



# California Fair Political Practices Commission

March 15, 1989

Schelley Kurle  
Western Elections  
Post Office Box 8900  
Stockton, CA 95208

Re: Your Request for Advice  
Our File No. A-89-099

Dear Ms. Kurle:

This is in response to your letter requesting advice on behalf of Grass Valley City Administrator/City Clerk David A. Breninger regarding application of the mass mailing provisions of the Political Reform Act (the "Act") to the publication of Grass Valley's sample ballot.<sup>1/</sup>

## QUESTION

You have included a proposed sample ballot booklet with your letter. Is the use of the elected city administrator/city clerk's name in the Grass Valley sample ballot booklet permitted under the mass mailing restriction of Proposition 73?

## CONCLUSION

In the proposed sample ballot booklet you included with your letter, the elected city administrator/city clerk's name may not appear except under limited circumstances. Use of the elected city administrator/city clerk's name in the Grass Valley sample ballot booklet is permitted only where the name is included in a return address on the standard forms or envelopes of the agency, or wherever the name is required by law.

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<sup>1/</sup> Government Code Section 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.

FACTS

Western Elections is preparing to print a sample ballot booklet to be mailed to more than 200 persons in a calendar month in anticipation of the Grass Valley general municipal elections. The proposed sample ballot booklet includes the name of the Grass Valley city administrator/city clerk in a variety of places. You have informed us that the city administrator/city clerk is an elected officer of the city.

On the front cover of the booklet appears the following statement:

Compiled and Distributed by  
**DAVID A. BRENINGER**  
City Administrator/City Clerk

On two of the inside pages, Mr. Breninger's name appears with the address of the Grass Valley City Hall for correspondence purposes. The first directs inquiries concerning the election to Mr. Breninger at city hall, and the second discusses the procedure for obtaining an absentee ballot, again directing inquiries to Mr. Breninger at city hall.

In addition, on the inside back cover Mr. Breninger's name appears with the address of the Grass Valley City Hall on an absentee ballot application as part of the return address. Finally, Mr. Breninger's name appears on the back cover with the return address of the Grass Valley City Hall, and, again, in a notice regarding the procedure for returning the absentee ballot.

ANALYSIS

A mass mailing is defined in Section 82041.5 as more than two hundred substantially similar pieces of mail. Government Code Section 89001 provides that no newsletter or other mass mailing shall be sent at public expense. Read together, these two sections could be construed to ban all mailings of 200 or more substantially similar documents if the mailings are done at public expense. However, the Commission has adopted Regulation 18901 (copy enclosed)<sup>2/</sup> which sets out specific exceptions to the prohibition on mass mailings.

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<sup>2/</sup> This regulation although adopted by the Commission at its December 6, 1988, meeting is under review with the Office of Administrative Law. We anticipate that it will be in effect by April 1, 1989. We are advising that the regulation be followed while it is undergoing that review.

Regulation 18901(c) provides that a newsletter or other mass mailing may not be sent at public expense if the name, photograph or signature of the elected officer appears on the document, or if it is designated as being from the elected officer or his or her office, and the elected officer exercises direction and control over the content, production, or distribution of the document.

However, Regulation 18901(e) carves out an exception to this prohibition when the name of the elected official appears solely on the standard letterhead, forms or envelopes of the official's agency.

This exception permits inclusion of the name of the elected official in the standard forms and the return address of the envelopes of the agency. An absentee ballot application constitutes a form for the purposes of this exception. Thus, if the absentee ballot application which includes the name of the city administrator/city clerk is the standard form used by the agency in previous elections, the inclusion of his name is permitted on the form.

The exception in Regulation 18901(e) is limited to the inclusion of the elected official's name on the standard letterhead, forms and envelopes of the agency and not in any text. The mass mailing restrictions prohibit designation of the mailing as being from the elected official, and the exceptions in the regulation are to be narrowly construed. Thus, absent use of the name in the standard letterhead, forms or envelopes of the agency, any reference to the elected official in the body of the document is prohibited unless it meets the requirements of another exception.

