

M e m o r a n d u m

To: Honorable Ernest J. Dronenburg, Jr.
Honorable Matthew K. Fong

Date: April 6, 1994

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

Subject: **CONTRIBUTION DISCLOSURE OPINION 94-3**
Proposal to Prosecute for Failure to
File Contribution Disclosure Forms

This is in response to your memorandum of March 30, 1994, in which you requested our opinion regarding the ability of the Board to criminally prosecute persons who fail or refuse to file a Contribution Disclosure Statement. Although Government Code Section 15626 requires parties, participants and agents to disclose on the record whether they have made any contribution, my conclusion is that there is no statutory requirement to file a Contribution Disclosure Statement. Thus, the mere failure to respond to a request to file a Contribution Disclosure Statement would not be a violation of the law.

Note that paragraphs (b), (c), and (d) of Section 15626 prescribe requirements and prohibitions on the members of the Board. Paragraphs (e) and (f) apply to parties and participants.

Paragraph (e) provides as follows:

"A party to, or a participant in, an adjudicatory proceeding pending before the board shall disclose on the record of the proceeding any contribution or contributions in an aggregate amount of two hundred fifty dollars (\$250) or more made within the preceding 12 months by the party or participant, or his or her agent, to any member of the board."

The law goes on to provide in paragraph (h)(6) that:

"The Notice of Contribution shall be on a form prescribed under rules adopted by the board to provide for staff inquiry of each party, participant, close corporation, and its majority shareholder, and any agent

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thereof, to determine whether any contribution has been made to a member, and if so, in what aggregate amount and what date or dates within the twelve months preceding an adjudicatory proceeding or decision". (Emphasis added.)

The law then goes on to require the staff to inquire and report on the record.

Thus, the law requires the staff to inquire and report, and provides for the Board to provide for a form to be used, but does not specifically require the party or participant to file the form. A criminal prosecution could not be brought against a person for failing to file a Contribution Disclosure Statement, because there is no underlying statutory authority for such a prosecution.

Our proposed regulation, Regulation 7011, requires the party, participant(s) and agent(s) to complete the Contribution Disclosure form. However, even after these regulations are adopted and approved by OAL, we could not criminally prosecute a person for failure to file under these regulations without a statutory basis for doing so.



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cc: Contribution Disclosure Binder Distribution List