

Memorandum

To: Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chairwoman
Honorable Betty T. Yee, First District
Honorable George Runner, Second District
Honorable John Chiang, State Controller

Date: July 15, 2011



From: Anita Gore, Deputy Director
External Affairs Department

Subject: **Board Meeting: July 26-28, 2011, Item M**
Educational Outreach Events and Partnerships

This memo is to provide you with the follow up information you requested at the April 27, 2011 Board Meeting, regarding the Board of Equalization's current procedures, guidelines and best practices for educational outreach events. The memo includes the history and current BOE policies and procedures and plans for future enhancements.

The External Affairs Department's Outreach Services Division is currently charged by the Board Members to coordinate outreach events and activities in an effort to better educate tax and fee-payers about their tax obligations. As the state's need for revenues to support BOE programs, infrastructures, and services grows, the agency continually assumes a broader role in educating taxpayers. In conformity with the Board's 2010 – 2015 Strategic Plan, <http://www.boe.ca.gov/pdf/pub382.pdf>, the goal of taxpayer education and outreach is to maximize voluntary compliance.

There are three basic types of outreach events that BOE staff and Board Members have consistently supported and participated in over the years:

BOE sponsored – initiated by a BOE program or Board Member, coordinated and funded in whole or part by BOE and include only government entities or nonprofit organization as co-sponsors, “partners,” or event participants.

Non-BOE sponsored – sponsored and coordinated by non-profit or community-based organizations, and

BOE co-sponsored – sponsored and coordinated in different respects by other BOE and non-profit or community-based organizations.

BOE sponsored events cost BOE approximately \$3,700 each, for travel, printed handouts, etc. Each event is attended by approximately 200 or more taxpayers. Outreach Services Division 2010/11 annual budget is \$391,974. Of that total, \$291,974 is personnel services for 5.5 employees and \$100,000 is operating expenses.

All expenditures for BOE participation in non-BOE sponsored events must be approved by the External Affairs Department, Legal Department and the Executive Director. Costs for these events include travel expenditures for a BOE staff expert to speak, educational CDs, printed handouts, etc.

CURRENT POLICIES/GUIDELINES

All events, both BOE-sponsored and non-BOE sponsored events must have a governmental purpose (see Appendix A for definition of “governmental purpose”) and must be reviewed and approved by the External Affairs Department, Legal Department, and the Executive Director (see attached chart). The Legal Department and the External Affairs Department are responsible for determining whether there is a “governmental purpose”.

Guidelines for BOE participation in BOE sponsored and non-BOE sponsored outreach events are supported by numerous internal legal opinions and FPPC advice as well as sections in the Board of Equalization Administrative Manual (BEAM). Copies of the opinions and FPPC advice can be requested from the Legal Department and the BEAM provisions below.

BOE sponsored events abide by the following guidelines:

- May be produced in co-sponsorship with non-profit organizations and/or government agencies (does not prohibit nonprofit partners having for profit contributors);
- Admission is free to the participants;
- Event materials are created, printed and distributed by the BOE. All materials distributed to the public are reviewed and approved by the External Affairs Department, Legal Department, Executive Director. Although, it is not the general practice for the BOE to include logos of for-profit company names or logos on event materials, there is no law specifically prohibiting placement of a for-profit business logos on event materials created, printed and distributed by the BOE.
- Exhibit tables at BOE sponsored events are offered to non profit organizations or government agencies at no charge;
- Venues used for BOE sponsored events are typically government, non-profit or community facilities that can be used at no cost. If there is a fee is typically charged for the venue, Outreach Service Division (OSD) of the External Affairs Department will submit a fee waiver request.

