

M e m o r a n d u m

To: Mrs. Janice Masterton
Board Proceedings Division

Date: March 21, 1994

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

Subject: **CONTRIBUTION DISCLOSURE OPINION 94-2**

Contributions Received From a Witness at an Adjudicatory Proceeding Who Does Not Actively Support or Oppose the Particular Decision and Has No Financial Interest in the Matter Do Not Require a Board Member's Disqualification Under Government Code Section 15626

This is in response to your memorandum of March 3, 1994, in which you requested our opinion regarding participation of a Board Member under the following circumstances.

As we understand it, a Board Member has received contributions of \$1,000 made in June 1993 and \$1,250 made in May 1993 from the Bank of America. At the hearing on this matter, a contribution disclosure form was filed by a potential witness, which identified the witness as being a Bank of America employee. The witness did not testify at the hearing because the information that he was prepared to verify was stipulated to by the parties. The information the witness would have verified was that the debt obligations incurred by the taxpayer to Bank of America had been paid in full by the taxpayer. It is, therefore, our opinion that Bank of America has no financial interest in the outcome of this case. In addition, we note that the taxpayer's attorney, submitted a letter on March 3, 1994 indicating that Bank of America has no financial interest in the outcome of this case.

Government Code Section 15626 provides that a Board Member must disqualify him or herself if he or she received a contribution or contributions within the preceding 12 months in an aggregate amount of \$250 or more from a party or his or her agent or from any participant. Government Code Section 15626(h)(3) defines the term "participant" as "any person who is not a party but who actively supports or opposes a particular decision in an adjudicatory proceeding pending before the board and who has a financial interest in the decision..." It would appear that the witness and Bank of

America did not actively support or oppose this particular decision, nor was there any financial interest in the outcome of the decision. We are, therefore, of the opinion that neither the witness or Bank of America would be considered to be a "participant" in this matter and the fact that the Board Member had received contributions from Bank of America would not require him to disqualify himself from participation in this matter.

A handwritten signature in cursive script, reading "E. L. Sawyer Jr." with a period at the end. The signature is written in dark ink and is positioned to the right of the main text block.

ELS:MCA:wk

cdc94-2

cc: Contribution Disclosure Distribution List