

**M e m o r a n d u m**

To : Mrs. Janice Masterton, Chief  
Board Proceedings Division

MIC: 81

Date: November 12, 1996

From : Mary C. Armstrong  
Acting Chief Counsel



Subject : **Contribution Disclosure Opinion No. 96-3**  
A county may be a "participant" for purposes of contribution disclosure.

I am writing in response to the question of whether a county may be a participant for purposes of contribution disclosure under the Kopp Act (Government Code section 15626). As discussed below, a county may be a participant if a representative of the county actively supports or opposes a particular decision in an adjudicatory proceeding pending before the board and the county has a financial interest in the decision.

The Kopp Act provides that: "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." (Section 15626 (e).)

A "party" is "any person who is the subject of an adjudicatory proceeding pending before the board." (Section 15626(h)(2).) A "participant" is "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, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9. A person actively supports or opposes a particular decision if he or she lobbies in person the members or employees of the board, testifies in person before the board, or otherwise acts to influence the members of the board." (Section 15626(h)(3).) The term "person" is not defined in the Kopp Act.

In Contribution Disclosure Opinion (CDO) 90-2, we advised that the Franchise Tax Board, although a state agency, was a "person" for purposes of the Kopp Act. The rationale was that an entity that has the right to sue and be sued and to enter into contracts is, absent a specific statutory definition to the contrary, regarded as a person.<sup>1</sup> It was later established by regulation that the term "party" does

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<sup>1</sup> We note also that, for purposes of the campaign contribution reporting requirements of the Political Reform Act (Government Code section 81000 et seq.), the definition of "person" in Government Code section 82407 encompasses public entities. (Fair Political Practices Commission v. Suitt (1979) 90 Cal. App. 3d 125.)

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“not include a state agency as that term is defined in Chapter 2 (commencing with Section 82000) of Title 9 of the Government Code.”<sup>2</sup> (18 Cal. Code of Regs., Section 7004(a), emphasis added.) This regulatory exclusion is consistent with the purposes of the Kopp Act since state agencies generally do not make campaign contributions.<sup>3</sup> We note, however, that 18 Cal. Code of Regs., Section 7005, which defines “participant,” does not contain a similar exclusion. Therefore, absent a future regulatory provision establishing such an exclusion, a state agency that meets the definition of participant would be required to complete a contribution disclosure form.

Based on the analysis in CDO 90-2, a county may also be a “person” subject to contribution disclosure requirements of the Kopp Act. Moreover, the contribution disclosure regulations contain no exclusions for local agencies. Since it is also generally illegal for local agencies to use public funds to make campaign contributions, arguably a regulation could also be adopted to exclude local agencies from the definitions of party and participant.<sup>4</sup> However, since no such regulation currently exists, we are of the opinion that it is necessary for local entities such as counties to complete contribution disclosure forms if they are a party or a participant as defined in the Kopp Act.

The County Counsel, the chief financial officer for the county, or the county manager may complete contribution disclosure forms for the County. In addition, the person representing the County in the adjudicatory proceeding should complete contribution disclosure forms as an agent.

If you have any questions regarding this advice, please contact Tax Counsel Ani Kindall at 324-2195.

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cc: Mr. E. L. Sorensen, Jr.  
Mr. James Speed  
Mr. Lawrence Augusta  
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Contribution Disclosure Binder Distribution List

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<sup>2</sup> Government Code section 82049 defines “state agency” to mean “every state office, department, division, bureau, board and commission, and the Legislature.”

<sup>3</sup> See, Government Code section 8314 (“It shall be unlawful for any elected state officer, appointee, employee, or consultant to use or permit others to use state resources for campaign activity ....”) and section 85300 (“No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office.”) However, compare Fair Political Practices Commission v. Suitt (1979) 90 Cal. App. 3d 125, a case involving an unreported in-kind contribution by the Assembly Democratic Caucus of the State Legislature, in which the court held that campaign contribution reporting requirements of the Political Reform Act (Government Code section 81000 et seq.) were intended to apply to contributions of public funds as well as private funds.

<sup>4</sup> See, Government Code section 85300, Penal Code section 424, and People v. Battin (1978) 77 Cal. App. 3d 635 (illegal use of supervisory staff in campaign).