

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)
)
 Opinion requested by)
 S. Wyanne Bunyan,)
 Chief Counsel for the)
 Secretary of State)

No. 76-003
 January 16, 1976

BY THE COMMISSION: We have been asked the following questions by S. Wyanne Bunyan, Chief Counsel for the Secretary of State:

Recent amendments to the Federal Voting Rights Act of 1965 require that information and materials relating to the electoral process, including ballots, be provided to single language minorities in certain instances.^{1/} The Director of the Census, pursuant to his duties under the federal statute, has determined that the State of California, in 38 of its counties, must provide all materials related to the electoral process in English and Spanish, and in one county, must provide all materials related to the electoral process in English, Spanish and Chinese. Chapter 8 of the Political Reform Act, Government Code Sections 88000, et seq., requires the Secretary of State to prepare a state ballot pamphlet in accordance with certain content, style and format requirements. Since the Political Reform Act is silent with respect to the combined use of the English, Spanish and Chinese languages, the Secretary of State's Office has asked several questions concerning the application of the Act to the Spanish and Chinese translations.

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 42 U.S.C. Section 1973aa-1a(b) provides, in pertinent part:

(b) Prior to August 6, 1985, no State or political subdivision shall provide registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language if the Director of the Census determines (i) that more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and (ii) that the illiteracy rate of such persons as a group is higher than the national illiteracy rate: Provided, That the prohibitions of this subsection shall not apply in any political subdivision which has less than five percent voting age citizens of each language minority which comprises over five percent of the state-wide population of voting age citizens....

Specifically, we have been asked:

(1) Must the non-English translation(s) of the state ballot pamphlet prepared by the Secretary of State contain all of the components prescribed in Sections 88001(a) through 88001(e) and Section 88002(a) of the Government Code?

(2) Must the non-English translation(s) in a bilingual or multilingual state ballot pamphlet prepared by the Secretary of State be placed in the state ballot pamphlet according to the precise order set forth in Section 88002 of the Government Code?

(3) Must non-English translations which are part of a bilingual or multilingual state ballot pamphlet conform to the specifications set forth in Section 88005 of the Government Code?

(4) Must a bilingual or multilingual state ballot pamphlet be structured so that the English and non-English translations are kept apart or may the translated components be intermingled with the English components. For example, would it be proper to prepare a state ballot pamphlet which alternates in either English and Spanish or in English, Spanish and Chinese the major components of the pamphlet. That is to say, print the title and summary in English, then in Spanish, then in Chinese, followed by the Official Summary of the Attorney General in the same format, etc.

CONCLUSION

(1), (2) If each voter receives a copy of the English language state ballot pamphlet, the minority language translations need not comply with the content and format requirements of Government Code Sections 88001 and 88002.

(3) If the minority language translations are part of the ballot pamphlet, the requirements of Government Code Section 88005 must be observed.

(4) The purpose of providing a clear and understandable ballot pamphlet to the average voter would be frustrated if English, Spanish and Chinese provisions were intermingled. Accordingly, this may not be done in the manner suggested.

ANALYSIS

At the outset, we emphasize that this Commission does not have jurisdiction with respect to the requirements of the Federal Voting Rights Act and we intimate no opinion relative to whether federal law requires that any or all of the state ballot pamphlet be provided to single language minorities in their own language. Our opinion in this matter is limited to the requirements of the Political Reform Act, Government Code Sections 81000 at sec. 2, and, in particular, to the provisions of Chapter 8 of the Act.

Section 8 of the Government Code provides, in pertinent part:

Whenever any notice, report, statement, or record is required or authorized by this code, it shall be made in writing in the English language unless it is expressly provided otherwise.

We assume that "this code" refers to the Government Code, see Comment, 61 Calif. L. Rev. 1395, 1396-97 (1973), and we note that it is not "expressly provided" anywhere in that Code that bilingual or multilingual materials are required in order to satisfy the various requirements of the Political Reform Act. Nor do we believe that the drafters of the Act contemplated that such materials would be necessary pursuant to the provisions of Chapter 8.

The purpose of Chapter 8 is to remedy inequities in the electoral process which were caused, in part, by a ballot pamphlet that was "difficult to read and almost impossible for a layman to understand," Section 81001(g). Thus, the reforms encompassed in Chapter 8 were designed to address problems exacerbated by a ballot pamphlet with a form and content which were confusing to the average voter. The reforms were not designed to alleviate problems created by information related to the electoral process being available only in the English language, a matter treated by federal legislation. We conclude, therefore, that the requirements contained in Chapter 8 of the Political Reform Act can be satisfied by a ballot pamphlet in the English language and that the Secretary of State can fulfill her obligations under the Act by preparing a proper ballot pamphlet in only the English language.

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All statutory references are to the Government Code unless otherwise noted.

However, our determination that the state ballot pamphlet need not be printed in languages other than English in order to satisfy the requirements of the Political Reform Act does not preclude the Secretary of State from providing a Spanish or Chinese translation. Section 88001(e) authorizes the Secretary of State to include in the ballot pamphlet material which she "determines will make the ballot pamphlet easier to understand or more useful for the average voter." In addition, Sections 7291 and 7295, albeit in a different context, provide that state agencies should furnish certain materials in languages other than English in order to facilitate effective communication between government and the people.^{3/} Taken together,

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part: Government Code Section 7291 provides, in pertinent

The Legislature hereby finds and declares that the effective maintenance and development of a free and democratic society depends on the right and ability of its citizens and residents to communicate with their government and the right and ability of the government to communicate with them.

...

It is the intention of the Legislature in enacting this chapter to provide for effective communication between all levels of government in this state and the people of this state who are precluded from utilizing public services because of language barriers.

