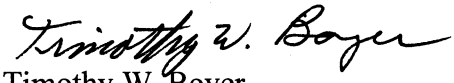
State of California

Board of Equalization
Legal Division-MIC: 83

Memorandum

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

Date: January 6, 1997



From : Timothy W. Boyer
Chief Counsel

Subject : **Contribution Disclosure Opinion No. 97-1**
If Contributions Are Accepted by an Acting Board Member, the Disclosure and Disqualification Provisions of the Kopp Act Are Applicable to the Acting Board Member. Contributions Received by the Resigned Board Member Should Not Be Disclosed and Will Not Result in Disqualification of an Acting Board Member

Questions Raised:

Prior to his departure, Mr. Steven Kamp, Legal Counsel to Board Member Brad Sherman, raised the following questions:

1. "Whether the Quentin L. Kopp Conflict of Interest Act, Government Code section 15626, applies to votes and other acts of participation by a Chief Deputy serving as Acting Board Member?"

2. "Whether contributions to a non-federal committee controlled by the departing Board Member (Mr. Sherman), accepted by Mr. Sherman while Chief Deputy Chiang is serving as Acting Board Member (or within one year prior to the resignation date of the departing Board Member), would require disclosure by, and/or disqualification of, Mr. Chiang from voting or participating, under the Kopp Act?"

Conclusions:

1. If contributions are accepted by an Acting Board Member, the disclosure and disqualification provisions of the Kopp Act are applicable to the Acting Board Member. An Acting Board Member's name should be included on the contribution disclosure form even if no contributions are currently being accepted. The requirement in Government Code section 15626(h)(6), to provide the board staff with campaign statements, will not apply until such time as an Acting Member is required by the Political Reform Act (Government Code section 81000 et seq.) to file campaign statements.

2. Now that Board Member Brad Sherman has resigned his office, contributions to a non-federal committee controlled by Mr. Sherman, accepted by Mr. Sherman while the Chief Deputy is serving as the Acting Member, or within one year prior to his resignation date, should not be disclosed and do not require disqualification.

Analysis:

Government Code section 15626, in pertinent part, provides:

> (b) Prior to rendering any decision in any adjudicatory proceeding pending before the State Board of Equalization, each member who knows or has reason to know that he or she received a contribution or contributions within the preceding 12 months in an aggregate amount of two hundred fifty dollars ($250) or more from a party or his or her agent, or from any participant or his or her agent, shall disclose that fact on the record of the proceeding.
>
> (c) No member shall make, participate in making, or in any way attempt to use his or her official position to influence, the decision in any adjudicatory proceeding pending before the board if the member knows or has reason to know that he or she received a contribution or contributions in an aggregate amount of two hundred fifty dollars ($250) or more within the preceding 12 months from a party or his or her agent, or from any participant or his or her agent, and if the member knows or has reason to know that the participant has a financial interest in the decision, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9.
>
> ...
>
> (e) 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.
>
> ...
>
> (g) For purposes of this section, if a deputy to the Controller sits at a meeting of the board and votes on behalf of the Controller, the deputy shall disclose contributions made to the Controller and shall disqualify himself or herself from voting pursuant to the requirements of this section.
>
> (h) For purposes of this section:
>
> ... (6) ... Each member shall provide board staff with a copy of each of his or her campaign statements at the time each of those statements is filed.

We are of the opinion that, if contributions are being accepted by an Acting Board Member, the Acting Board Member is subject to the disclosure and disqualification requirements of the Kopp Act. The purpose of the Kopp Act is to avoid conflicts of interests. The Kopp Act makes no distinction between elected members and appointed or acting members. An Acting Member "is authorized to perform all of the duties of the office until the vacancy is filled."[1] Therefore, if an Acting Member accepts contributions, he is as susceptible to conflicts of interest as the elected Board Members and must therefore be subject to the same rules. Moreover, even if no contributions are currently being accepted, an Acting Member's name should be listed on the contribution disclosure forms in order to provide notice to parties, participants, or agents that aggregated contributions of $250 or more to an Acting Member will be subject to the Kopp Act's disclosure and disqualification requirements.

Government Code section 15626(h)(6) requires each member to provide board staff with a copy of each of his or her campaign statements at the time each of those statements is filed. Generally, no campaign statement filing requirements exist until such time has a person becomes an elected officer, a candidate, or a committee. (Government Code sections 82013 and 84100 et seq.) Therefore, until such time as an Acting Member is required to file campaign statements under the Political Reform Act, no requirement to provide campaign statements to board staff can exist under Government Code section 15626(h)(6).

With regard to the second question, we are of the opinion that contributions to the former Board Member are not disclosable and do not result in disqualification of an Acting Member. The Kopp Act specifically addresses the responsibility of the Deputy Controller in Government Code section 15626(g). The Deputy Controller acts under the direct supervision of the Controller and casts the Controller's vote; therefore, it is appropriate to disclose and disqualify based on contributions received by the Controller. The same rationale is not applicable to an Acting Member because an Acting Member is no longer under the control of the former Board Member. An Acting Member must fulfill the duties and responsibilities of the office using his or her own judgment. Consequently, contributions made to the former Board Member do not create a potential conflict of interest and as such do not require disclosure or disqualification.

If you have any questions regarding this advice, please contact Ani Kindall of my staff at 324-2195.

TWB:AAK:ak
cdo97-1.doc

cc: Honorable Johan Klehs
Honorable Ernest J. Dronenburg, Jr.
Honorable Dean F. Andal
Mr. John Chiang
Honorable Kathleen Connell
Mr. E. L. Sorensen, Jr.
Contribution Disclosure Binder Distribution List

---

[1] See Attorney General Opinion 96-1106 issued December 31, 1996.