



# California Fair Political Practices Commission

May 22, 1989

Robert E. Leidigh  
Olson, Connelly, Hagel & Fong  
300 Capitol Mall, Suite 350  
Sacramento, CA 95814

Re: Your Request for Informal Assistance  
Our File No. I-89-175

Dear Mr. Leidigh:

You have requested advice on behalf of the Senate Rules Committee regarding application of the mass mailing provisions of the Political Reform Act (the "Act")<sup>1/</sup>, as amended by Proposition 73 on the June 7, 1988 ballot.

### QUESTIONS

1. May "FYI cards" be sent in a mass mailing at public expense?
2. Will certain closures to letters be considered to "solicit or induce" a response?
3. May a notice be included in correspondence in order to advise the recipient that no follow-up communications will be forthcoming?
4. May the publication "California State Senate" be produced at public expense for distribution by the capitol tour guides?
5. May reports published by a Senate committee list the names of all committee members on the document?

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<sup>1/</sup> 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. FYI cards may be sent in a mass mailing at ~~public expense~~ if the elected officer's name appears only in the standard letterhead or logotype of the card and does not follow any textual message.
2. In certain instances, closures to letters will be considered to solicit or induce a response.
3. A notice informing recipients of a letter that no further correspondence will be forthcoming absent a specific request, will be considered to solicit or induce a response.
4. The publication "California State Senate" may not be produced at public expense for distribution by the Capitol tour guides. However, that publication may be placed on the counter of the Capitol tour ticket office for members of the public to pick up for themselves.
5. Reports published by Senate committees may include the names of committee members only in the standard letterhead or logotype of the stationery, forms or envelopes of the committee.

### ANALYSIS

Section 89001 provides that no mass mailing shall be sent at public expense. 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.

#### FYI Cards

You have submitted copies of various transmittal cards used by members of the California State Senate. These are commonly referred to as "FYI cards."

Typically, the FYI cards are paperclipped or stapled to a document, such as a legislative bill, and sent to some interested person. The cards typically bear the seal of the State Senate, the Senator's name, perhaps an office address, and a notation that the document is being sent: "For your information;" or "Per your request." Some of the FYI cards also contain the phrase "Compliments of." A few of the FYI cards bear additional notations or contain spaces for handwritten notes.

Generally, a mass mailing may not be sent at public expense by an elected officer if the name, office, photograph, or other reference to the elected officer appears on the document. However, 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, form 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).

In the present situation, the FYI cards seem to be standard stationery or forms of the various elected officers. Accordingly, the names of those elected officers may appear in the standard letterhead or logotype. However, we do not believe the cards which include statements such as "compliments of" followed by the elected officer's name and title can be considered to be standard letterhead or logotype.

While this distinction may seem technical, we believe it is an important one. The term "letterhead" has been defined as "a printed heading on stationery, esp. one giving a name and address." (The Random House College Dictionary, revised edition, p. 769.) The purpose of the letterhead exception is simply to notify the recipient of the identity of the sender. It is not intended to enable the sender to use the listing of the name as a closing to some textual statement. When the text of a message precedes the listing of the elected officer's name we believe the document no longer constitutes letterhead.

#### Soliciting or Inducing

Mail sent in response to an unsolicited request, letter or other inquiry is not subject to the mass mailing prohibition. (Section 82041.5.) Regulation 18901(h) provides that an unsolicited request means a communication which is not requested or induced by the recipient elected officeholder or any third person acting at his or her behest. You have asked whether the following closures to letters sent by members of the Senate would be considered to "solicit or induce" any return correspondence:

(1) I will keep you informed on the status of this measure as it proceeds through the legislative process.

(2) I appreciate you taking the time to contact me and hope you will continue to let me know your views on other matters of special interest to you.

(3) If you have any questions or concerns regarding this bill, please do not hesitate to contact me.

(4) I hope all members of our community will write to me and other legislators expressing their support for this most important measure.

(5) If we can be of assistance to you, please feel free to call upon us.

We do not believe that sentences 2, 3 or 5 "solicit or induce" the recipients to send communications to the officeholder. Rather, these are simply statements encouraging the recipient in a very general manner to communicate with the legislator. They are not apt to persuade a recipient who is otherwise not inclined to do so, to request further communications. Such statements are merely a common way of closing letters in a courteous manner.

Similarly, we do not believe that sentence 1 solicits or induces the recipients to send communications to the officeholder. However, the sentence indicates that there will be some type of ongoing correspondence. Unless the requestor has specifically requested ongoing communications from the legislator, such communications may not be sent to constituents in a mass mailing at public expense. (Regulation 18901(h).)

Finally, we believe that sentence 4 solicits or induces a request. It specifically requests that the recipient write to his or her legislator on a specific issue.

