

Memorandum

To : Mr. Coby King
Legal Counsel, Second District

Date: March 15, 1993

From : Ani Armen Kindall
Staff Counsel

Subject: Contribution Disclosure Opinion 93-3
A Contribution Made to a Board Member by a Party to an Adjudicatory Proceeding Pending Before the Board is not Aggregated with a Contribution Made Solely by the Spouse of the Party's Agent

Question Presented:

This memorandum is in response to your telephone question this morning asking whether, for purposes of Government Code section 15626, a contribution to a Board Member made by a party to an adjudicatory proceeding pending before the Board should be aggregated with a contribution made by the spouse of the party's agent. Specifically, the agent's spouse made a contribution to the Board Member using a check printed with the names of both spouses. The check was signed by the wife and the husband's printed name was crossed out prior to making the contribution.

Answer:

A Board Member who has received a contribution from a party to an adjudicatory proceeding pending before the Board does not have to aggregate the contribution with one received from the spouse of the party's agent when it is clear from the spouse's contribution check that the contribution was made solely by the spouse.

Analysis:

Government Code section 15626(c) states:

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 he 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.

Government Code section 15626(h)(4) defines agent as follows:

"Agent" means any person who represents a party to or participant in an adjudicatory proceeding pending before the board. If a person acting as an agent is also acting as an employee or member of a law, accounting, consulting, or other firm, or a similar entity or corporation, both the entity or corporation and the person are agents.

2 Cal. Code of Regulations section 18533 states in part:

A contribution made from a checking account bearing the printed name of more than one individuals shall be attributed to the individual whose name is printed on the check and who signs the check, unless an accompanying document directs otherwise.

Based on regulation section 18533 and the facts surrounding the agent's wife's contribution, it is clear that the contribution was made by the agent's wife rather than the agent himself. By signing the check herself, and crossing out her husband's printed name, the agent's wife made it clear that this was not intended to be a joint contribution. Further, since the wife signed the check, regulation 18533 requires that the contribution be attributed to the wife, unless an accompanying document directed otherwise.

Section 15626(c) requires that the contributions of agents and parties be aggregated. Since the wife does not represent a party to an adjudicatory proceeding pending before the board, she is not an agent as defined in section 15626(h)(4). There is no requirement that a contribution made by an agent's spouse be aggregated with that of the party. Therefore, a Board Member who has received a contribution from a party to a

Mr. Coby King

-3-

March 15, 1993

adjudicatory proceeding pending before the Board and also from the spouse of the party's agent need not aggregate the contributions in order to determine whether he or she may participate in the proceeding.

Ani Armen Kindall

cc: . Contribution Disclosure Binder Distribution List