Government Code Section 7295 provides:

Any materials explaining services available shall be translated into any non-English language spoken by a substantial number of the public served by the agency. Whenever notice of the availability of materials explaining services available is given, orally or in writing, it shall be given in English and in the non-English language into which any materials have been translated. The determination of when these materials are necessary when dealing with state and local agencies shall be left to the discretion of the state and local agency.

we think that these statutory provisions invest the Secretary of State with the discretion to add Spanish or Chinese translations to the state ballot pamphlet if she determines that such translations would be useful.

Of course, implicit in any grant of discretion is the requirement that it not be abused. Cf. Cadilla v. Board of Medical Examiners, 26 Cal.App.3d 961 (1972); Snow v. City of Garden Grove, 188 Cal.App.2d 496 (1961). Accordingly, although it may be permissible for the Secretary of State to add Spanish or Chinese translations to the state ballot pamphlet, she could not accomplish this in a manner which would frustrate the purposes of the Political Reform Act.

Having established the general principles by which we will be guided, we now turn to the specific questions posed by this opinion request. In particular, the Chief Counsel for the Secretary of State has asked whether non-English translations must observe the content requirements of Sections 88001 and 88002(a) (question 1) and the format requirements of Section 88002 (question 2).

We have concluded that the Political Reform Act requires only that each voter be provided with a state ballot pamphlet prepared in the English language which meets the content, style and format requirements of Chapter 8. See page 4, supra. If, therefore, each voter is sent at least a proper English language ballot pamphlet, the requirements of the Political Reform Act will have been satisfied. Accordingly, we conclude that supplemental material added to the ballot pamphlet need not comply with the express provisions of the Act to which the opinion request refers in questions (1) and (2).^{4/}

Question (3) asks whether minority language translations which are part of the ballot pamphlet must be printed in conformity with the requirements of Section 88005. Section 88005 provides:

The ballot pamphlet shall be printed according to the following specifications:

- (a) The pages of the pamphlet shall be not smaller than 8-1/2 x 11 inches in size;
- (b) It shall be printed in clear readable type, no less than 10-point, except that the text of any measure may be set forth in 8-point type;

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We have not been asked and we intimate no opinion on the question of whether a minority language translation must conform to the content and format requirements of Chapter 8 if the minority language translation is provided in lieu of the English language ballot pamphlet.

- (c) It shall be printed on a quality and weight of paper which in the judgment of the Secretary of State best serves the voters;
- (d) The pamphlet shall contain a certificate of correctness by the Secretary of State.

(Emphasis added).

The mandatory language of this section makes it clear that, to the extent something is part of the ballot pamphlet, the Secretary of State has no discretion relative to the requirements imposed. Accordingly, we conclude that if the minority language translation is included in the ballot pamphlet and, therefore, is a part of it, the requirements of Section 83005 must be observed.

Question (4) asks whether the minority language translations may be intermingled with or included alongside^{5/} the English language provisions as long as the format requirements are met. We conclude that, in general, intermingled translations would undermine the purposes of Chapter 8 and would result in a ballot pamphlet which would not satisfy the requirements of the Political Reform Act. Accordingly, question (4) must be answered in the negative.

The purpose of the required format is to create a uniform, uncluttered and readable ballot pamphlet. This purpose is manifest in the provisions themselves. The left hand page contains the title of the measure, the Attorney General's summary and the legislative analyst's analysis. Sections 88002(a) and (b). In many instances, the right hand page will contain the text of the measure itself. Section 88002(c). When the reader turns the page, he will find the arguments for the measure on the left hand page and the arguments against it on the right hand page, with rebuttals, if any, printed below the arguments. Section 88002(c). This format generally will provide the reader with four compact pages of information on each measure.

Although it may be possible to technically observe the format requirements while intermingling material from two or three languages in the manner described in question (4), we do not think it can be done in a way which will comport with and further the purposes of the Act. Intermingling might result in reduced margins and less space between lines. Moreover, mixing numerous passages from two or three languages on a single page of print undoubtedly would be confusing to the average voter

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Although not referred to in the opinion request, the possibility of a minority language translation appearing alongside the English language material was posed during the hearing on this opinion and we, therefore, treat this proposal as part of question (4).

and frustrate the goal of clarity.^{6/} We think that such a format would render the ballot pamphlet less understandable to the average voter and less usable, rather than contribute to providing the "useful document" contemplated by Section 81002(e).

However, we do not, by our conclusion herein, intend to suggest that any intermingling is per se invalid. Pursuant to the discretion vested in the Secretary of State to include material which will make the ballot pamphlet "more useful to the average voter," Section 33091(e), it might be appropriate to insert some information in the ballot pamphlet in languages other than English. For example, instructions printed in Spanish or Chinese in various parts of the ballot pamphlet directing the reader to another portion of the pamphlet or directing him to mail a coupon in order to receive a minority language translation certainly would not constitute an abuse of the discretion vested in the Secretary of State.

Approved by the Commission on January 16, 1976.
Concurring: Brosnahan, Carpenter, Lowenstein, Miller and Waters.


Daniel H. Lowenstein
Chairman

^{6/} We observe that this is the primary reason why use of the blank spaces which sometimes exist in the English language ballot pamphlet to insert a minority language translation would not be acceptable. Using blank spaces to insert minority language translations also would contribute to another type of confusion resulting from the fact that the format required by Chapter 8 will not always create blank spaces. Inevitably, this would mean that translations for some measures would appear in blank spaces whereas translations for other measures would have to be inserted somewhere else in the ballot pamphlet. This type of ballot pamphlet would create confusion for the average voter.