#### Informational Notice

You have asked whether the following notice would be considered to "solicit or induce" future correspondence from the recipient:

#### NOTICE

In June 1988, the voters approved Proposition 73. Among other things, Proposition 73 placed certain restrictions on mailings which are sent out by government offices. As a result, this office may no longer keep you updated on items of interest to you unless you specifically request that we do so.

Therefore, in future communications with this office, if you wish to be kept informed about developments of interest to you, please specify that you request to be kept informed.

We believe that the second paragraph of this notice solicits or induces a request. It's purpose is to persuade a recipient to make a request which he or she would not otherwise make. We do

not believe the first paragraph alone solicits or induces a request.

We would also point out that the mass mailing restriction does not prohibit communications on items of interest to constituents, but merely prohibits those mailings from including the name, photograph or other reference to elected officers.

#### Standard Capitol Publications

You have submitted a publication entitled "California State Senate" which includes the names and pictures of the members of the Senate. In the past, this publication and other publications which you have submitted to us have been given to visitors to the State Capitol by the tour guides. Although, you have indicated that capitol tours meet and commence in public hallways, so there is no convenient location at which these publications may be set out to be picked up, that information is not consistent with our experience. There is an office in the basement of the Capitol at which the public can pick up free tickets for tours of the Capitol. Those persons who obtain the tickets meet their guides in the hallways at a set location. You have asked whether the tour guides may hand publications out to participants.

Since these documents contain the name and photograph of elected officers, they fall under the mass mailing prohibition. (Regulation 18901(c).) Accordingly, they may not be sent in a mass mailing at public expense. A mass mailing is "sent" if it is distributed by agency personnel or agents of the agency, or by volunteer delivery mechanisms. (Regulation 18901(g)(3) and (4).) Thus, regardless of whether these documents are distributed by direction of the Senate, or voluntarily, they are "sent" within the meaning of the prohibition.

Regulation 18901(h) provides that 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 request for those materials. In the present situation, the tour guides distribute the materials rather than having members of the public voluntarily pick up the materials. This will not be considered an unsolicited request for materials. Accordingly, the materials may not be distributed in a mass mailing sent at public expense. The materials may be made available on the counter at the office where members of the public obtain their free tour tickets.

#### Senate Committee Publications

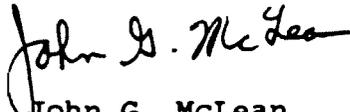
Finally, you have asked whether the names of committee members may appear on reports published by the committee. Reports which are to be sent in a mass mailing at public expense may include the names of all members of the committee in the standard

letterhead or logotype of the stationery, forms or envelopes of the committee. (See, Symkowitz Advice Letter, No. I-88-339, copy enclosed.)

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

Sincerely,

Kathryn E. Donovan  
General Counsel



By: John G. McLean  
Counsel, Legal Division

KED:JGM:aa

Enclosure

Law Offices of  
OLSON, CONNELLY, HAGEL & FONG

FPPC

March 21, 1989

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Diane M. Griffiths  
General Counsel  
FAIR POLITICAL PRACTICES COMMISSION  
428 "J" Street, Suite 800  
Sacramento, California 95814

**HAND DELIVERED**

**RE: REQUEST FOR FORMAL WRITTEN ADVICE REGARDING  
REGULATION 18901**

Dear Ms. Griffiths:

I am writing on behalf of my client the Senate Rules Committee. The Rules Committee has asked that I seek formal written advice from the Commission regarding several applications of Regulation 18901. The situations which we ask the Commission to address are as follows:

1. **FYI Cards** - Several weeks ago, I submitted to the Commission photocopies of various transmittal cards used by members of the California State Senate. These are commonly referred to as "FYI cards." I asked for oral advice as to whether these cards could be sent out in quantities of over 200 in a calendar month.

I was advised that the Commission would not provide that advice unless it was sought in writing. This is a written request for such advice.

Typically, the FYI cards are paperclipped or stapled to a document, such as a legislative bill, and sent to some interested person. The cards typically bear the seal of the State Senate, the Senator's name, perhaps an office address, and a notation that the document is being sent: "For your information;" or "Per your request." Some of the FYI cards also contain the phrase "Compliments of."

A few of the FYI cards bear additional notations or contain spaces for handwritten notes. One example actually bears the signature of the officeholder. My client recognizes that these latter examples may present problems with respect to Regulation 18901. However, the vast majority of the FYI cards appear to be nothing more than miniaturized stationery which bears a "standard letterhead or logotype."

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LANCE H. OLSON  
BRUCE J. HAGEL  
LEROY Y. FONG  
ROBERT E. LEIDIGH

OF COUNSEL  
LLOYD G. CONNELLY, Member  
California State Legislature

Page Two

We request your advice as to the appropriateness of using the FYI cards to transmit legislative bills and similar documents to interested persons. In considering this request, assume that the recipients will number more than 200 in a calendar month. The attached documents may differ, but the FYI cards would be the same. Also assume that the recipients did not make an "unsolicited request."

**2. Soliciting or Inducing** - Attached is a copy of a memorandum dated March 10, 1989, from Cliff Berg, Executive Officer of the Senate Rules Committee, to all Senate Offices. As you can see from the memorandum, questions have arisen regarding certain commonly used closures to letters sent by members of the State Senate.

We request the Commission's advice as to which of the closing phrases quoted in the memorandum are appropriate. Specifically, we wish to know whether any of the quoted phrases would be considered to "solicit or induce" any return correspondence from the recipient.

**3. Informational Notice** - Many correspondents to public offices are unaware of the changes caused by Proposition 73 and Regulation 18901. In the past, they have received follow-up mailings from officeholders after asking for information from public offices.

Under Regulation 18901, absent a specific request for continuing information, such follow-up correspondence is prohibited. Consequently, many correspondents are not receiving follow-up communications, which they expected to receive without making a specific request.

The Senate Rules Committee wishes to provide an approved notice to correspondents which would educate them as to the changes in the law. This notice could be included in correspondence in order to advise the recipient that no follow-up communications will be forthcoming. It would also apprise them of the need to specifically request continuing information if they wish to receive it.

The text of the proposed notice appears below. We request the Commission's advice on whether such a notice would be permissible under Regulation 18901. Specifically, would such a notice be considered "soliciting or inducing" future correspondence from the recipient.

#### **NOTICE**

In June 1988, the voters approved Proposition 73. Among other things, Proposition 73 placed certain restrictions on mailings which are sent out by

Page Three

government offices. As a result, this office may no longer keep you updated on items of interest to you unless you specifically request that we do so.

Therefore, in future communications with this office, if you wish to be kept informed about developments of interest to you, please specify that you request to be kept informed.

**4. Standard Capitol Publications** - I enclose copies of three standard publications which are given to visitors to the State Capitol by the tour guides (docents). The enclosed publications were printed in the past and are now being prepared for update and reprinting.

Because the capitol tours meet and commence in public hallways, there is no convenient location at which these publications may be set out to be picked up. Consequently, the tour guides hand them out to the tour participants.

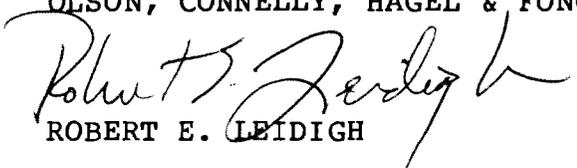
The capitol tours are operated by the State Department of Parks and Recreation. That agency is a part of the administration and is not subject to the supervisory control of the State Senate.

We request the Commission's advice as to the whether the publication "California State Senate" may be produced in a similar fashion to the enclosed version for dissemination by the capitol tour guides.

**5. Senate Committee Publications** - Lastly, I wish to confirm telephone advice provided this date by John McLean, Staff Counsel in the Legal Division. Mr. McLean confirmed my understanding that when a Senate Committee publishes a report, it is permissible for the names of all committee members to appear in the same type size and typeface and location on the document. This is provided that the other restrictions in Regulation 18901 are adhered to.

Very truly yours,

OLSON, CONNELLY, HAGEL & FONG

  
ROBERT E. LEIDIGH

Enc: Noted

cc: Cliff Berg, Senate Rules Committee

Law Offices of  
OLSON, CONNELLY, HAGEL & FONG

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March 21, 1989

Diane M. Griffiths  
General Counsel  
FAIR POLITICAL PRACTICES COMMISSION  
428 "J" Street, Suite 800  
Sacramento, California 95814

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OF COUNSEL  
LLOYD G. CONNELLY, *Member*  
*California State Legislature*

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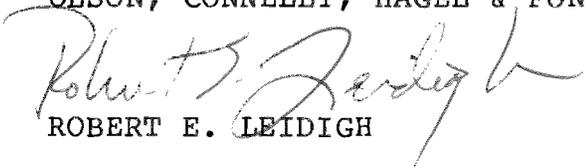
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Very truly yours,

OLSON, CONNELLY, HAGEL & FONG

  
ROBERT E. LEIDIGH

Enc: Noted

cc: Cliff Berg, Senate Rules Committee



# California Fair Political Practices Commission

March 24, 1989

Robert E. Leidigh  
Olson, Connelly, Hagel and Fong  
300 Capitol Mall, Suite 350  
Sacramento, Ca 95814

Re: Letter No. 89-175

Dear Mr. Leidigh:

Your letter requesting advice under the Political Reform Act was received on March 21, 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 that reads "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:plh