



California Fair Political Practices Commission

January 12, 1989

Randy Riddle
Deputy City Attorney
Office of City Attorney
City and County of San Francisco
Room 206, City Hall
San Francisco, CA 94102-4682

Re: Your Request for Advice
Our File No. A-88-311

Dear Mr. Riddle:

You have requested advice on behalf of Louise Renne in her capacity as City Attorney. She has responsibility to advise various city officials regarding production and distribution of the ballot pamphlet. This letter confirms the telephone advice we provided on August 19, 1988.

QUESTION

May the San Francisco ballot pamphlet contain the names of elected officers who: (1) are being voted on; (2) are sponsoring other candidates who are being voted on; (3) are submitting ballot arguments for or against various measures appearing on the ballot; or (4) are listed as having voted for or against placing a measure on the ballot?

CONCLUSION

The San Francisco ballot pamphlet may include the names of elected officers which appear in the manners described. Inclusion of the names of elected officers under these circumstances is required by law, and thus exempt from the prohibition on publicly funded mass mailings. Our conclusion is in accord with the Commission's opinion, In re Miller (1978) 4 FPPC Ops. 26.

FACTS

The statutes of the state and the charter of the City and County of San Francisco require that a ballot pamphlet be published and disseminated to the voters prior to each election.

Under the San Francisco Charter and state law, a ballot measure may be submitted to the voters in a number of different ways. A majority of the eleven members of the

Board of Supervisors ("the Board") may order submitted to the voters a proposed charter amendment, ordinance or statement of policy. Further, the mayor or four members of the board may submit to the voters a proposed ordinance or policy statement. Finally, voters may by petition place on the ballot a proposed charter amendment, ordinance or declaration of policy.

San Francisco Charter Section 9.105 requires the Registrar of Voters to mail to each registered San Francisco voter at city expense a "sample ballot, a copy of all statements of qualifications of candidates received by him [or her], to be followed by the names and addresses of all sponsors of all officers to be voted for in said city and county." This charter provision necessarily requires that the name of any incumbent elected officer seeking reelection or election to another San Francisco elective office be included in this pamphlet. Also, it is common practice for elected officers to sponsor other persons seeking election to local office.

Charter Section 9.112 contains a similar though more detailed provision. It provides in pertinent part that "the Board of Supervisors shall, by ordinance, provide for the format of said pamphlet and for the submission, review, selection, printing and inclusion of arguments in favor of or in opposition to any measure contained in said pamphlet."

Pursuant to Section 9.112, the board adopted San Francisco Administrative Code Sections 5.74 et seq. These sections establish procedures for the submission of official and paid arguments in support of or opposition to city charter amendments, ordinances and declarations of policy. The board of supervisors and the mayor may submit official arguments in support of measures presented to the voters by the board or mayor, respectively. The board and mayor may submit official arguments in opposition to initiative measures. With respect to measures submitted by the mayor, the mayor's name appears under his or her argument. With respect to measures submitted by the board, the phrase "Submitted by the Board of Supervisors" follows the board's argument.

Further, four members of the board may submit an official argument in support of an ordinance or declaration of policy placed on the ballot by those four supervisors. The names of the four supervisors follow their argument. Also, with respect to measures placed on the ballot by the board, the names of supervisors voting for and against presenting the proposal to the voters appear in the pamphlet. The ballot pamphlet has included arguments submitted by the board since at least 1950.

Finally, like any other citizen, the mayor, individual members of the board or state or local elected officers may submit paid arguments in support of or opposition to ballot measures, and may endorse official or paid arguments submitted by others. The names of these elected officers appear under their respective arguments. Although the proponents of paid arguments must pay a fee (or petitions in lieu of a fee) to cover the cost of printing the argument, that fee only covers approximately one-half of the total costs of printing and mailing the pamphlet. Accordingly, taxpayers underwrite the submission of these arguments to the voters.

ANALYSIS

The Political Reform (the "Act")^{1/}, as amended by Proposition 73, now provides that no mass mailing shall be sent at government expense. (Section 89001.) The Commission has determined that the intent of the voters in adopting Proposition 73 was to prevent elected officers from gaining an advantage from incumbency by using public funds to send out newsletters and other mass mailings which increase their name recognition. (See Regulation 18901, adopted as an emergency regulation, filed August 8, 1988; and Raye, et al. Advice Letters, No. A-88-220, copies enclosed.)

(c) A mass mailing is not prohibited by Government Code Section 89001 if less than 200 pieces of mail are sent in a calendar month, or if the mailing consists only of:

- (1) Press releases sent to the media;
- (2) Mailings sent in the normal course of business from one governmental entity or officer to another governmental entity or officer;
- (3) Mailings sent in connection with the payment or collection of funds by the agency;
- (4) Mailings to persons subject to a government program administered by a governmental officer when such mailings are essential to the functioning of the program; or

^{1/} Government Code Sections 81000-91015. 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.

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(5) Mailings required by statute, ordinance
or court order. (Emphasis added.)