Policies related to non-BOE sponsored events are outlined in BEAM Sections 7807, 7808 and 7809 and are summarized below:

- It is permissible for the BOE to participate in non-BOE sponsored events that are sponsored and coordinated by nonprofit or community-based organizations that have partnered with for-profit private businesses to put on the event.
- Requests for BOE participation in non-BOE sponsored events (i.e., a speaker, panel participation, staffing a booth or table), are evaluated by OSD and the Legal Department to verify that the event has a governmental purpose prior to authorizing participation. All proposed allocation of resources are reviewed and approved by the Executive Director.
- It is permissible for BOE to participate in events where for-profit vendors have partnered with the sponsoring non-profit to have booths or tables at the events and/or otherwise support and help defray the costs of the seminars.
- Nothing in the Political Reform Act prevents the BOE from participating in non-BOE sponsored events sponsored or coordinated by non-profit and community-based organizations that have solicited payments from for-profit businesses to support and help defray the costs of the seminars.

Policies related to BOE co-sponsored events:

- Requests for BOE co-sponsorship follow the guidelines for non-BOE sponsored events.

LEGAL CONSIDERATIONS (see attached Appendix B)

The BOE Legal Department reviews and approves all events that the BOE participates.

There are 6 different areas of legal guidance applicable to Outreach Events.

- Quentin Kopp Act
- Political Reform Act
- Behested Payments
- Mass Mailings
- Conflicts of Interest (*Business Investment, Business Employment, Real Property, Gifts, Personal Financial Effect, etc.*)
- Use of State Resources

BEST PRACTICES

Below are some common questions/issue associated with BOE outreach activities that have been resolved by the BOE Legal Department and have lead to the BOE “best practices” guidelines.

How do we treat payments made or solicited by a nonprofit, 501 (c)(3) tax exempt organization, to underwrite the costs of a BOE sponsored event?

Payments made or solicited by a nonprofit, 501 (c)(3) organization at the behest of a Board Member to underwrite costs of holding seminars sponsored by the BOE and/or Board Member may be treated as a “behested payment”. Such payments for the seminars fall within the exemption to the definition of “contribution” applicable to certain payments made for events found in Government Code section 8201 (b)(2)(B) of the Political Reform Act.

Are there any legal restrictions on BOE to cover small costs – for coffee, bottled water, etc. (average cost is less than \$150.00) at BOE sponsored events?

Providing light refreshments such as “water and granola bars/cookies” to the participants of our tax/business seminars is permissible. A small expenditure such as this at a seminar that promotes taxpayers’ understanding of the tax law is something that is for the good of the community, and therefore an appropriate and justifiable expenditure of public funds for a public purpose. (Gov. Code 8314.)

May the BOE use state funds to print and distribute seminar invites/flyers for non-BOE sponsored events in which the BOE and/or Board Member participates? If so, are there any restrictions to sending those invites via United States Postal Service mail and/or via Email?

The BOE may use state funds to print and distribute invites/flyers announcing a seminar or other outreach activity sponsored by the BOE, or announcing a non-BOE sponsored event in which the BOE or Board Member(s) participate, so long as the expenditure has a legitimate governmental purpose.

If the BOE designs, produces, or prints more than 200 seminar/meeting flyers/invites that “feature” a Board Member (i.e., Member’s name or title is mentioned at least once or used in letterhead), and are to be sent to constituents’ homes, businesses, or P.O. boxes, then these are considered mass mailings. In order for the BOE to send them, the flyer/invite must meet the requirements of an applicable exception to the mass mailing prohibition. (Gov. Code 89001; FPPC Regulation 18901.)

May the BOE use state funds to print programs for non-BOE sponsored events?

Yes, the BOE may use state funds to print programs for non-BOE sponsored events, in which the BOE and/or Board Member (s) participate, so long as the expenditure has a legitimate governmental purpose. Policies for determining the level of BOE participation in non-BOE sponsored events in outlined in BEAM sections 7802 et seq.

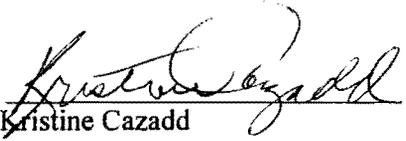
FUTURE ENHANCEMENTS

In an effort to become more transparent in all our public activities, the External Affairs Department would like to create a web page on the BOE public website that includes standard operating guidelines for sponsoring and participating in non-BOE sponsored events. A web page developed for these purposes can be easily accessed by all interested parties, can be easily updated with changes.

