



California Fair Political Practices Commission

March 24, 1989

Dwight D. Gentry
Western Elections
Post Office Box 8900
Stockton, CA 95208

Re: Your Request for Advice
Our File No. A-89-166

Dear Mr. Gentry:

This is in response to your letter requesting advice on behalf of Neil Crawford, County Clerk of Solano County, regarding application of the mass mailing provisions of the Political Reform Act (the "Act")^{1/} to the use of the absentee ballot identification form and attached envelope that you have enclosed with your request.

QUESTION

Is the use of the elected county clerk's name on the envelope attached to the absentee ballot identification form permitted under the mass mailing restriction of Proposition 73?

CONCLUSION

The elected county clerk's name may appear on the absentee ballot envelope, provided the absentee ballot identification form and attached envelope are standard forms and envelopes of the agency.

^{1/} 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 variety of election materials for cities and counties throughout the state. You have requested advice concerning an absentee ballot identification form and attached envelope that you have enclosed with your request.

The absentee ballot form and envelope are mailed along with an absentee voter ballot and voting instructions to each voter who applies for an absentee ballot in Solano County. The form and envelope are used to return the voting materials to the county clerk and to identify the voter.

The absentee ballot identification form and attached envelope will be mailed to more than 200 persons in a calendar month. The form is a self mailer and includes the name of the county clerk of Solano County in the mailing address along with the address of the county clerk's office. The county clerk is an elected officer of the county.

ANALYSIS

Absentee Ballot Self Mailer

Government Code Section 89001 provides that no newsletter or other mass mailing shall be sent at public expense. Section 82041.5 defines a mass mailing as more than two hundred substantially similar pieces of mail sent in a calendar month. Regulation 18901(c) (copy enclosed) provides that a newsletter or other mass mailing is prohibited by Section 89001 if the name, photograph or signature of an elected officer appears on the document, or if it is designated as being from an elected officer or his or her office, and the elected officer exercises direction and control over the content, production, or distribution of the document.

Regulation 18901 also sets out specific exceptions to the prohibition on mass mailings. Subsection (e) of the regulation provides an exception when the name of the elected official appears solely on the standard letterhead, forms or envelopes of the official's agency. We have said that an absentee ballot application constitutes a form for the purposes of this exception. (Kurle Advice Letter, No. A-89-099, copy enclosed.) The absentee ballot identification form also fits within this exception. Thus, if the absentee ballot identification form is the standard form used by the agency in elections, the inclusion of the name of an elected officer is permitted on the form.

We have also said that an agency may include the name of the elected official "in the standard letterhead ... of the stationary, forms or envelopes of the agency." (Regulation 18901(e)(2); Harlan Advice Letter, No. A-89-081, copy enclosed.) Here, the

Dwight G. Gentry
March 24, 1989
Page 3

form is a self mailer which includes an envelope. The envelope has the name of the county clerk one time as part of the address of the agency to which the form is to be returned. Use of the county clerk's name in the mailing address space is tantamount to using it in the return address space. Since the name is used only once in the standard envelope, we conclude that such use is in compliance with the restrictions of the Act.

Please be advised, however, that the standard form and envelope exception and all the other exceptions in Regulation 18901 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 is prohibited unless it meets the requirements of another exception.

Applicability

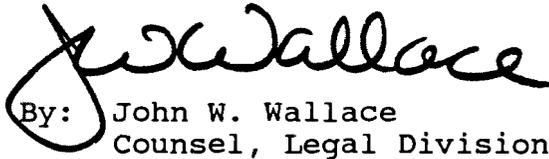
You have also asked about the general applicability of this advice. You would like to know if you may print other self mailers with substantially the same text in reliance on this advice letter.

Formal written advice is the application of the law to a particular set of facts. While the immunity provided by Government Code Section 83114(b) is limited to the requestor and to the specific facts contained in the formal written advice, this advice may provide guidance to others in identical factual situations. (Regulation 18329(b)(7), copy enclosed.)

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

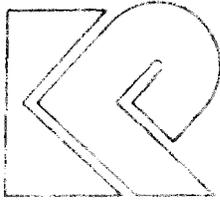
Sincerely,

Diane M. Griffiths
General Counsel


By: John W. Wallace
Counsel, Legal Division

DMG:JWW:plh

Enclosures



K/P GRAPHICS

REC-10
MAR 15 8 31 AM '89

WESTERN ELECTIONS

Post Office Box 8900
Stockton, California 95208
(209) 465-5614

March 13, 1989

California Fair Political Practices Commission
Attention: John Wallace
Post Office Box 807
Sacramento, California 95804-0807

Dear John,

Enclosed please find a copy of our Form No. 9033, an Identification and Return Envelope used by the County of Solano. We request your opinion on whether the printed format of this envelope is in compliance with the Proposition 73 regulations, specifically regarding the inclusion of the name of the County Clerk, as highlighted on the sample form. We also request your decision on the applicability of this opinion: can your opinion regarding this envelope be applied to other envelopes which include substantially the same text, as well as the name of an elected County Clerk as part of the destination address? The County is aware that we are requesting this opinion as part of our normal preparations for printing.

Usage: This envelope is mailed, along with an absent voter ballot and voting instructions, to each voter who applies for such an absent voter ballot. After voting the ballot, the voter encloses the voted ballot in this envelope and returns the envelope according to the election laws.

