in the Ticor case.

I note that the same conclusions would apply to the contribution to Mr. Fong. Further, the contribution to Mr. Fong is below the \$250 threshold.

cdo94-1



cc: Hon. Matthew Fong  
Member, First District  
Hon. Ernest J. Dronenburg, Jr.  
Hon. Gray Davis  
Mr. Burton W. Oliver  
Mr. E. L. Sorensen, Jr.  
Ms. Janice Masterton  
Contribution Disclosure Binder Distribution List