State of California

Board of Equalization
Legal Division-MIC: 82

Memorandum

To : Mrs. Janice Masterton, Chief
Board Proceedings Division

MIC: 81

Date: January 31, 1997

From : Timothy W. Boyer
Chief Counsel

Timothy W. Boyer

Subject: **Contribution Disclosure Opinion 97-3**
The basic difference between a consent calendar item and an item on a "not subject to statute" calendar is that a consent calendar item would be subject to the Kopp Act requirements if it were removed from the consent calendar, while a "not subject to statute" calendar item is never subject to the requirements of the Kopp Act. A consent calendar may consist of just one item.

Questions:

You have raised the following questions:

1. What is the difference between a "not subject to statute" calendar and a consent calendar?

2. May a consent calendar consist of just one item?

Conclusions:

1. A "not subject to statute" calendar consists of items that the Board Members may discuss freely without regard to the requirements of the Kopp Act (Government Code section 15626). A consent calendar, for purposes of the Kopp Act, consists of non-appearance, non-adjudicatory matters as defined in Government Code section 15626(h)(5). The basic difference between a consent calendar item and an item on a "not subject to statute" calendar is that a consent calendar item would be subject to the Kopp Act requirements if it were removed from the consent calendar, while a "not subject to statute" calendar item is never subject to the requirements of the Kopp Act.

2. A consent calendar may consist of just one item.

Analysis:

Pursuant to Government Code Section 15626(h)(5), a consent calendar matter is not considered "adjudicatory," and therefore subject to the Kopp Act requirements, "unless the matter has previously appeared on the calendar as a non-consent item, or has been removed from the consent calendar for separate discussion and vote, or the item is one about which the member has previously contacted the staff or a party."

18 California Code of Regulations, Section 7003 further defines an "adjudicatory proceeding." Subdivision (a) of Regulation 7003 states:

> "adjudicatory proceeding pending before the board" means any matter pertaining to an issued assessment of tax or fee or refund of tax or fee to a taxpayer or feepayer that has been scheduled and appears as an item on a meeting notice of the board, as required by Government Code Section 11125, as a contested matter for administrative hearing before the board.

Subdivision (b) of Regulation 7003, in pertinent part, states:

> A non-appearance agenda item is not considered an adjudicatory proceeding unless the matter has previously appeared on the calendar as a contested matter, or has been removed from the non-appearance agenda for separate discussion and vote, or the agenda item is one about which the member has previously contacted the board staff or a party. A matter which has previously been submitted on the record without an appearance by the taxpayer or taxpayer's representative and without Board discussion on the matter is a non-appearance matter.

Regulation 7003 then goes on to provide that certain items are not considered adjudicatory proceedings under Government Code section 15626. For example, assessments pursuant to Section 19 of Article XIII of the California Constitution (subdivision (c)) and rate setting functions fixed or set by the board (subdivision (d)) are not considered adjudicatory proceedings. These items, since they are never subject to the provisions of the Kopp Act, would be placed on a "not subject to statute" calendar. Unlike non-appearance, consent calendar items, items on a "not subject to statue" calendar may be freely discussed by the Board Members without causing them to be subject to the Kopp Act.

For purposes of the Kopp Act, a consent calendar may consist of just one item. The Kopp Act does not provide that an otherwise consent item may not be placed on a consent calendar simply because there is only one such item for consideration at a meeting. A one item consent calendar should be treated in the same manner as any other consent calendar. The vote must be taken on the calendar without discussion of the item.

If you have further questions regarding this matter, we will be happy to discuss then with you. The staff assigned to this matter are Assistant Chief Counsel Mary C. Armstrong (324-5589) and Tax Counsel Ani Kindall (324-2195).

cc: Contribution Disclosure Binder Distribution List