The standard form exception and all the other provisions of Regulation 18901 are to be narrowly construed in light of the language of Section 89001. With this in mind we conclude that the sample ballot booklet which includes the name of the city administrator/city clerk in several places is not a form for the purposes of Regulation 18901(e). Thus, unless the use of the city administrator/city clerk's name in the mass mailing falls within some other exception enumerated in Regulation 18901, his name is prohibited from appearing in the document.

#### The Legal Notice Exception

Regulation 18901(f)(6) provides an exception for mailings in which the inclusion of an elected official's name is required by law, court order or order adopted by an administrative agency. This exception permits use of the official's name, office, title or signature where it is expressly required by law to be included in the mailing. Thus, if the use of the name, office, title or signature is required by statute, ordinance, charter provision or

Schelley Kurle  
March 15, 1989  
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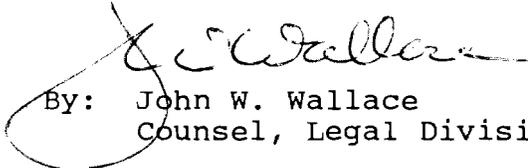
administrative regulation, it may be included in the sample ballot booklet. (Riddle Advice Letter, No. A-88-311, copy enclosed.)

Use of the name of the elected city clerk in the sample ballot booklet is, therefore, permitted despite Section 89001 only if it is required by law. Absent evidence of such a requirement, we conclude that reference to the city administrator/city clerk in the text or on the cover of the sample ballot booklet is prohibited by Section 89001.

If I can be of any further assistance to you, please feel free to contact me at (916) 322-5901.

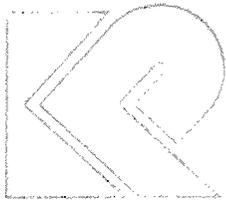
Sincerely,

Diane M. Griffiths  
General Counsel

  
By: John W. Wallace  
Counsel, Legal Division

DMG:JWW:plh

Enclosure



K & P GRAPHICS

FEB 10 8 21 AM '89

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## WESTERN ELECTIONS

Post Office Box 8900  
Sacramento, California 95208  
(916) 465-5614

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February 8, 1989

California Fair Political Practices Commission  
Attention: Legal Division  
Post Office Box 807  
Sacramento, CA 95804-0807

To Whom It May Concern:

Due to the recent passage of Proposition 73, we would like to be advised of the policies for the enclosed pages of an upcoming Sample Ballot Booklet.

I have highlighted the areas in question and have indicated what type of page each name is occurring upon. Please let us know if these regulations will be the same for all of the future pages which will occur in Sample Ballot Booklets so that we may continue to utilize the correct standards.

If you have any questions on the materials presented or need further explanation of our concerns, please contact either Dwight Gentry or Schelley Kurle at (209) 465-5614.

Thank You

Schelley Kurle  
Production Assistant

Enc.

*FRONT COVER of BOOKLET*

# Sample Ballot

& Voter Pamphlet

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**GENERAL MUNICIPAL ELECTION**

**CITY OF GRASS VALLEY**

County of Nevada, State of California

**TUESDAY - MAY 2, 1989**

**NOTICE:  
ABSENT VOTER BALLOT APPLICATION ENCLOSED  
SEE INSIDE BACK COVER**

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Complled and Distributed by  
**DAVID A. BRENINGER**  
City Administrator/City Clerk

★ ★

THE LOCATION OF YOUR  
**POLLING PLACE**  
IS SHOWN ON BACK COVER

job no 24964

disk WE116  
file no. 185-S-1  
12-21-88  
dh

*Inside PAGE*

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### Election and Voting Assistance

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Direct all inquiries concerning this election to:

**City of Grass Valley**  
David A. Breninger  
Office of City Administrator/City Clerk  
Grass Valley City Hall  
125 East Main Street  
Grass Valley, CA 95945  
(916) 273-2203  
Weekdays 8:00 a.m. to 5:00 p.m.  
(excluding weekends & holidays)

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# REMEMBER TO VOTE

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#### **ARE YOU INTERESTED IN SERVING ON A FUTURE PRECINCT ELECTION BOARD?**

Would you like to serve on a precinct election board on Election Day at some future election? The Elections Department of the Nevada County Clerk's Office welcomes applicants. Write to the Elections Department, County Clerk's Office, 201 Church St., Nevada City, CA 95959 to let them know of your interest. You will be contacted as vacancies occur.