The practice of posting outreach activity guidelines is consistent with other governmental agencies who offer taxpayer assistance through outreach activities and events (i.e., Internal Revenue Service, Small Business Administration, etc.).

In addition, the External Affairs Department would like to create a web page on the BOE Intranet website for BOE employees to access information about participating in BOE sponsored and non-BOE sponsored events. Information would include the standard operating guidelines posted to the BOE public website and additional information on BOE guidelines for speakers, presentations, and materials.

Approved:


Kristine Cazadd
Interim Executive Director

Item deferred.

7/26/2011



Approval Procedures

Type of Outreach Activity	EAD Approval	Board Member Approval	BOE Program Approval	Legal Approval						Executive Director Approval
				Quentin Kopp Act	Political Reform Act	Behested Payments	Mass Mailings	Conflicts of Interest	Use of State Resources	
BOE Sponsored Event	✓	✓	✓	✓	✓	✓		✓	✓	
Non-BOE Sponsored Event	✓	✓	✓	✓	✓	✓		✓	✓	
BOE co-sponsored Event	✓	✓	✓	✓	✓	✓		✓	✓	
Event Invites/Flyers	✓	✓					✓		✓	
Public Service Announcements	✓	✓			✓		✓		✓	
Event Programs	✓				✓		✓	✓	✓	
Promotional Items (pens, bags, business cardholders, etc.)	✓	✓	✓		✓		✓		✓	

DEFINITION OF GOVERNMENTAL PURPOSE

Governmental/Public Purpose Definition

Public resources may not be used by the BOE unless there is a governmental or public purpose. This means that the expenditure of BOE resources must benefit the public interest rather than private individuals or a private purpose. Even if there is a governmental or public purpose, the expenditure must still be authorized. A Board Member or the BOE only has the authority to expend resources on governmental or public purposes within its express or implied constitutional or statutory authority. In *League of Women Voters of California v. Countywide Criminal Justice Coordination Committee* (1988) 203 Cal.App.3d 529, 549, the court explained that “the determination of what constitutes a public purpose is primarily a matter for legislative discretion [citations], which is not disturbed by the courts so long as it has a reasonable basis.” The court suggested, however, that in the case of an administrative agency, what constitutes a “legitimate purpose” is limited by the agency’s explicit authority. *Id.* at 549. In making this distinction, the court compared a state agency to a city government who they viewed to possess “broad autonomous legislative and fiscal powers.” *Id.*

Consistent with the opinion of the Attorney General in 73 Cal. Ops. Atty. Gen 255 (1990), to be of “legitimate interest” to the BOE, the expenditure of state funds must affect the BOE as a state agency, or affect the citizens of the BOE in their status as citizens of the BOE. Mere general interest of the electorate in any matter, (e.g., in “pro-life” or “pro-choice” matters), would not be sufficient or a legitimate interest on which to expend state funds.

According to the Attorney General in its *Ethics Training Course for State Officials*, the starting point for any analysis concerning the misuse of public funds begins with the principle that public funds must be expended for an authorized public purpose. An expenditure is made for a public purpose when its purpose is to benefit the public interest rather than private individuals or private purposes. Once a public purpose is established, the expenditure must still be authorized. A public official possesses only those powers that are conferred by law, either expressly or impliedly.

LEGAL CONSIDERATIONS

A. Quentin Kopp Act:

Generally, an outreach event does not result in disqualification under the Kopp Act because payments made to help defray the costs of a governmental event will not be construed as “contributions.”

