



# California Fair Political Practices Commission

May 22, 1989

Melanie K. Wellner  
Deputy County Counsel  
County of Nevada  
950 Maidu Avenue  
P.O. Box 6100  
Nevada City, CA 95959-6100

Re: Your Request for Advice  
Our File No. I-89-205

Dear Ms. Wellner:

We are writing in response to your request for clarification of the mass mailing provisions of the Political Reform Act, specifically as they pertain to the Bollinger Advice Letter No. A-89-082. Mr. Bollinger, the Nevada County Clerk, requested advice regarding the inclusion of his name as part of the return address on envelopes used to mail absentee ballots. We concluded that under Regulation 18901(e), 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 ballots.

As you stated, Mr. Bollinger had consulted you previous to requesting our advice, and you had reached an opposite conclusion. We appreciate that you took the conservative approach in providing legal advice to Mr. Bollinger. As you realize, the Commission has determined that the intent of the voters in adopting Proposition 73 was to prevent elected officers from gaining an advantage from incumbency by using public funds to send out newsletters and other mass mailings which increase their name recognition. Therefore, we believe that Regulation 18901 and the exceptions thereto should be construed narrowly.

You are correct in your analysis of some of the exceptions to Regulation 18901. Neither 18901(f)(4) nor (f)(6) are complete exceptions. In 18901(f)(4), inclusion of the elected officer's name must be necessary, and in 18901(f)(6), the elected officer's name must be required. Neither of these exceptions applied to the facts or questions Mr. Bollinger presented.

Therefore, your question seems to lie in the interpretation of 18901(e). This section sets forth a letterhead exception,

which provides for inclusion of the elected officer's name, provided certain criteria are met. Regulation 18901(e)(2) states that the name is permitted provided "the newsletter or mass mailing is not otherwise prohibited under subdivision (c) because of additional references to the elected officer." (Emphasis added.) Subdivision (c) sets forth the prohibitions for mass mailings. Thus, subdivision (e) allows use of the elected officer's name in the letterhead or return address, as long as there are no additional references to the elected officer, which are prohibited by subdivision (c).

I trust this answers your question. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

By:  Jill R. Stecher  
Counsel, Legal Division

KED:JRS:plh

# COUNTY OF NEVADA

## COUNTY COUNSEL

ERIC ROOD ADMINISTRATION CENTER  
950 Maidu Avenue - P. O. Box 6100  
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JAMES A. CURTIS  
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Keith C. Johnson, *Deputy*

April 5, 1989

Ms. Jill Stecher, Counsel  
Legal Division  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, CA 95804-0807

Re: Proposition 73

Dear Ms. Stecher:

We are in receipt of a copy of your opinion dated March 8, 1989 to the Nevada County County Clerk (your file No. A-89-082). In that opinion you concluded that an elected county clerk may include his/her name as part of a return address on envelopes used to mail out and return absentee ballots provided that the envelopes are the standard envelopes regularly used.

The Nevada County Clerk had sought an opinion from this office earlier. I am enclosing a copy of my response which I had discussed with the FPPC legal staff prior to mailing. Our conclusion was the opposite of yours. My opinion was based on the assumption that the policy was to remove unfair advantages which incumbents have if their name is used where it is not necessary. I have just reviewed the FPPC April Bulletin wherein Chairman John Larson is quoted as stating that "Without restrictions on mass mailings at public expense, incumbent officeholders gain an unfair advantage by having their campaigns subsidized by the taxpayers. Under Commission rules, incumbent officeholders basically must avoid using tax dollars to promote themselves in mass mailings." This statement indicated to me that the basis for my opinion was in line with the thinking of the FPPC Board. We could not see the necessity of inclusion of the County Clerk's name on envelopes even if they were the regular standard envelopes used by the Department. We viewed the unnecessary use of the official's name as the type of use which the law was intended to avoid.

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Ms. Jill Stecher, Counsel  
April 5, 1989  
Page Two

The problem that I have in understanding your conclusion is that it reads one section of Reg. 18901 in isolation. You refer to subsection (e) as the determinative section, stating that the envelope is standard and therefore meets the subsection (e) test. Subsection (e), however, under (2) contains further criteria, i.e., that the mass mailing not be otherwise prohibited under subdivision (c). A standard envelope of the type discussed here would not appear to me to meet the criteria of (c). Further, the policy as set forth in language such as (f)(4) and (f)(6) indicate that the name of the official must be necessary or otherwise required by law. We could not see that the County Recorder's name appearing on an envelope would be necessary or required so long as the office was listed.

I am sure that you can see the difficulty that we are having in advising our clients. We would appreciate direction. If we are to construe each section narrowly as providing an exemption from the mass mailing laws, we would appreciate knowing that policy. On the other hand, if the purpose of the regulation is to remove incumbents' advantages, we would suggest that the above ambiguity be clarified. Your response and assistance will be most appreciated.

Very truly yours,



MELANIE K. WELLNER  
Deputy County Counsel

MKW:mjc  
Enclosure  
cc: John Larson,  
Chairman of the Board  
Bruce Bolinger



# California Fair Political Practices Commission

April 12, 1989

Melanie K. Wellner  
Deputy Counsel  
County of Nevada  
Eric Rood Administration Center  
P.O. Box 6100  
Nevada City, CA 95959-6100

Re: Letter No. 89-205

Dear Ms. Wellner:

Your letter requesting advice under the Political Reform Act was received on April 10, 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*  
Diane M. Griffiths  
General Counsel

DMG:plh