



California Fair Political Practices Commission

February 23, 1989

The Honorable Alfred E. Alquist
Member of the Senate
State Capitol, Room 5100
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. I-89-109

Dear Senator Alquist:

You have requested advice regarding application of the mass mailing provisions of the Political Reform Act (the "Act")^{1/}, as amended by Proposition 73 on the June 7, 1988 ballot.

QUESTIONS

1. May material sent in response to an unsolicited request include the name or image of an elected officeholder?
2. May material be made available at a school classroom or assembly where an elected officeholder appears?
3. May an elected officeholder indicate at a public forum or school classroom or assembly where he or she appears that material is available?

CONCLUSIONS

1. Materials sent in response to an unsolicited request are not subject to the mass mailing prohibition. Accordingly, the materials may include the name or image of an elected officeholder.

^{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.

2. Materials passed out at a school classroom or assembly where an elected officeholder appears are not considered to be sent in response to an unsolicited request. Therefore, the mass mailing prohibition applies.

3. Materials picked up at a public forum or classroom where the officeholder indicates that such materials are available are not considered to be sent in response to an unsolicited request. Therefore, the mass mailing prohibition applies.

ANALYSIS

Section 89001 provides that no mass mailing shall be sent at public expense. The term "mass mailing" means over two hundred 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. (Section 82041.5.)

Regulation 18901 clarifies that the purpose of Section 89001 is to prevent elected officers from using public funds to send out newsletters and other mass mailings. Subdivision (c) of the regulation provides:

(c) A newsletter or other mass mailing may not be sent within the meaning of Government Code Section 89001 if:

(1) The name of the elected officer or his or her photograph appears on the document; and

(A) The elected officer exercises direction or control over the content, production, or distribution of the document, or

(B) The document is sent at the request or suggestion of the elected officer or his or her agent; or

(C) The document is signed by, or is designated as being from the elected officer or his or her office; or

(2) (A) The elected officer is affiliated with the agency which produces or distributes the document; and

(i) The elected officer is featured in the document; or

(ii) The name, office or other reference to the elected officer or his or her photograph appears on the

document and the document is prepared or sent in cooperation, consultation, coordination or concert with the elected officer.

You have asked about materials which would include the name or image of an elected officeholder. The regulation makes clear that such materials may not as a general rule be sent at public expense. However, the statute makes an exception for materials which are sent in response to an unsolicited request. Materials sent in response to an unsolicited request are not subject to the prohibition. Accordingly, such materials may include the name or image of an elected officeholder. The question becomes what is an unsolicited request for materials?

Regulation 18901(h) provides in pertinent part:

(h) As used in this regulation, "unsolicited" specific request means a communication which is not requested or induced by the elected officeholder or any third person acting at his or her behest....

Members of the public who come to an agency's offices or to a meeting and who pick up materials for themselves will be deemed to have made an unsolicited specific request for those materials.

An unsolicited request for materials is made only if individuals come to an agency's offices or to a meeting and pick up these materials for themselves of their own volition. Materials which are distributed to those individuals or which the individuals are induced to request by the officeholder or a third person acting at his or her behest are not "sent in response to an unsolicited request." Thus, for example, such materials may not be passed out at a school classroom or assembly where the elected officeholder appears.^{2/} Nor may such materials be provided by elected officeholders to schools for distribution to students.

Finally, we believe that a request is solicited when an elected officeholder appears at a public forum or school classroom and indicates that materials which would otherwise fall under the prohibition are available. To conclude otherwise would allow officeholders to induce "unsolicited requests" in a wide variety of ways. Proposition 73 specifically added the term "unsolicited" to Section 89001 in order to prevent such circumvention of the mass mailing prohibition.

^{2/} A newsletter or mass mailing is "sent" within the meaning of Section 89001 if it is distributed by various means including distribution by agency personnel, agents of the agency or volunteer delivery mechanisms.

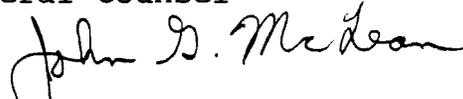
The Honorable Alfred E. Alquist
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We do believe that materials which are available at a public agency such as a school and which are picked up by students or other members of the public of their own volition are provided "in response to an unsolicited request." However, we believe that when such materials are made available to be used in connection with classroom studies, students picking up the materials cannot be said to have made an unsolicited request for such materials even if the materials are simply placed in the classroom for students to pick up. We note that materials to be used in such ways may still be sent at public expense if they do not contain the names, photographs, or other references to elected officers.

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

Sincerely,

Diane M. Griffiths
General Counsel



By: John G. McLean
Counsel, Legal Division

JGM:ld

Enclosures

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COMMITTEE ON BUDGET AND FISCAL REVIEW

ROOM 160, STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
(916) 441-5207

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February 17, 1989

John McLean
Legal Division
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

Dear John,

Please provide clarification regarding the Fair Political Practices Commission's permanent Regulation 18901, addressing newsletters produced at public expense:

Question #1

May unsolicited material include the name or image of an elected officeholder? Unsolicited means a communication which is not requested or induced by the recipient elected officeholder or any third person acting at his or her behest. This includes information requested in response to an elected officer's participation at a public forum.

Question #2

May unsolicited material be made available at a school classroom or assembly where an elected officeholder appears?

Question #3

May an elected officeholder indicate at a public forum or school classroom or assembly where the officeholder appears that unsolicited material is available?

Thank you for your consideration.

Sincerely,


Alfred E. Alquist
Senator



California Fair Political Practices Commission

February 21, 1989

Honorable Alfred E. Alquist
Member of the State Senate
State Capitol, Room 5013
Sacramento, CA 95814

Re: Letter No. 89-109

Dear Senator Alquist:

Your letter requesting advice under the Political Reform Act was received on February 17, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean 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, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh

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ROOM 5013, STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
(916) 445-5202

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BARBARA BESSON



February 17, 1989

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