A Member of the Board is disqualified from participating in an adjudicatory proceeding pending before the Board if any party, participant, or agent has contributed \$250 or more to the Member in the preceding 12 months. (*Board Reference Manual* pp.3-1 - 3-3, attached.) For purposes of the Kopp Act, the term “contribution” has the same meaning prescribed in Govt. Code section 82015 of the Political Reform Act (PRA) and related regulations. Therefore, if a payment is not considered a “contribution” under the PRA, it will not be deemed a contribution under the Kopp Act.

B. Political Reform Act:

Outreach events generally do not constitute a conflict of interest under the Political Reform Act because payments made to help defray the costs of a governmental event will not be construed as “gifts” or “contributions.” If a Board Member cosponsors a free tax seminar with a non-profit organization and solicits donations to help defray the seminar-related costs, the donations received by the non-profit at the Board Member’s behest constitute “behested payments,” not contributions or gifts.

C. Behested Payments:

A payment that is made by a third party principally for legislative, governmental, or charitable purposes is generally considered a “behested payment” if it is requested, solicited, or suggested by an elected officer, or is otherwise made in cooperation, consultation, coordination, or with the consent of the elected officer. This includes payments behested on behalf of the elected officer by his or her agent or employee. (Gov. Code, §82015, subd. (b)(2)(B)(iii); Cal. Code Regs., tit. 2, §18225.7; Fair Political Practices Commission (FPPC), *Limitations and Restrictions on Gifts, Honoraria, Travel and Loans* (February 2010), at p. 5.) These payments are not for personal or campaign purposes.

Government Code section 82015(b)(2)(B)(iii) states that a payment which is made principally for legislative, governmental, or charitable purposes will not be considered a contribution or a gift as long as it is not made principally for personal purposes. Thus, as long as the seminar is principally for governmental purposes, no contribution will occur. If such payments equal or exceed \$5,000 in the aggregate in a calendar year from the same source, then reporting obligations will occur. (Gov. Code, §82015(b)(2)(B)(iii).) Moreover, in order to not be deemed a “contribution,” the payment(s) may not be used for “election-related activities.”

D. Mass Mailings:

Generally, an outreach event does not result in violation of the “mass mailing” rule, so long as the dissemination of promotional materials meets one of the exceptions to the prohibition, or results in sending 200 or less invites via US mail. Government Code section 89001 provides that no newsletter or other mass mailing shall be sent at public expense. A “mass mailing” has been made when over 200 substantially similar pieces of mail have been delivered, by any means, by an officeholder, candidate, or committee, to any person’s home, office, or post office box in a calendar month.(Gov. Code, § 82041.5.)

Because the outreach event invites typically “feature” the Member (i.e., Member’s name is mentioned at least once or used in letterhead), no more than 200 copies of the event invites may be mailed or delivered, by any means, to a person’s home, office, or post office box in a single calendar month, unless an exception applies and the announcement otherwise complies with the applicable provisions in FPPC Regulation 18901(b), i.e., the announcement is not signed by the Member, no photographs of the Member are included, and there is no other reference to the Member, unless another exception applies. (FPPC Regulation 18901.) If, however,

items are set out for the public to pick up on their own, or are handed out in a public area, the restrictions of the mass mailing regulation do not apply.

E. Conflicts of Interest:

Economic conflicts of interest are defined in the FPPC's publication *Can I Vote?* FPPC weblink: [www.http://fppc.ca.gov/index.php?id=37](http://fppc.ca.gov/index.php?id=37). They have historically been unrelated to outreach events. If a Member has or acquires an economic interest related to an event however, the Member is disqualified from participation on the item involved. (*Board Reference Manual* pp.3-1 - 3-3, at the following weblink: <http://www.boe.ca.gov/meetings/pdf/BMRM.pdf>.)