As previously noted in the discussion of the facts, the ballot pamphlet is required by law; hence, it meets the requirement of subdivision (c)(5). However, in In re Miller (1978) 4 FPPC Ops. 26, the Commission determined that the use of the elected officer's name must also be pursuant to a practice authorized or established by law. (See also Miller Advice Letter, No. A-88-257, copy enclosed.)2/

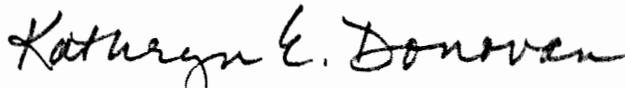
The various statutory and charter provisions, as well as administrative regulations, which you have cited appear to require, authorize or establish the practice of inclusion of elected officers' names in the ballot pamphlet in each of the manners which you have described. In the case of the paid arguments, any citizen, including a nonincumbent candidate, can submit such arguments. This practice hardly provides an advantage to an incumbent elected officer. Listing which supervisors voted for or against placing the measure on the ballot merely provides the voters with useful information which otherwise could be provided in the arguments for or against the measure.

Consequently, it is our view that the inclusion of elected officers' names on the ballot pamphlet in each of the manners which you have described is permissible under Section 89001.

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

Sincerely,

Diane M. Griffiths
General Counsel



By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh

Enclosures

2/ The Commission recently adopted a permanent regulation which has a similar exception for mailings required by law, where any use of the elected officer's name, office, title or signature also is required by law. (Permanent Regulation 18901(f)(6), copy enclosed.)



Louise H. Renne,
City Attorney

August 4, 1988

August 4, 1988

Mr. Robert Leidigh
California Fair Political Practices Commission
Legal Division
428 "J" Street
Sacramento, California 95814

Dear Mr. Leidigh:

We are writing to seek advice concerning application of Proposition 73's mass mailing prohibition to the San Francisco Voter Information Pamphlet ("the Pamphlet".) This request is prompted by an observation from a member of your legal division that Proposition 73 could be construed to apply to the Pamphlet. This is an issue whose significance extends beyond San Francisco. For example, the Secretary of State mails to each California voter an information pamphlet similar in character and purpose to San Francisco's Pamphlet. Since the San Francisco Pamphlet for the November 1988 election must be sent to the printer in the near future, we urgently request a response to this inquiry no later than August 19, 1988.

Under the San Francisco Charter and state law, a ballot measure may be submitted to the voters in a number of different ways. A majority of the eleven members of the Board of Supervisors ("the Board") may order submitted to the voters a proposed Charter amendment, ordinance or statement of policy. Further, the Mayor or four members of the Board may submit to the voters a proposed ordinance or policy statement. Finally, voters may be petition place on the ballot a proposed Charter amendment, ordinance or declaration of policy.

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Pursuant to Section 9.112, the Board adopted San Francisco Administrative Code Sections 5.74 et seq. These sections establish procedures for the submission of official and paid arguments in support of or opposition to City Charter amendments, ordinances and declarations of policy. The Board of Supervisors and the Mayor may submit official arguments in support of measures submitted to the voters by the Board or Mayor, respectively. The Board and Mayor may submit official arguments in opposition to initiative measures. With respect to measures submitted by the Mayor, the Mayor's name appears under his or her argument. With respect to measures submitted by the Board, the phrase "Submitted by the Board of Supervisors" follows the Board's argument. Further, four members of the Board may submit an official argument in support of an ordinance or declaration of policy placed on the ballot by those four supervisors. The names of the four Supervisors follow their argument. Also, with respect to measures placed on the ballot by the Board, the names of the Supervisors voting for and against submitting the proposal to the voters appears in the Pamphlet. The Pamphlet has included arguments submitted by the Board since at least 1950.

Finally, like any other citizen, the Mayor, individual members of the Board or state or local elected officials may submit paid arguments in support of or opposition to ballot measures, and may endorse official or paid arguments submitted by others. The names of these officials appear under their respective arguments. Although the proponents of paid arguments must pay a fee (or petitions in lieu of a fee) to cover the cost of printing the argument, that fee only covers approximately one-half of the total costs of printing and mailing the Pamphlet. Accordingly, taxpayers underwrite the submission of these arguments to the voters.

We are concerned that Proposition 73's prohibition against on mass mailings at public expense could be construed to limit the material included in the Pamphlet. Specifically, we request advice whether mailing at public expense a ballot pamphlet containing the following material would violate Proposition 73:

- (1) The name and statement of qualifications of a local elected official seeking reelection or election to another elected office.

- (2) The name of a state or local elected official acting of a sponsor of a candidate for local office.
- (3) An official argument submitted by the Mayor followed by his or her name.
- (4) An official argument submitted by the Board of Supervisors followed by the phrase "Submitted by the Board of Supervisors."
- (5) An official argument submitted by four members of the Board of Supervisors followed by the names of the four Supervisors.
- (6) The name of state or local elected official appearing as the sponsor or endorser of a paid argument or as an endorser of an official argument.
- (7) The names of the Supervisors voting for and against submitting a ballot measure to the voters.

For your convenience, I am enclosing copies of the San Francisco Charter provisions and Administrative Code Sections to which this letter refers. Please feel free to contact Burk Delventhal at (415) 554-4233 or Randy Riddle at (415) 554-4211 if you have any further questions concerning this matter.

Very truly yours,

LOUISE H. RENNE
City Attorney



RANDY RIDDLE
Deputy City Attorney



Louise H. Renne,
City Attorney

REC'D - LEGAL DIV

August 4, 1988

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