



California Fair Political Practices Commission

July 25, 1988

Anthony L. Miller
Chief Deputy
Office of the Secretary of State
1230 J Street
Sacramento, California 95814

Re: Your Request for Advice
Our File No. A-88-257

Dear Mr. Miller:

You have written on behalf of Secretary of State, March Fong Eu. Because of certain mandated deadlines, you have requested that we expedite our response. Consequently, you have modified your request to one for formal written staff advice rather than a full Commission opinion.

QUESTIONS

1. May the Secretary of State sign the certificate of correctness which is required to appear in the ballot pamphlet?
2. May the Secretary of State's name appear in the return address on the ballot pamphlet?
3. May the Secretary of State's name appear on the cover of the ballot pamphlet in a statement that the ballot pamphlet has been prepared by the Secretary of State?

CONCLUSIONS

1. The Secretary of State may sign the certificate of correctness which is required to appear in the ballot pamphlet by Government Code Section 88005(d) and Elections Code Section 3574(d). A certification presumably must be signed in order to carry any legal significance. Therefore, the requirement that the certificate appear on the ballot pamphlet presumes that it will be signed by the certifying officer.

2. The Secretary of State's name may not appear in the return address on the ballot pamphlet. Unlike the signature in the certificate, the return address is sufficient without the name of the officeholder. The name and address of the office is enough.

3. The Secretary of State's name may not appear on the cover of the ballot pamphlet where it states "Compiled by MARCH FONG EU Secretary of State." The voters will be adequately apprised regarding the pamphlet's preparation if it merely states "Compiled by the Secretary of State."

FACTS

The Secretary of State is responsible for preparing and mailing out the California Ballot Pamphlet for each statewide election. Under the prior version of Government Code Section 89001, since amended by Proposition 73, you sought advice on her behalf regarding the use of her name in the ballot pamphlet. (In re Miller (1978) 4 FPPC Ops. 26.)

In the Miller Opinion, the Commission advised that the Secretary of State may not sign a letter to the voters which was included in the ballot pamphlet. The Commission deadlocked and provided no advice on the related question of whether her name could appear on the cover of the ballot pamphlet. The Commission did advise that the Secretary of State could inscribe her signature on the required certificate of correctness.

In the absence of advice from the Commission, the Secretary of State has continued to place her name on the cover of the ballot pamphlet, even during periods when she was a candidate under the former statute. In addition, her name has appeared in the return address printed on the outside of the ballot pamphlet.

You have written to request our advice on these practices in the wake of the passage of Proposition 73, which amended Government Code Section 89001. The ballot pamphlet must be prepared and available for public viewing on or before July 26, 1988. Therefore, you have asked that we expedite the advice to allow any changes to be made prior to the time that the ballot pamphlet is made available for public display.

ANALYSIS

Government Code Section 89001 was amended by Proposition 73, effective June 8, 1988. As amended, the section reads:

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

Anthony L. Miller
July 25, 1988
Page -3-

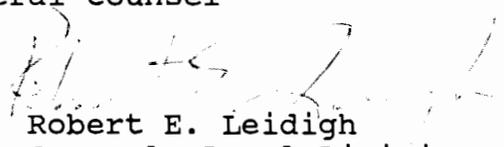
As worded, the section could be read to preclude all mass mailings sent at government expense. We have previously provided interim advice which determined that the voters did not intend to eliminate all governmental mass mailings. (See enclosed copies of Raye Advice Letters, No. A-88-220, June 16, 1988 and July 1, 1988.) We have advised that mass mailings may be sent if the name of an elected officer does not appear therein. (Certain narrow exemptions permit some mailings which do include references to elected officers.)

Next we apply our interim advice to your specific questions. The Secretary of State's name is not necessary to the information on the front cover. It is sufficient to note that the Secretary of State's office has prepared the ballot pamphlet. We also conclude that her name is not necessary to the return address information on the back cover. Again, the name of the Secretary of State's office is sufficient. Therefore, our advice is that, for this ballot pamphlet, those two references to her name should be deleted. Future ballot pamphlets will be subject to the revised regulation to be adopted by the Commission at a future date.

I trust that this letter adequately responds to your request for expedited advice. If you have any questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

Enclosure



Office of the Secretary of State
March Fong Eu

Executive Office
1230 J Street
Sacramento, California 95814

(916) 445-6371

June 29, 1988

John H. Larson, Chair
Fair Political Practices Commission
428 J Street
Sacramento, California 95814

Re: Request for Opinion (Govt. Code sec 83114):
Govt. Code sec 89001 as amended by Proposition 73
(California Ballot Pamphlet)

Dear Mr. Larson:

On behalf of Secretary of State March Fong Eu, I hereby request, pursuant to Government Code section 83114, the opinion of the Fair Political Practices Commission regarding the publication and mailing of the California Ballot Pamphlet by the Secretary of State in the context of the provisions of Proposition 73. Specifically, I request the Commission's guidance with respect to questions numbered 2(a), 2(b) and 2(c) initially asked and partially addressed by the Commission in opinion No. 77-032 (4 FPPC 26) dated February 8, 1978. These questions involved the permissibility of using the Secretary of State's name in the certificate of correctness, the introductory letter and the compilation reference in the California Ballot Pamphlet after the Secretary of State had filed a declaration of candidacy during election years.

In reliance on that opinion, the Secretary of State has, following the filing of her declaration of candidacy in those years in which she is a candidate, limited the inclusion of her name in the California Ballot Pamphlet to the certificate of correctness, the return address, and the compilation reference. She has specifically omitted any reference to her name in the introductory letter. A copy of the pamphlet published and provided in this manner in 1986 is enclosed as an example. In the absence of a Commission opinion or advice to the contrary, she proposes to continue with this approach with respect to all subsequent pamphlets.

Please note that, pursuant to Government Code section 88006 and Elections Code section 3576, the final text of the California Ballot Pamphlet for the November 1988 General Election must be completed and must be available for public display on or before July 26, 1988. The issuance of an opinion prior to July 26, 1988 would be appreciated.

Sincerely,



ANTHONY L. MILLER
Chief Deputy

Enclosure



California Fair Political Practices Commission

July 11, 1988

Anthony Miller
Office of the Secretary of State
Executive Office
1230 J Street
Sacramento, CA 95814

Re: 88-257

Dear Mr. Miller:

Your letter requesting advice under the Political Reform Act was received on June 30, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert Leidigh, 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,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh