



California Fair Political Practices Commission

July 7, 1988

Francis Chin
General Counsel
Metropolitan Transportation Commission
Metrocenter
101 8th Street
Oakland, CA 94607

RE: Your Request for Advice
Our File No. I-88-246

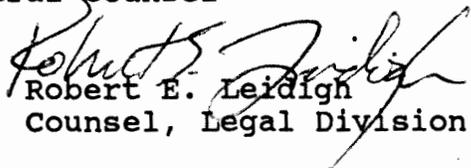
Dear Mr. Chin:

We have received your letter concerning the new restrictions on publicly-funded mass mailings under Proposition 73. We appreciate your comments on this subject.

Enclosed are copies of our first advice letters interpreting the mass mailing restrictions. After examining the new statute and the analysis by the Legislative Analyst, we have concluded that the voters intended to restrict mailings by state and local elected officials, but did not intend to ban publicly-funded mailings entirely. In the future, we expect to address additional questions concerning the mass mailing restrictions in Proposition 73, and we will include your name on our mailing list for information on the subject.

Sincerely,

Diane M. Griffiths
General Counsel

By: 
Robert E. Leidigh
Counsel, Legal Division

DMG:REL:ld

Enclosures



June 24, 1988

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Housing Agency

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U.S. Department
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Ms. Diane M. Griffiths
General Counsel
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

RE: Proposition 73 (June 7, 1988 California Ballot)

Dear Ms. Griffiths:

I am counsel for the Metropolitan Transportation Commission, the regional transportation planning agency for the San Francisco Bay region, established pursuant to Government Code § 66500 *et seq.* I am in receipt of a copy of your opinion letter A-88-220 dated June 16, 1988, signed by Robert E. Leidigh, which responds to certain questions concerning Proposition 73. Upon reviewing the opinion, I telephoned and spoke with Mr. Marguerita Aldebarado of your office concerning additional questions on the issue of newsletters and mass mailings (Government Code §§ 82041.5 and 89001).¹ The following are questions on which I respectfully request your written advice. For the purpose of this request, please assume that all newsletters and mass mailings referred to in the questions consist of 200 or more unsolicited copies.

QUESTIONS

- 1. Do the amendments to Government Code §§ 82041.5 and 89001 apply to the Metropolitan Transportation Commission and its individual Commissioners?

Footnote

¹ Government Code § 82041.5 as amended provides:

"'Mass mailing' means two hundred or more substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry."

Government Code § 89001 as amended provides:

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

Both sections are part of the Political Reform Act: Section 82041.5 is in Chapter 2, the definition section; and Section 89001 is in Chapter 9, entitled Incumbancy, consisting of two sections. Prior to Proposition 73, both sections in Chapter 9 made specific reference to elected officials. Although Section 89001, as amended, does not now refer to elected officials, it is still part of Chapter 9. If Chapter 9 is read as a whole, a reasonable interpretation would be that Section 89001 applies only to the activities of incumbent elected officials.

The Metropolitan Transportation Commission has no elected positions. The Commission consists of sixteen voting members and three nonvoting members (Government Code § 66503) who are all appointed. Commissioners may be, but are not required to be, elected officials when they are appointed. Currently, fourteen of the voting members are also elected officials and two hold no elected office. All Commission members are referred to in MTC publications as Commissioners, and not by their respective elected titles. All Commission correspondence goes out in the name of the Commission, MTC Commissioners, or MTC staff.

2. If Government Code § 89001, as amended by Proposition 73, applies to the Metropolitan Transportation Commission, does it apply to newsletters or other mass mailings that are sent under the name of the Commission and not under the name of any specific Commissioner?

MTC does not routinely publish newsletters or other mass mailings on behalf of Commissioners (except as noted in question 8, below). Attached for your review are copies of Transactions (Attachment #1), MTC's monthly staff newsletter with a distribution of approximately 7,500 monthly, and the Bay Area Monitor (Attachment #2), a 5,000 copy bi-monthly publication edited by the League of Women Voters under contract with and funded by MTC, the Bay Area Air Quality Management District, and the East Bay Municipal Utility District.

Both publications concentrate on activities of current interest in the field of public transportation and make frequent references to elected officials relative to their activities involving public transportation. No elected official has editorial control of either newsletter. However, the Commission does approve the budget each year to fund the publication of the newsletters.

3. If Government Code § 89001, as amended, applies to MTC's newsletters such as Transactions and the Bay Area Monitor, are all references to elected officials precluded?

In your Opinion Letter No A-88-220, at paragraph 2(g), page 8, you state that any reference to an elected official is precluded. It seems overly broad and would exclude any news reports such as is common in MTC's Transactions and Bay Area Monitor newsletters. For example, the

status of pending legislation on transportation requires the identification of authors to legislative bills. Any discussion of the state's support for transportation programs would necessarily have to refer to the Governor's budget and legislators' positions. Local legislative efforts to develop support for local financing require the identification of local elected officials and their respective positions.

4. If MTC is precluded by Government Code § 89001 from making any reference to elected officials, is it precluded from including in Transactions and the Bay Area Monitor references to its own Commissioners?

If MTC Commissioners, who all serve by appointment, are precluded from being included in newsletters because they are otherwise elected officials, it would create a situation where only MTC Commissioners who are non-elected officials may be included in such newsletters.

5. If MTC Commissioners cannot be referred to in any mass mailing or newsletter, would MTC also have to alter the format of its annual report?

Attached is a copy of MTC's last annual report (Attachment #3), of which 3,800 copies were published and distributed. Although similar in nature to a corporate financial document, MTC's annual report is not legally mandated. It is, however, a document that necessarily summarizes the annual status of transportation funding resources in the San Francisco Bay Area. Commissioners are listed to identify the persons who establish the policies affecting the distribution of such funding.

7. MTC Commissioners are assigned to standing MTC Committees to which a great bulk of the Commission's work is delegated. The distribution of agendas to meetings of such committees is required pursuant to the provisions of the Ralph M. Brown Act (Government Code § 6250 et seq.). However, the Brown Act does not require listing the names of Committee members. If the listing of committee members includes persons who also happen to be elected officials, must MTC delete the roster from committee agendas?

Attached for your information are the agendas for each of the Commission's four standing committee meeting for the month of June 1988 (Attachment #4). The names of Committee members are included to advise the public as to which Commissioners serve on which Commission Committees. Reference to their respective elected offices is not included.

8. May MTC Commissioners mail out individual reports to their respective appointing bodies?

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All MTC voting Commissioners are appointed by elected officials. Many of those elected officials want feedback from their MTC appointees of MTC activities. As an example, the Association of Bay Area Governments (ABAG) has one appointee on MTC. The ABAG-appointed MTC Commissioner has as her constituents all of the cities and counties who are members of ABAG. She wishes to make periodic written reports to her constituents. The current ABAG-appointed MTC Commissioner is also an elected official, but her reports would be based on her responsibilities as an MTC Commissioner. Attached for your information is a copy of one recent report (Attachment #5).

9. How do you define standard letterhead or logotype which your letter opinion A-88-220 states may include elected officials' names?

Attached, for your information, is a copy of MTC's standard stationery with its standard letterhead and logotype (Attachment #6). As you will note from other documents attached to this opinion request (e.g., see Attachments 1, 3, 4), the letterhead with the names of MTC's Commissioners vary by document for purposes of editorial style. The agency should not be locked into only a single standard format.

Most of the newsletters and reports referred to in the questions above are in various stages of current development for their next issuance. A reasonable reading of Government Code § 89001, as amended by Proposition 73, should not preclude the non-partisan, public information efforts served by such publications by agencies like the Metropolitan Transportation Commission.

It is very important for agencies like the Metropolitan Transportation Commission, with an appointed board, to continue an active outreach program to communicate with its constituents and with the general public. Further, because MTC is not a household name and many members of the public are not familiar with its responsibilities, the identification of its Commissioners in its correspondence helps to provide recipients of the Commission's mass mailings and newsletters with some common references.

Please do not hesitate to contact me should you need additional information relative to this opinion request.

Very truly yours,



Francis Chin
General Counsel

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Attachments (see list)

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ATTACHMENTS

- No. 1 May 1988 Transactions, MTC's monthly staff newsletter with a distribution of approximately 7,500 monthly.
- No. 2 May/June 1988 Bay Area Monitor, a 5,000 copy bi-monthly publication edited by the League of Women Voters under contract with and funded by MTC, the Bay Area Air Quality Management District, and the East Bay Municipal Utility District.
- No. 3 1987 MTC Annual Report, 3,800 copies distributed.
- No. 4 June 1988 agendas from each of the Commission's four standing committees.
- No. 5 1987 Annual Report of MTC Activities, dated November 10, 1987, by MTC's representative from the Association of Bay Area Governments to her constituents, who comprise all ABAG member cities and counties.
- No. 6 MTC standard letterhead stationery.