

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

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(916) 322-5662 322-3660 322-5901 322-6441 322-6444

August 27, 1981

Thomas M. Griffin  
Chief Counsel  
Department of Education  
Legal Office  
Room 535  
721 Capitol Mall  
Sacramento, CA 95814

A-81-08-076

Dear Mr. Griffin:

In your memorandum of August 20, 1981, to Ted Prim, you asked whether a member of the Board of Education who has a financial interest in a decision may participate in that decision under Section 87100 of the Government Code, when, without that member's participation, it will be impossible to get the six affirmative votes necessary for action by the Board. Our answer is that the member may participate only if his participation is legally required as provided by Section 87101 of the Act.

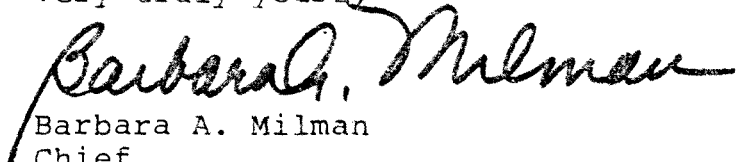
I am assuming from your letter that the Board of Education cannot act without a quorum of six members voting on a particular matter. If it is possible to constitute a quorum of members of the Board who do not need to disqualify themselves under Section 87100, the vote of a member who is required to disqualify himself under Section 87100 is not legally required under the Act. This is true even if some members of the Board who could vote are not present. In other words, for purposes of the Political Reform Act, as long as there are six members of the Board who are qualified to vote on a matter, even if they are not all present, there is no way that a member who has a financial interest in the decision can vote under Section 87100.

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In the event that so many members of the Board are disqualified under Section 87100 that a quorum of six members cannot be constituted, either from members present or from members not present at a meeting, then the question of legally required participation will arise. In determining whether the disqualified member's votes are legally required, I refer you to the Commission's regulation in 2 Cal. Adm. Code Section 18701(a), which provides that a disqualified official is not legally required to participate in a decision "unless there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision". If that is the case, then an otherwise disqualified member of the Board may be allowed to vote. For determining who should vote in such a situation, I refer you to the Commission's opinion in the matter of the opinion requested by Matthew Hudson, 4 FPPC 13 (No. 77-007, February 7, 1978).

I hope that this answers your questions on this matter. If you have any further questions, please feel free to call me at 322-5901.

Very truly yours,

  
Barbara A. Milman  
Chief  
Legal Division

BAM:ce

**Memorandum**

To : Ted Prim  
Executive Director  
Fair Political Practices Commission  
1100 K Street  
P.O. Box 807  
Sacramento, California 95804

Date : August 20, 1981

File No.:

From : THOMAS M. GRIFFIN  
Legal Office, Room 535 (5-4694)

Subject:

On behalf of the State Board of Education, I am requesting the informal advice of your staff on a issue that may arise under Government Code Sections 87100 et seq.


Under Section 33010 of the Education Code, six affirmative votes of the Board are necessary for the validity of any of its acts. If a board member abstains from voting, that abstention is, in effect, a negative vote. There have been instances in the past when a bare quorum of six board members has present. If one of those board members were required to abstain on any item, that item would fail for lack of six affirmative votes.

Under Sections 87100, et seq., of the Government Code, public officials, including members of the State Board of Education, may not make or participate in making any governmental decision in which he knows or has reason to know he has a financial interest. We understand that it is the position of your office, that in the case of such a conflict the member may not even vote against his financial interest.

When a bare quorum of the board is present, an abstention clearly has an effect on the financial interest to the same extent as does a vote. The specific question, therefore, may be stated as follows:

When a bare majority of the Board of Education is present, may a member with a financial interest in the decision participate in that decision under Section 87100.

Thank you for your attention to this matter. If you need further information or would like to discuss this problem, please do not hesitate to call at 5-4694.

  
THOMAS M. GRIFFIN  
Chief Counsel

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