Most common economic interests:

- **Business Investment** in a company of \$2,000 or more.
- **Business Employment** as a director, officer, partner, trustee, employee, or holding any position of management.
- **Real Property interests** of \$2,000 or more, and also certain leasehold interests.
- **Sources from whom/which you have received (or from whom you have been promised) \$500 or more** in income within 12 months prior to the decision about which you are concerned. (Includes a community property interest in spouse's or registered domestic partner's income.)
- **Gifts** from any single source may not exceed \$420 in a calendar year. Gifts from a single source that aggregate \$50 or more must be disclosed, and gifts aggregating \$420 or more received by an official may subject the official to disqualification with respect to the source. (Gov. Code, § 87103(e).)
- **Personal Financial Effect** - Personal expenses, income, assets, or liabilities are likely to go up or down by \$250 or more in a 12-month period as a result of your governmental decision.

In the absence of an economic interest at or above the disqualifying amounts listed above, a Board Member would not have a conflict of interest with regard to a matter involving that taxpayer, and would therefore, be eligible to participate in the discussion and vote of that taxpayer's matter.

If a Board Member has a financial conflict of interest under the Political Reform Act (PRA), regardless of which calendar the matter appears, a Member would not be entitled to participate in that matter. A Board Member who has a financial conflict of interest under the PRA must do the following:

- Publicly identify, in enough detail to be understood by the public, the financial interest that causes the conflict of interest or potential conflict of interest.
- Recuse himself or herself from discussing or voting on the matter or from attempting to use his or her position to influence the decision.
- Leave the room until after the discussion, vote, or any other disposition of the matter is concluded, unless the matter is on an agenda reserved for uncontested matters.

A Board Member or Deputy State Controller may choose to abstain from or not be present for voting, even if there is nothing that legally prohibits their participation, and regardless of whether their non-participation impacts the outcome of the decision. However, if a Board Member or Deputy State Controller is entitled to participate, but chooses not to, his or her reason for not participating need not be disclosed on the record.

F. Use of State Resources:

Use of the Board resources for outreach events, including non-BOE sponsored events, is consistent with Government Code sections 8314, 85300, and 1090, and is permissible, provided that:

- the event has a government purpose
- the state funds are not used to advocate or promote a Member's election to public office; rather, the event has a public purpose;
- no state funds are paid (directly or indirectly), to the co-sponsoring nonprofit; and

- the Member does not enter the state into contracts in which the Member has a personal financial interest.

Government Code 8314, subdivision (2) states: "It is unlawful for any elected state or local officer, including any state or local appointee, employee or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law." "Personal purpose" means those activities the purpose of which is for personal enjoyment, private gain or advantage, or an outside endeavor not related to state business." (Section 8314, subdivision (b) (2).)

**STATE BOARD OF EQUALIZATION ADMINISTRATIVE MANUAL
PART V — GENERAL ADMINISTRATION**

DESIGNATED OFFICIAL REPRESENTATIVE (cont. 1) 7804

- A. Amount and extent of employee participation.
- B. Personal and/or organizational benefits gained.
- C. Items of interest to BOE tax administration.

INTRA-BOE CONFERENCE 7805

When a conference is planned within the BOE to include participation from more than one BOE department, the attendees will be recommended by the appropriate Deputy Director to the Executive Director for approval or submission to the Board.

OUT-OF-STATE CONFERENCE ATTENDANCE 7806

Requests to attend out-of-state conferences must be made prior to the fiscal year in which the conference will be held based upon criteria, schedules, and instructions issued annually by the Executive Director. Requests must meet the justification requirements of the State Administrative Manual (SAM) Sections 0730-0733 and BOE policies. These requests will be processed through normal line channels and will be used by the Executive Director in considering all out-of-state conference travel plans for the fiscal year.

Requests submitted to the Executive Director must go through the same approval processes as budget requests, that is, approval by the Board, Department of Finance, and the Governor's office.

**OFFICIAL PARTICIPATION BY EMPLOYEES 7807
IN NON-BOE SPONSORED ACTIVITIES**

Employee participation in a restricted non-Board sponsored activity requires the approval of the Executive Director as set forth in BEAM Section 7808. A non-BOE sponsored activity is an activity that is not coordinated and/or funded by the Board.

