

Memorandum

To: Honorable Brad Sherman
Chairman

Date: August 10, 1994

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

Subject: **CONTRIBUTION DISCLOSURE OPINION 94-9**

The specific amount of a contribution is not required to be disclosed orally on the record. Parties, participants and/or agents are required to disclose the specific amount(s) of contribution made to Board Members. Contribution Disclosure Statements will be retained for five years.

QUESTIONS PRESENTED:

(1) When a Board Member is disqualified from participating in a matter under the provisions of Government Code Section 15626, what information must be disclosed at the hearing concerning the reasons for the Board Member's disqualification?

(2) Does Government Code Section 15626 require parties, participants or agents to disclose the amount(s) of contributions made to Board Members on the Contribution Disclosure Statements filed with the Board?

(3) Are the Contribution Disclosure Statements filed by parties, participants and agents part of the official record of the Board and if so, how long should the Contribution Disclosure Statements be maintained by the Board Proceedings Division?

ANSWERS:

(1) A Board Member need only disclose at the hearing that a contribution or contributions aggregating \$250 or more have been received and that the Board Member is therefore disqualified from participating pursuant to Government Code Section 15626. The specific amount(s) of the contribution(s) is not required by statute to be disclosed orally on the record of the proceeding by the Board Member.

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(2) Government Code Section 15626 does require parties, participants and/or agents to disclose the specific amount(s) of contributions made to Board Members.

(3) The Contribution Disclosure Statements filed by parties, participants and agents are part of the official record of the Board. They should be maintained by the Board Proceedings Division for a minimum of five years.

ANALYSIS:

Under Government Code Section 15626, a Board Member who has 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 or his or her agent, is required to "disclose that fact on the record of the proceeding." (Gov. Code § 15626(b).) In addition, "[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." (Gov. Code § 15626(e).) Finally, the statute also provides the following:

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 thereof, to determine whether any contribution has been made to a member, and if so, in what aggregate amount and on what date or dates...." (Gov. Code § 15626(h)(6).)

It is clear that Government Code Section 15626 does not require the amount or amounts of the contribution(s) to be disclosed orally by Board Members on the record of the proceeding. The only statutory requirement is that the fact that a contribution or contributions have been received and are the reason for disqualification must be put on the record of the proceeding. We suggest the following statement be made by the disqualified member(s):

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"Pursuant to the provisions of Government Code Section 15626, I am disqualified from participating in the pending proceeding."

In addition, we note that the proposed regulations adopted pursuant to Government Code Section 15626 provide only for disclosure of the fact of a contribution, not the amount. (See 2 Cal. Code Regs. § 7009(a) (proposed).)

In contrast, the staff is required by statute to "determine" of each party, participant and agent whether any contribution has been made to a member, and if so, in what aggregate amount. We are therefore of the opinion that the amount of contribution(s) should continue to be included on the contribution disclosure forms.

The proposed regulations adopted pursuant to Government Code Section 15626 provide that all statements filed pursuant to Government Code Section 15626 by parties, participants, and agents shall be incorporated into the written record of the proceeding and shall be made available to the public. (See 2 Cal. Code Regs. § 7009(c) (proposed).) A question has arisen regarding how long the contribution disclosure statements should be retained by the Board Proceedings Division. Government Code Section 15626(i)(4) provides that "[p]rosecution for violation of this section shall be commenced within four years after the date on which the violation occurred." We are, therefore, of the opinion that the Board Proceedings Division should retain the filed contribution disclosure statements for a minimum of five years from the date they are received.



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cc: Hon. Matthew K. Fong
Member, First District
Hon. Ernest J. Dronenburg, Jr.
Hon. Gray Davis
Contribution Disclosure Binder Distribution List