

## MEMORANDUM

To: Janice Masterton, Chief  
Board Proceedings Division, MIC:81

Date: June 5, 1995

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

Subject: Contribution Disclosure Opinion No. 95-6

A REQUEST BY A BOARD MEMBER TO CHANGE THE DATE FOR ACTION ON AN ITEM ON THE NON ADJUDICATORY CONSENT CALENDAR CONSTITUTES CONTACTING BOARD STAFF AND THE ITEM BECOMES ADJUDICATORY

The question has arisen whether a request from a Board member to change the date that an item is scheduled on the non-appearance consent calendar for non-adjudicatory items would cause the item to become adjudicatory. A contact by a Board member requesting specific action such as this constitutes "contacting the board staff" within the meaning of subdivision (h) (5) of Government Code Section 15626. Accordingly, the item would become an adjudicatory matter pending before the Board, and the taxpayer would be required to complete and file campaign contribution disclosure forms.

In subdivisions (b) (2) and (b) (3) of Regulation 7003, the Board has more specifically defined which contacts may be made without causing an item to become an adjudicatory matter within the meaning of subdivision (h) (5) of Section 15626. Those contacts are limited to procedural contacts, such as when a case is scheduled, the status of a particular case, and whether campaign contribution disclosure requirements have been met. The regulation further defines what constitutes a substantive inquiry which would cause the item to become an adjudicatory matter.

Neither the definition of "procedural inquiries" in subdivision (b) (2) nor the definition of "substantive inquiries" in subdivision (b) (3) specifically includes a request to remove a matter from a consent calendar on one date and place it on a consent calendar on another date, or a request to place a particular taxpayer's matter on a consent calendar for a particular date; however, such a request is clearly more than a procedural inquiry of the type defined. Procedural inquiries,

by definition, are simply that: inquiries. They do not require staff action in response to the inquiry. On the other hand, a request to change a hearing date or set a specific hearing date is a request for special treatment for a particular taxpayer for substantive reasons, i.e. to change the date when the refund or other action takes place for whatever benefit that affords the taxpayer. It requires action by the staff on behalf of one taxpayer, and sets that one taxpayer apart from others similarly situated.

If you have any questions, please contact Assistant Chief Counsel Larry Augusta at 445-6493.

ELS:LAA:ph

Copies to Contribution Disclosure List of Names: