

M e m o r a n d u m

Re: Honorable Brad Sherman
Honorable Ernest J. Dronenburg, Jr
Member, First District
Honorable Matthew K. Fong
Honorable Gray Davis

Date: December 28, 1994

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

Subject: **Contribution Disclosure Opinion 94-15**
Discussion in closed session regarding possible settlement of a litigation matter is not an adjudicatory proceeding pending before the Board, and any contact by a Member does not render the discussion adjudicatory.

A taxpayer's representative requested our opinion regarding the following:

Question Presented:

An assessment by the State Board pursuant to Section 19 of Article XIII of the California Constitution later became the subject of a court challenge by the taxpayer. Thereafter, while the court proceeding is pending, the Board meets in closed session to consider a possible settlement of the court litigation. Does Government Code section 15626 apply?

Answer:

A Board meeting to consider settlement of a matter in litigation is not considered an adjudicatory proceeding for purposes of Government Code section 15626 or Regulations 7001-7011. As such, the disclosure/disqualification requirements are not applicable. Additionally, the language in section 15626(h)(5), referring to an item "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" is not applicable in the circumstances described. Thus, the fact that a member might have, for example, contacted the staff before a meeting to vote on settlement of pending litigation does not render such meeting an "adjudicatory proceeding", because a discussion of a possible settlement of a matter in litigation will never be considered an adjudicatory matter pending before the Board.

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If you have any further questions regarding this matter,
Ms. Mary Armstrong of my staff will be happy to discuss them
with you.

A handwritten signature in cursive script, appearing to read "E. L. Armstrong".

ELS:MCA:wk
cdo94-15

cc: Mr. Burton W. Oliver
Contribution Disclosure Binder Distribution List