



California Fair Political Practices Commission

July 28, 1988

Robert L. Wonder
Interim City Manager
City of Alameda
City Hall
Santa Clara at Oak Street
Alameda, CA 94501

Re: Your Request for Advice
Our File No. A-88-229

Dear Mr. Wonder:

The purpose of this letter is to confirm the telephone advice we previously provided to your office. Your question concerns the restrictions on publicly-funded newsletters and other mass mailings imposed by Government Code Section 89001.^{1/}

QUESTION

Does Section 89001 prohibit a city from purchasing advertising space to promote the services and accomplishments of the city in a regularly published newspaper, prepared by a private entity and distributed to subscribers?

CONCLUSION

Under the recently adopted emergency regulation,^{2/} Section 89001 does not prohibit a city from purchasing newspaper advertising space to promote the services and accomplishments of the city. This is interim advice and may be changed in the future.

^{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.

^{2/} Regulation 18901 was adopted as an emergency regulation on July 26, 1988. It will become effective immediately upon approval by the Office of Administrative Law and filing with the Secretary of State. (Sections 11346.1 and 11349.6.)

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ANALYSIS

Section 89001 as amended by Proposition 73 of the June 1988 statewide primary election, provides:

No newsletter or other mass mailing shall be sent at public expense.

We have previously advised that Section 89001 prohibits public agencies from using public funds to prepare and distribute a mass mailing which refers to, or includes the signature or photograph of, an elected official. (Regulation 18901; Raye Advice Letters, No. A-88-220, copies enclosed.)

A "mass mailing" is defined as 200 or more substantially similar pieces of mail, but does not include a form letter or other mail sent in response to an unsolicited request. (Section 82041.5.) The Commission recently adopted Regulation 18901 as an emergency regulation to clarify the types of communications covered by Section 89001. Regulation 18901 does not specifically provide that a regularly published newspaper, prepared by a private entity and distributed to subscribers, is included in the term "mass mailing." Accordingly, Section 89001 currently does not prohibit a city from using public funds to purchase advertising space in such a newspaper.

We note that one purpose of Section 89001 is to conserve public funds. Ironically, the purchase of newspaper advertising space may be more costly than a mass mailing prepared and sent by the city. Section 89001 does not specifically authorize these more costly methods of communication, nor does it or the implementing regulation expressly prohibit them. However, the current regulation is effective for only 120 days (Section 11346.1(e)), and the Commission will be considering adoption of a permanent regulation during that period. Thus, our advice may change in the future.

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

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan
By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosures



CITY OF ALAMEDA • CALIFORNIA

CITY HALL • SANTA CLARA AT OAK STREET 94609 • (415) 522-4100

OFFICE OF THE CITY MANAGER

June 16, 1988

Ms. Margaret Altamirano
Counsel
Fair Political Practices Commission
428 J Street - Suite 800
Sacramento, CA 95814

Re: Proposition 73

Dear Ms. Altamirano:

This letter is forwarded to confirm your telephone conversation with Cheryl Mitchell of my staff on June 15, 1988 regarding provisions of Proposition 73.

- Pursuant to your interpretation of the newsletter and mass mailing provision of the recently approved Ballot measure (Proposition 73), the City of Alameda may proceed with its plans to purchase newspaper advertising space to promote the services and accomplishments of our municipal organization. The July 4th Progress Edition will contain photographs of local elected officials and will be paid for with public funds.

In your judgment, as the Progress Edition represents paid newspaper advertising space and is not solely produced, developed and distributed by the City, it is viewed differently than City newsletters and mass mailings and is not subject to the stipulations of Proposition 73.

If we have misconstrued your interpretation please advise. You may call me or Ms. Mitchell at (415) 522-4100, ext. 200 between 8:30 - 5:00 P.M. In addition, please forward a copy of the Fair Political Practices Commission's official interpretation of Proposition 73 upon completion. Thank you for your assistance.

Very truly yours,

Robert L. Wonder
Interim City Manager

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