



California Fair Political Practices Commission

May 26, 1988

William C. Marsh
City Attorney
City of Monterey
City Hall
Monterey, CA 93940

Re: Your Request for Advice
Our File No. A-88-182

Dear Mr. Marsh:

You have requested advice concerning restrictions on publicly funded newsletters and other mass mailings pursuant to Government Code Section 89001.^{1/}

QUESTION

May the City of Monterey use public funds to send a newsletter which includes the names of incumbent councilmembers who are candidates for reelection in a roster of city officials?

CONCLUSION

The City of Monterey may use public funds to send a newsletter which includes the names of incumbent councilmembers who are candidates for reelection in a roster of city officials. Recently adopted Regulation 18901 specifically permits the use of public funds to send newsletters in which an incumbent candidate's name appears only on the standard letterhead or logotype, including a listing or roster of agency officials or members.

^{1/} All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

ANALYSIS

Section 89001 prohibits any elected state or local officer from using public funds to send newsletters or other mass mailings to voters residing in the jurisdiction from which the elected officer was elected, or to which he or she seeks election, after he or she has filed to run for election to any federal, state or local office. A "mass mailing" is 200 or more identical or nearly identical pieces of mail. (Section 82041.5.)

Regulation 18901 (copy enclosed) clarifies the mailings covered by Section 89001. Of particular relevance to your question is subdivision (d), which specifies various types of mailings which are not subject to the Section 89001 prohibition. Regulation 18901(d)(2) exempts from the prohibition any newsletter or mass mailing which meets all of the following criteria:

(A) It is mailed by an agency;

(B) The stationery, forms and envelopes used for the mailing are the official stationery forms and envelopes of the agency, and;

(C) The elected officer's name appears, if at all, only on the standard letterhead or logotype of the stationery, forms or envelopes and there are no other references to the officer, including his or her name, signature or depiction in any photograph, in the mailing. As used in this subdivision, "the standard letterhead or logotype" includes a listing or roster of agency officials or members, in which all those listed appear in the same typeface and type size and location in the layout of the newsletter or other mass mailing.

Regulation 18901(d)(2)
(emphasis added).

Thus, a city newsletter which includes the names of incumbent city councilmembers who are running for election only in a roster would come within the exemption in Regulation 18901(d)(2). For the exemption to apply, the typeface and type size must be the same for all officials listed in the roster.

We have reviewed the roster printed on the back page of the newsletter you enclosed with your letter. It appears to meet the standards of Regulation 18901(d)(2). Accordingly, the roster would not be prohibited by Section 89001.

Mr. Marsh
May 26, 1988
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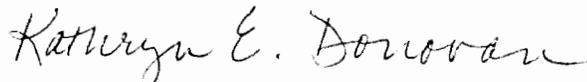
It is important to note that other references to incumbent councilmembers who are candidates for elected office could be in violation of Section 89001. For example, the newsletter could not include an article which mentions an incumbent candidate councilmember if the newsletter was prepared or sent by or at the request of, or in cooperation, consultation, coordination or concert with the councilmember. (Regulation 18901(a).) Similarly, any newsletter prepared by city staff could not be sent at public expense if it were signed by the councilmember or "featured" the councilmember by means of headlines, a photograph, or other treatment in the newsletter layout. (Regulation 18901(b) and (c).) A newsletter prepared by city staff, without the incumbent councilmember's cooperation, may mention the councilmember in the text of an article, so long as the councilmember's name is in the same typesize and typeface as the text.

In your letter, you stated that you had advised the staff editor of the city's newsletter to omit all references to incumbent councilmembers during the campaign period. Your advice was based on our Gonsalves Advice Letter, No. A-88-021 (copy enclosed). That advice letter addressed only the narrow question of newsletters which omit all references to incumbent elected officials. The requestor did not seek advice concerning less restrictive alternatives, such as inclusion of the names of city officials in the standard letterhead or logotype.

If you have any questions concerning this letter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Kathryn E. Donovan
Counsel, Legal Division

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Enclosure



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MAY 15 8 31 AM '88

Phone No. 646-3915

May 12, 1988

Ms. Kathryn Donovan
Staff Counsel, FPPC
428 J Street, Suite 800
Sacramento, CA 95804-0807

Dear Ms. Donovan:

I very much enjoyed your talk before the collected city attorneys last week, but it did leave me somewhat confused and I would appreciate some clarification.

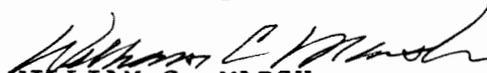
The City of Monterey distributes a newsletter three times a year (last copy enclosed). We have a councilmatic election in November. The terms of the Mayor and two incumbents expire. While no one has announced for re-election, I am presuming at least one incumbent will be seeking re-election. The newsletter is scheduled to be issued in late October, two to three weeks before the election.

Based on Advice Letter A-88-021 I advised the staff editor that the box labeled "City of Monterey" which lists the incumbent council be eliminated. Something in your remarks led me to believe that this simple listing was permissible. The remainder of your remarks were clear and, interestingly, substantially similar to the rules of our City Council in authorizing the newsletter.

I would very much appreciate your responding to the limited question of whether this listing of councilmembers is permitted or prohibited.

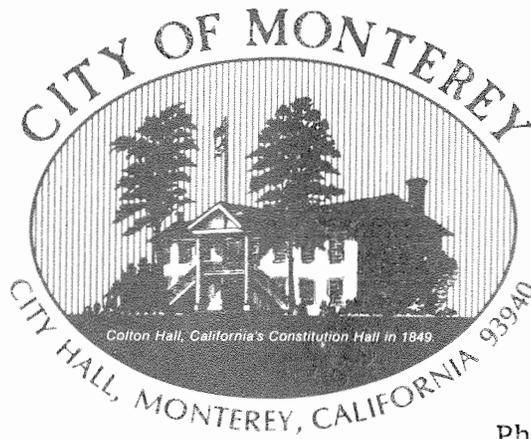
Thank you for your assistance.

Very truly yours,


WILLIAM C. MARSH
City Attorney

WCM:lk

Enclosure



88-182

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MAY 16 8 51 AM '88

Phone No. 646-3915

May 12, 1988

Ms. Kathryn Donovan
Staff Counsel, FPPC
428 J Street, Suite 800
Sacramento, CA 95804-0807

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Thank you for your assistance.

Very truly yours,


WILLIAM C. MARSH
City Attorney

WCM:lk

Enclosure



California Fair Political Practices Commission

May 19, 1988

William C. Marsh
City of Monterey
City Hall
Monterey, CA 93940

Re: 88-182

Dear Mr. Marsh:

Your letter requesting advice under the Political Reform Act was received on May 18, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh