



MIKE SCHAEFER  
MEMBER  
CALIFORNIA STATE BOARD OF EQUALIZATION

## MEMORANDUM

**Date:** September 12, 2024

**To:** Sally J. Lieber, Chair  
Ted Gaines, Vice Chair  
Antonio Vazquez, Board Member, Third District  
Malia M. Cohen, State Controller

**From:** Mike Schaefer, Board Member, Fourth District

**Re:** **Attorney General Opinion Request**

Honorable Members, I ask for your support in requesting that the Attorney General immediately resolve and clarify uncertainties in state law regarding the conduct of public meetings for all bodies, including the Board of Equalization. These uncertainties affect millions of people, including our constituents. I also ask that we request the Attorney General provide clarification and substantive information regarding limitations on holding office as a member of this Board.

The two specific questions to be addressed and answered are:

- 1) Whether a person must identify themselves when submitting written public comments or providing the comments remotely.
- 2) Whether a Member of the State Board of Equalization may serve more than two 4-year terms?

I provide the following information to demonstrate the uncertainties that need further clarification.

### **ISSUE #1. Gov. Code 11124 states in part:**

*(a) No person shall be required, as a condition to attendance at a meeting of a state body, to register their name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to their attendance.*

*(b) If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.*

*(c) This section does not apply to an internet website or other online platform that may require the submission of information to log into a teleconferenced meeting, provided, however, that a person required to submit such information shall be permitted to submit a pseudonym or other anonymous information when using the internet website or other online platform to attend the meeting.*

*(Amended by Stats. 2023, Ch. 216, Sec. 4. (SB 544) Effective January 1, 2024.)*

The government code includes the keyword 'attendance.' What about when public officials receive public oral or written opinions? In Court, if you are a witness, you must give your name and address unless the presiding officer grants you privacy for good cause. It must be the same way in other public meetings.

There is too much abuse when information is anonymous. Public participants listening in on meetings of the PUC, the UC Board of Regents, and the Agricultural Associations are identified; those talking or commenting in writing should be, too. Because the above law is confusing because of its silence, I believe the Attorney General will find it is limited to anonymous attendance (as it says) and leave it to the Legislature to modify it if they see fit.

## **ISSUE #2. California Constitution, Article XIII, section 17**

*The Board of Equalization consists of 5 voting members: the Controller and 4 members elected for 4-year terms at gubernatorial elections. The State shall be divided into four Board of Equalization districts with the voters of each district electing one member. No member may serve more than 2 terms.*

*(Sec. 17 amended Nov. 6, 1990, by Prop. 140. Initiative measure.)*

Legislators may serve 12 years in the Legislature, as a combination of service in the Assembly or Senate as long as the combined terms do not exceed 12 years. Our limitation for the State Board of Equalization does not mention 'lifetime,' and each of our districts has a 100% different electorate.

As the author of several important major election cases, (a) Random listing of ballot names, by alphabet (*Sumner v. Sexton*, 1972), (b) Right of the voter to write in ballot name (*Canaan v. Abdelhour*, 1985), and (c) voiding of any state residence requirements for US House or Senate (2001), I am confident that any two-term Member is entitled to seek an additional two terms in any new equalization district. So, we could serve 32 years if we did not have more than two terms in any district. The Supreme Court demands 'strict scrutiny' of any limitation on voter or candidate rights, that these rights are 'intertwined' and require a 'compelling state interest' if we are to limit the rights of a voter or a candidate.

Please support my motion that the Board request an opinion from the Attorney General on the above two issues. We owe it to our constituents to fill in the blank spaces (vague issues) regarding these important laws.

cc: Mr. Douglas Winslow, Chief Deputy, Office of Chair Sally J. Lieber  
Mr. Matt Cox, Chief Deputy, Office of Vice Chair Ted Gaines  
Ms. Deborah Bautista-Zavala, Chief Deputy, Office of Member Antonio Vazquez  
Mr. Cody Petterson, Chief Deputy, Office of Member Mike Schaefer  
Mr. Hasib Emran, Deputy State Controller  
Ms. Yvette Stowers, Executive Director