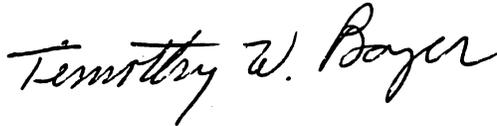


# Memorandum

To : Honorable Johan Klehs  
Honorable Dean Andal  
Honorable Claude Parrish  
Honorable John Chiang  
Honorable Kathleen Connell

Date: April 6, 1999

From : Mr. Timothy Boyer  
Chief Counsel



Subject: **Contribution Disclosure Opinion 99-3**  
**Providing Contribution Disclosure Forms to Potential Participants**

The following discussion is provided for the purpose of further clarification of the law in the subject area. Section 15626 provides both disclosure and disqualification requirements applicable when a Board Member has received a contribution of \$250 or more from a party, participant, or agent. In order to assist the Board Members in complying with these requirements, the Board has developed contribution disclosure forms that should be provided to parties and to those who may be participants or agents.

To better understand the law, it is useful to review the disqualification requirement in section 15626, as clarified by regulation 7008. A Board Member will be obligated to disqualify from a decision when both of the following occur:

1. The Board Member knows or has reason to know that he has received a contribution of \$250 or more from an individual, and
2. The Board Member knows or has reason to know that the individual is a participant. A participant is someone who (a) opposes or supports a decision and (b) has a financial interest in the outcome.

### **Knowledge that an Individual Supports or Opposes a Decision.**

Regulation 7006(b) broadly defines when an individual supports or opposes a particular decision. This could include any communication to the Board Member *if the purpose of the communication is to influence the decision*. Obviously, statements concerning pending matters that are not made for the purpose of influencing the decision, do not implicate section 15626.

However, even if a communication is made to the Board Member for the purpose of influencing the decision, whether actual disqualification is mandated based on this communication will depend on the Board Member's knowledge that the individual has a financial interest in the decision.

**Knowledge that an Individual has a Financial Interest.**

Regulation 7008(a)(1) states that a Board Member has knowledge (or should have knowledge) of an individual's financial interest under one of two circumstances:

1. The individual *reveals* that they have a financial interest, or
2. The Board Member otherwise *has actual knowledge or should have actual knowledge*.

So, for example:

- If a person generally discusses a pending decision with a Board Member, section 15626 would most likely not be implicated.
- If that same person reveals that he owns a business, but due to the nature or location of the business, the Board Member *knows or reasonably believes* that business would not be financially affected by the decision, section 15626 is not implicated.
- If that person reveals that he owns a business and reveals facts that suggest that the business may be affected by the decision, but never makes any statements in support or opposition to the decision, the person would not be a participant under section 15626.
- If the Board Member knows that the person owns a business and that the business may be financially affected by the decision, but the person only makes statements in support or opposition to the decision to the public at large, the person would not be a participant under section 15626. (See, Regulation 7006(c).)

Conversely:

- If the Board Member knows the person has made statements in support or opposition to the decision and knows that the person owns a business that will be financially affected by the decision, obviously section 15626 is implicated and the contribution disclosure forms should be provided. (However, no disqualification is required unless a contribution of \$250 or more was received from the individual within the preceding 12 months.)

Honorable Board Members

April 6, 1999

Page 3

- If that person reveals that he owns a business, reveals facts that suggest that the business may be affected by the decision, and makes statements in support or opposition to the decision, it would be prudent to provide contribution disclosure forms. (However, no disqualification is required unless a contribution of \$250 or more was received from the individual within the preceding 12 months.)
- In the rare case where the Board Member does not know whether the individual has a financial interest that will be affected by the decision, but he does know that the person made a \$250 contribution and knows that the person is actively supporting or opposing the decision, it would again be prudent to provide contribution disclosure forms. The provision of the form provides a “safe harbor” for the Board Member if the person is in actuality a participant.

Hopefully, these examples are helpful. If you have questions, please call me at (916) 445-4380.

cc: Mr. E. L. Sorensen, Jr.  
Contribution Disclosure Binder Distribution List