

M e m o r a n d u m

To : Mrs. Janice Masterton, Chief MIC: 81 Date: March 24, 1999
Board Proceedings Division

From : Timothy W. Boyer *Timothy W. Boyer*
Chief Counsel

Subject : **Contribution Disclosure Opinion No. 99-2**
Legally Required Participation - Random Selection Procedure

For purposes of additional clarification, we are providing this discussion of legally required participation and the random selection procedure.

When a majority of Board members are disqualified from participating in a governmental decision pursuant to Government Code section 15626, a sufficient number of disqualified members may be brought back to establish a quorum through a process of random selection such as a lottery. A member who participates in a lottery so that the Board can perform its statutory or constitutional duty is acting in manner that is consistent with the provisions of the Kopp Act. The Kopp Act provides for such participation in order to avoid situations where the Board, due to the lack of a quorum, is unable to perform its duties.

As we have addressed in previous opinions, the process of random selection involves the following steps:

1. A determination is made that a quorum does not exist because a majority of the members have disqualifying contributions.
2. The Chief, Board Proceedings Division or her designee places the name(s) of the disqualified member(s) in an envelope.
3. The Sergeant at Arms draws the names of as many members as needed to form a quorum. The selected member(s) may fully participate in the decision or may choose to abstain.

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4. If any disqualified member is unwilling to participate in the lottery, then a determination must be made whether or not the matter must be decided by date certain.
5. If the matter requires decision by a date certain, then, in order for the Board to conduct its necessary duties, the remaining disqualified members may participate in a lottery.
6. If the matter does not require a decision by a date certain; then the unwillingness of all disqualified members to participate in the lottery prevents the Board from forming a quorum.

If there are any questions or concerns regarding this matter, please call me at 445-4380.

cc: Honorable Johan Klehs
Honorable Dean F. Andal
Honorable Claude Parrish
Honorable John Chiang
Honorable Kathleen Connell
Mr. E. L. Sorensen, Jr.
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