



California Fair Political Practices Commission

March 8, 1989

Bruce C. Bolinger
County Clerk
County of Nevada
Nevada County Courthouse
201 Church Street
P.O. Box 6126
Nevada City, CA 95959-6126

Re: Your Request for Advice
Our File No. A-89-082

Dear Mr. Bolinger:

We have received your request for advice regarding the mass mailing provisions of the Political Reform Act (the "Act").^{1/} As the Nevada County Clerk, you want to ensure that the envelopes used for sending and returning absentee ballots are in compliance with the new mass mailing provisions contained in Section 89001, as amended by Proposition 73.

QUESTIONS

1. May an elected county clerk include his or her name as part of (a) the return address on envelopes used to mail absentee ballots to absentee voters and (b) the mailing address on the return envelopes provided to the absentee voters for use in mailing their completed absentee ballots to the county clerk?

2. May an elected county clerk include his or her name as part of (a) the return address on envelopes used to mail absentee ballots to permanent absentee voters and (b) the mailing address on the return envelopes provided to the permanent absentee voters for use in mailing their completed absentee ballots to the county clerk?

^{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.

CONCLUSIONS

1. An elected county clerk may include his or her name as part of the return address on envelopes used to mail out and to return absentee ballots, provided that the envelopes are the "standard" envelopes which are regularly used by the county clerk's office for absentee mailings.

2. An elected county clerk may include his or her name as part of the return address on envelopes used to mail out and to return permanent absentee ballots, provided that the envelopes are the "standard" envelopes which are regularly used by the county clerk's office for absentee mailings.

FACTS

Your first question is limited to the envelopes used in responding to separate, individual requests for absentee ballots. Such requests come from people who apply for absentee ballots by:

1) writing personal letters to the county clerk or elections department requesting absentee ballots,

2) using absentee ballot applications provided by political campaigns and political parties,

3) using federally provided absentee ballot applications,

4) picking up applications at the county clerk's office,

5) phoning the county clerk's office and requesting that an application be mailed, and

6) using the application provided by the county clerk in the sample ballot booklet.

Regardless of the type of request, it is the voter who makes the decision to apply for an absentee ballot.

Your second question pertains only to permanent absentee voters. A person who meets the requirements set forth in Elections Code Section 1451 may apply for permanent absentee voter status. All persons who qualify for permanent absentee voter status must either request an application form from the county clerk or make a written request to the county clerk.

Ordinarily, the envelopes used to mail both types of absentee ballots and to return the completed absentee ballots are specially designed for this purpose and are not likely to be used for any other purpose. The absentee voter return envelope contains specified text as required by the Elections Code Sections 1009, 1013 and 1015.

ANALYSIS

Section 89001 provides that "no newsletter or other mass mailing shall be sent at public expense." At its December 6, 1988 meeting, the Commission adopted Regulation 18901 (copy enclosed),^{2/} which implements Section 89001. Regulation 18901(a) states as follows:

(a) Except as provided herein, a newsletter or other mass mailing is "sent at public expense" within the meaning of Government Code Section 89001 if any of the costs of design, production, printing or distribution, is paid for with public moneys as defined in Government Code Section 85102(e).

Regulation 18901(e) establishes an exception to the mass mailing prohibitions if certain criteria are met. Regulation 18901(e) provides:

(e) A newsletter or other mass mailing is not prohibited by Government Code Section 89001 if it meets all of the following criteria:

(1) The stationery, forms and envelopes used for the mailing are the standard stationery, forms and envelopes of the agency or committee of the agency; and

(2) The name of an elected officer who is affiliated with the agency or committee appears, in the standard letterhead or logotype of the stationery, forms or envelopes of the agency, a committee of the agency, or the elected official and the newsletter or mass mailing is not otherwise prohibited under subdivision (c).

As used in this subdivision, the term "letterhead or logotype" includes a listing of agency or committee officials or members, in which all who are listed appear in the same typeface and type size and location in the layout of the newsletter or other mass mailing.

^{2/} This regulation is under review with the Office of Administrative Law. We advise that the regulation be followed while it is undergoing review and we anticipate that it will be in effect on approximately April 10, 1989.

Bruce C. Bolinger
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As used in this subdivision, the term "standard letterhead or logotype" refers to any regularly used by the agency, subunit or the elected officer....

Therefore, the envelopes used for both mailing out the absentee ballots and for returning the completed absentee ballots, regardless of the voter's status, must be the "standard" envelopes used by the county clerk's office.

You stated that the envelopes used to mail absentee ballots and to return completed absentee ballots are specially designed for this purpose and are not likely to be used for any other purpose. If these specially-designed envelopes are the "standard" envelopes which are regularly used by the county clerk's office for absentee mailings, the name of the elected county clerk may be included in the return address. However, please note that any and all exceptions to the mass mailing provisions are to be construed narrowly. (See Estate of Banerjee (1978) 21 Cal.3d 527, 540.)

I hope this answers your questions regarding the mass mailing provisions as they pertain to the return address on absentee ballot envelopes.