If you need additional information about the usage of this form, or if you have any other questions, please don't hesitate to give us a call. Please note that the County of Solano has an upcoming election scheduled, for which these envelopes are required. In order for us to meet legal deadlines for supplying these envelopes, we must start production on March 28, 1989. Accordingly, we must have your opinion on this specific form on or before March 27, 1989. Your decision on applicability would be needed as soon as possible after that date. We are aware of a number of elections due to occur shortly after the Solano election that would require the printing of similar materials, and if you should decide that item-by-item approval is required, we would need to submit samples of those similar forms.

Sincerely,

Dwight D. Gentry
(209) 465-5614

NOTE: Your Absentee Ballot must be in the office on or before Election Day at 8:00 p.m.

I hereby affirm that I am ill or disabled and that I designate:

(Print name of person returning ballot)
who is my spouse, child, parent, grandparent, grandchild, brother or sister to return my ballot.

(Signature of Voter)

WARNING: VOTING TWICE CONSTITUTES A CRIME. In the event that the voter attempts to vote more than one absent voter's ballot, both ballots will be void.

MARKED OFFICIAL BALLOT ENCLOSED

VOTER: Enclose in this envelope only your voted ballot and secrecy envelope (if any).

If you have spoiled your ballot and wish another sent to you, **ENCLOSE the spoiled ballot and mark a check in this box**

FROM: ADDRESS ON REVERSE SIDE
OPEN CAREFULLY
ABSENT VOTER'S BALLOT ENCLOSED
Form No. 9033 - K/P Western Elections

State of CALIFORNIA, County of SOLANO
I, the undersigned, declare under penalty of perjury that I reside within the precinct in which I am voting, and that I am the person whose name appears on this envelope. I herein enclose my ballot in compliance with Division 2, Chapter 1, of the Elections Code. I have not applied, nor do I intend to apply, for an absent voter's ballot from any other jurisdiction for the same election.

Your ballot cannot be counted unless you sign here:

✓ _____
Signature Date
✓ _____
Residence Address in Solano County City or Town

Postmaster: Deliver to address on other side

-
-
-

IDENTIFICATION AND RETURN ENVELOPE
TO BE OPENED ONLY BY THE CANVASSING BOARD

FOR OFFICE USE ONLY

Pct. No. _____
Party _____
Ballot Style _____
Date Mailed _____
Date Returned _____
Election _____

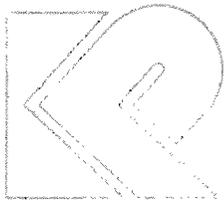
(Endorse below the cause of challenge and action thereon or the cause of rejection):

CANVASSING BOARD



PLACE
FIRST CLASS
POSTAGE
HERE

TO: NEIL CRAWFORD, COUNTY CLERK /
COUNTY OF SOLANO
POST OFFICE BOX "I"
FAIRFIELD, CA 94508-0001



K/P GRAPHICS

March 9 1989

WESTERN ELECTIONS

Post Office Box 807
Stockton, California 95201
(209) 465-5614

March 13, 1989

California Fair Political Practices Commission
Attention: John Wallace
Post Office Box 807
Sacramento, California 95804-0807

Dear John,

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Sincerely,

Dwight D. Gentry
(209) 465-5614

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I hereby affirm that I am ill or disabled and that I designate:

(Print name of person returning ballot)

who is my spouse, child, parent, grandparent, grandchild, brother or sister to return my ballot.

(Signature of Voter)

WARNING: VOTING TWICE CONSTITUTES A CRIME. In the event that the voter attempts to vote more than one absent voter's ballot, both ballots will be void.

MARKED OFFICIAL BALLOT ENCLOSED

VOTER: Enclose in this envelope only your voted ballot and secrecy envelope (if any).

If you have spoiled your ballot and wish another sent to you, **ENCLOSE** the spoiled ballot and mark a check in this box . . .

FROM: ADDRESS ON REVERSE SIDE
OPEN CAREFULLY
ABSENT VOTER'S BALLOT ENCLOSED

Form No. 9033 - K/P Western Elections

State of CALIFORNIA, County of SOLANO

I, the undersigned, declare under penalty of perjury that I reside within the precinct in which I am voting, and that I am the person whose name appears on this envelope. I herein enclose my ballot in compliance with Division 2, Chapter 1, of the Elections Code. I have not applied, nor do I intend to apply, for an absent voter's ballot from any other jurisdiction for the same election.

Your ballot cannot be counted unless you sign here:

✓ _____
Signature Date

✓ _____
Residence Address in Solano County City or Town

Postmaster: Deliver to address on other side

-
-
-

IDENTIFICATION AND RETURN ENVELOPE
TO BE OPENED ONLY BY THE CANVASSING BOARD

FOR OFFICE USE ONLY

Pct. No. _____

Party _____

Ballot Style _____

Date Mailed _____

Date Returned _____

Election _____

(Endorse below the cause of challenge and action thereon or the cause of rejection):

CANVASSING BOARD



PLACE
FIRST CLASS
POSTAGE
HERE

TO: NEIL CRAWFORD, COUNTY CLERK /
COUNTY OF SOLANO
POST OFFICE BOX "I"
FAIRFIELD, CA 94522-0600



California Fair Political Practices Commission

March 16, 1989

Dwight D. Gentry
K/P Graphics
Western Elections
P.O. Box 8900
Stockton, CA 95208

Re: Letter No. 89-166

Dear Mr. Gentry:

Your letter requesting advice under the Political Reform Act was received on March 15, 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