Inside PALOE

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### Absentee Voting Information

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If you find that for any reason you will be unable to vote in person on election day, promptly complete and sign the enclosed application for absent voter's ballot and mail in stamped envelope or return in person to David A. Breninger, City Administrator/City Clerk, Grass Valley City Hall, 125 East Main Street, Grass Valley, California 95945 - Telephone (916) 273-2203.

Any registered voter who wishes to vote by absent voter's ballot may do so by applying in writing between 29 days before the election (April 3, 1989) and 7 days before the election (April 25, 1989). The application must be signed by the voter and should include the voter's residence address and the address to which the absent voter's ballot is to be sent if it differs from the voter's residence address. A separate application must be submitted by each voter. An application form is provided for your convenience in this voter pamphlet.

Beginning April 26, 1989 and until Election Day, May 2, 1989, any voter unable to go to the polls because of illness or disability resulting in his or her confinement in a hospital, sanatorium, nursing home, or place of residence, or any voter who because of physical handicap is unable to go to his or her polling place or gain access to it due to architectural barriers, or any voter unable to go to his or her polling place because of conditions resulting in his or her absence from the precinct on election day may request in a written statement, signed under penalty of perjury, that a ballot be delivered to him or her. The ballot shall be delivered by the elections official to the voter or any authorized representative of the voter who presents the written statement to the official.

The voter shall mark the ballot, place it in the identification envelope, fill out and sign the envelope and return the ballot, personally or through the authorized representative, to either the elections official or any polling place within the jurisdiction.

All voted absentee ballots must be received by the City Clerk or by the precinct board at any polling place in the City of Grass Valley by no later than the close of the polls at 8:00 p.m. on May 2, 1989.



job no 24964

disk WE014  
file 185-BACK  
12-13-88  
dh

**DAVID A. BRENINGER**  
City Administrator/City Clerk  
City of Grass Valley  
125 East Main Street  
Grass Valley, California 95945

POSTMASTER: DO NOT FORWARD  
IF ADDRESSEE HAS MOVED  
★ ★ ★ ★ ★ ★ ★ ★ ★ ★

# VOTE

**ELECTION DAY TUESDAY, FEBRUARY 7, 1989**

**Polls Open 7 a.m. to 8 p.m.**

BULK RATE  
U.S. POSTAGE  
PAID  
Grass Valley, CA  
Permit No. 160

**YOUR POLLING PLACE** →

**MAILING ADDRESS** →



**Notice to  
Physically**

**Handicapped Voters:**

"HANDI ACC - YES" in the right center portion of your address label means your polling place is accessible to the physically handicapped.

### NOTICE

If you find that for any reason you will be unable to vote in person on election day, promptly complete and sign the enclosed application for absent voter's ballot and mail in stamped envelope or return in person to **David A. Breninger, City Administrator/City Clerk, Grass Valley City Hall, 125 East Main Street, Grass Valley, California 95945 - Telephone (916) 273-2203**. Your application may be submitted not more than 29 days before the day of election but must reach the Office of the City Clerk not less than 7 days before the day of election.

*BACK lower*



# California Fair Political Practices Commission

February 14, 1989

Schellely Kurle  
Production Assistant  
Western Elections  
P.O. Box 8900  
Stockton, CA 95208

Re: Letter No. 89-099

Dear Mr. Kurle:

Your letter requesting advice under the Political Reform Act was received on February 10, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace 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:plh