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

Sincerely,

Diane M. Griffiths
General Counsel

By:  Jill Stecher
Counsel, Legal Division

DMG:JS:plh

Enclosure



COUNTY OF NEVADA

BRUCE C. BOLINGER

COUNTY CLERK

Nevada County Courthouse, 201 Church St.
P.O. Box 6126, Nevada City, CA 95959-6126
(916) 265-1293

FEB 3 11 44 AM 1989

Jan. 30, 1989

Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear Legal Division:

1. Question No. 1

In light of the current language of Govt. Code Sec. 89001 and 2 Cal. Code of Regs. Sec. 18901, may an elected county clerk include his or her name as part of (1) the return address on envelopes used to mail absentee ballots to absentee voters and as part of (2) the mailing address on the return envelopes provided to the absentee voters for use in mailing their voted absentee ballots back to the county clerk? I would appreciate a written opinion on this.

I am excluding from the above question the envelopes involved in any automatic mailing of absentee ballots to (1) voters in mail ballot precincts where no polling places are provided and the voters have to vote by mail and (2) permanent absentee voters (see Question No. 2 below relating to permanent absentee voters) who apply to receive absentee ballots automatically in all elections. With respect to both the mail ballot precincts and the permanent absentee voters I am assuming that, for purposes of discussion, they exceed 200 pieces in a calendar month, although in some elections this would not be the case.

I am limiting Question No. 1 to the envelopes used in responding to separate, individual requests for absentee ballots. Such requests come from people who apply for absentee ballots in any of several different ways:

-By writing personal letters to the County Clerk or Elections Department requesting absentee ballots.

-By using absentee ballot applications provided them by political campaigns and political parties.

-By using federally provided absentee ballot applications.

-By using applications provided by the County Clerk from the Elections Department. Voters will drop by the office and pick up applications or will phone the office and request that applications be mailed to them.

-By using applications provided by the County Clerk in the sample ballot booklet. Elections Code Sec. 1018 requires that "the official shall include within the sample ballot an application for an absent voter ballot." The relative proportions of each of these different types of applications will vary according to the type of election, the level of campaign activity, and when the sample ballots are mailed. In any event, whatever the type of application, it is the voter

Memo to FPPC (cont.)

who, because of the inconvenience or impossibility of voting at the polling place on election day, makes the decision to apply for an absentee ballot.

2. Question No. 2

Question No. 2 asks the same question as did Question No. 1 but applies it to permanent absentee voters. Here too I would appreciate a written response.

A person who meets the requirements of Elections Code Sec. 1451 in terms of one or more specified physical handicaps that limit that person's mobility may apply for permanent absent voter status using an application form "which shall be available from the county clerk" (Elec. Code Sec. 1451) or by making a written request to the County Clerk (Elec. Code Sec. 1452). If the applicant is a registered voter, the County Clerk then places the applicant's name "upon a list of those to whom an absent ballot is sent each time there is an election within their precinct." (Elec. Code Sec. 1453.)

Typically a County Clerk will provide information in the sample ballot booklet about how to apply for permanent absent voter status but the permanent absent voter on his or her own will have to arrange to obtain an application form by contacting the County Clerk's office, complete the form, and mail it in, or will have to send in a handwritten application for permanent absent voter status. All persons who qualify for permanent absent voter status do so as a result of their exercising this initiative.

The number of persons who have acquired permanent voter status may exceed 200 depending on the size of the county and the type of election.

In all probability a great many election officials have stocks of absentee envelopes on hand which carry the names of elected officials. Because probably they are all going to be faced with elections that they will have to administer in the next several months, their printing requirements and, consequently, their budgets will be affected by the responses to the above questions. Therefore, a prompt response to the above questions will be appreciated.

One further thing that I should mention is that ordinarily the envelopes used to mail out absentee ballots and for the return of the voted absentee ballots are specially designed for this purpose and are not likely to be used for any other purpose. Particularly in the case of the absent voter return envelope, state law (Elections Code Secs. 1009, 1013, and 1015) requires a great deal of text to be printed on it.

Sincerely,


Bruce C. Bolinger
Nevada County Clerk-Recorder

cc: Gale Enstad, President, County Clerks' Association of California



COUNTY OF NEVADA

BRUCE C. BOLINGER

COUNTY CLERK

Nevada County Courthouse, 201 Church St.

P.O. Box 6126, Nevada City, CA 95959-6126

(916) 265-1293

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Sincerely,


Bruce C. Bolinger
Nevada County Clerk-Recorder

cc: Gale Enstad, President, County Clerks' Association of California



California Fair Political Practices Commission

February 7, 1989

Bruce C. Bolinger
County Clerk
County of Nevada
Nevada County Courthouse
201 Church Street
P. O. Box 6126
Nevada City, CA 95959-6126

Re: Letter No. 89-082

Dear Mr. Bolinger:

Your letter requesting advice under the Political Reform Act was received on February 3, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jill Stecher 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:ld

cc: Gale Enstad, President,
County Clerks' Association of California