

Memorandum

To : Mrs. Janice Masterton
Chief, Board Proceedings Division

Date: January 10, 1995

From : E. L. Sorensen, Jr.
Chief Counsel

Subject: CONTRIBUTION DISCLOSURE OPINION 95-1

A contribution made by an agent's spouse need not be aggregated with the agent's contribution or reported by the agent.

QUESTION PRESENTED:

Recently, you noted a contribution made by an agent's spouse on a campaign reporting statement. Is a contribution by an agent's spouse to a Board Member required to be reported by the agent appearing before the Board and should it be aggregated with any contribution(s) made by the agent?

CONCLUSION:

No. Contributions made by the spouse of a party, participant or agent are not aggregated with contributions made by a party, participant or agent for purposes of determining whether a disqualifying contribution under Government Code section 15626 has been made. According to an opinion issued by the Fair Political Practices Commission (FPPC), husbands and wives are treated as separate persons for purposes of determining whether contribution limits have been met.

ANALYSIS:

Government Code section 15626 requires that prior to rendering any decision in an adjudicatory proceeding pending before the Board, each Member who knows or has reason to know that he or she has received a contribution or contributions within the preceding 12 months in an aggregate amount of two hundred fifty dollars (\$250) or more from a party or his or her agent, or from any participant or his or her agent, shall disclose that fact on the record of the proceeding.

Section 15626 clearly requires contributions made by parties, participants and agents to be aggregated to determine

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whether the \$250 threshold has been reached. To determine whether contributions from spouses of parties, participants and agents must be aggregated, we look for guidance at the general rules regarding contributions under the Political Reform Act (PRA). Originally, the PRA defined "person" as follows:

"Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert. (§ 82047 (emphasis added).)

Under this definition of "person", contributions from a husband and wife were considered by the FPPC to be from a single source and, thus, cumulative. However, after the passage of Proposition 73, there was a new definition of "person" for the purpose of contribution limits. Now, for purposes of contribution limits, "person" is defined as follows:

"Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and labor organization. (§ 85102(b).)

Thus, based upon the differences between the two definitions, the FPPC determined that contributions of husbands and wives should no longer be cumulative (see FPPC opinions Poole 90-503 and Stanton 92-041). We are of the opinion that the same analysis should be given to contributions made by the spouse of an agent, party and/or participant under Government Code section 15626. A contribution by a spouse is separate and should not be aggregated with the agent's contribution. Nor should a contribution by a spouse alone trigger the disqualification/disclosure requirements of section 15626, since the spouse is not a party, participant or agent to the pending adjudicatory proceeding.

Finally, we note that the FPPC has issued the following guidelines regarding contributions by spouses:

Individuals may make separate contributions using jointly held funds (i.e., spouses may each contribute \$1000 to a single candidate in a fiscal year).

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However, when a contribution is made by a check bearing the imprinted name of more than one individual, it must be attributed to the individual who signs the check unless an accompanying document indicates the amount to be attributed to each individual. If each individual signs the check, the contribution must be attributed equally to each individual unless an accompanying document indicates otherwise. Accompanying documents must be signed by each contributing individual. (See FPPC Information Manual A 1990.)

If you have further questions, please contact Mary Armstrong of my staff at 324-5589.

A handwritten signature in cursive script, appearing to read "E. L. Armstrong".

ELS:MCA:wk
cdo95-1

cc: Mr. Burton W. Oliver
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