Restricted Activities: Examples of restricted non-BOE sponsored activities include:

- Participating as a speaker at a conference, seminar, meeting, workshop, or class that is not sponsored by the BOE.
- Reviewing a book or other publication that is not written by BOE staff.
- Conducting a tour of BOE facilities.
- Completing a questionnaire or survey.

As a general rule, participation by an employee on state time in a restricted non-BOE sponsored activity will not be approved unless the activity is sponsored by a governmental, quasi-governmental or non-profit entity. Exceptions to the general rule may be approved by the Executive Director.

**STATE BOARD OF EQUALIZATION ADMINISTRATIVE MANUAL
PART V — GENERAL ADMINISTRATION**

**OFFICIAL PARTICIPATION BY EMPLOYEES (cont. 1) 7807
IN NON-BOE SPONSORED ACTIVITIES**

Exempted Activities: Non-BOE sponsored activities that have been exempted from the general rule are:

- Taxpayer education and outreach provided through speakers at not-for-profit events.
- Recruitment activities such as job fairs or college career days.
- Tours of BOE facilities by foreign government officials arranged by for-profit entities which have contracted with United States Government agencies and various foreign governments.

The approval process for each exempted activity is set forth in BEAM Section 7808.

**APPROVAL PROCEDURE FOR PARTICIPATION BY BOE EMPLOYEES 7808
IN NON-BOE SPONSORED ACTIVITIES**

Staffing and workload demands will be taken into consideration prior to authorizing employee participation in either restricted or exempted non-BOE sponsored activities.

The appropriate Deputy Director or direct report Division Chief shall log and note the disposition of all written requests for employee participation in restricted and exempted non-BOE sponsored activities.

The appropriate approval procedure for each type of non-BOE sponsored activity is set forth below.

The request for employee participation in a restricted non-BOE sponsored activity, accompanied by a written recommendation consistent with BOE policy, shall be forwarded from the appropriate Deputy Director or direct report Division Chief to the Executive Director (Attention: Chief Counsel) for approval or denial of the request.

Tours Of BOE Facilities By Foreign Government Officials

A request for a tour of BOE facilities by foreign government arranged by for-profit entities which have contracted with United States Government agencies and various foreign governments shall be handled in the same manner as a request for an employee to participate in restricted non-BOE sponsored activities.

Recruitment Activities

A request for Headquarters staff to participate in recruitment activity shall be submitted to the Chief of the Personnel Management Division for approval or denial of the request. A request for District office staff to participate in a recruitment activity shall be submitted to the appropriate District Administrator for approval or denial of the request. If the recruitment activity is approved by the District Administrator, a copy will be sent to the Chief of Field Operations and the Recruitment Coordinator in the Personnel Management Division.

Taxpayer Education And Outreach

Requests for employee participation in taxpayer education and outreach provided through speakers at not-for-profit events shall be approved or denied in writing by the appropriate Deputy Director or direct report Division Chief.

**STATE BOARD OF EQUALIZATION ADMINISTRATIVE MANUAL
PART V — GENERAL ADMINISTRATION**

UNOFFICIAL PARTICIPATION BY EMPLOYEES

7809

If an employee decides to participate in a non-BOE sponsored activity on non-state time, such participation must comply with the provisions of the Political Reform Act (Government Code Section 81000 et seq.) regarding the acceptance of gifts, travel expenses, and honoraria. Such participation must also comply with the standards of conduct found in the BOE's "Statement of Activities That Are Inconsistent, Incompatible, or in Conflict with Duties as an Employee of the State Board of Equalization."

The following restrictions also apply to an employee who participates unofficially in a non-BOE sponsored activity:

- No state time should be used by the employee.
- Pre-existing, nonconfidential, materials may be used as a basis for a presentation; however, state resources may not be used to copy the materials.
- The employee must make it clear that any views expressed are personal and not necessarily those of the BOE.
- The employee must limit statements about his or her employment with the BOE to position title, length of service, and location of employment.
- The employee may not be identified on the program or other materials as a BOE employee.

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