



California Fair Political Practices Commission

May 31, 1989

John Knott
Museum Director
California State Capitol Museum
State Capitol, Room 124
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. I-89-242

Dear Mr. Knott:

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. Because of the general nature of your request, we are treating it as one for informal assistance.²

QUESTION

Does the mass mailing prohibition apply to brochures which depict the California State Capitol Museum and give tour information?

CONCLUSION

The prohibition does not apply to one of the brochures because it does not include the name, photograph or any other reference to an elected officer. The museum brochures which include a photograph of the elected officers are not subject to the mass mailing prohibition if they are "sent in response to an unsolicited request." Therefore, the brochures may be placed on the counter of the Capitol tour ticket office for members of the public to pick up for themselves or mailed to tourists who have made unsolicited requests for the brochures. This exception does

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 Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

not apply to brochures which are distributed to school groups or provided in bulk for distribution in hotels and motels.

FACTS

You have provided us with two brochures which were originally printed in 1982, following completion of the State Capitol Restoration Project. One brochure has several photographs of the exterior and interior of the California State Capitol Museum and contains basic information regarding the museum and the hours. There is a picture of both the Senate and Assembly chambers, with the members of the Legislature. The seal of the State Assembly and State Senate are on the back of the brochure, with the statement "Operated by the California Department of Parks and Recreation in cooperation with the California State Legislature, Joint Rules Committee."

The other brochure gives specific tour information. It contains an identical sentence regarding operation, but does not have any photographs or seals of the senate and assembly.

The brochures are made available to members of the public by:

- (1) placing them at the tour desk in the Capitol building;

- (2) giving them to school groups following guided tours of the Capitol;

- 3) providing them in bulk to a private company, which distributes the brochures to local hotels and motels for placement in a lobby rack; and

- (4) mailing individual brochures to tourists who call or write requesting information.

ANALYSIS

Section 89001 of the Political Reform Act, as amended by Proposition 73, provides that "no newsletter or other mass mailing shall be sent at public expense." A mass mailing is defined as 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.)

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. The Commission has adopted Regulation 18901 (copy enclosed), which implements Section 89001.

Regulation 18901(c)(1) states that a newsletter or other mass mailing may not be sent at public expense if:

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

(A) The elected officer exercises direction and 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.

(B) An elected officer is "featured" in a mass mailing if he or she is singled out for attention of the reader by use of his or her signature, inclusion in any photograph, or the manner of display of his or her name or office in the layout of the document such as by headlines, type size, or typeface.

(C) An elected officer is "affiliated with an agency" if he or she is a member, officer, or employee of the agency or a subunit such as a committee, or has supervisory control over the agency, or appoints one or more members of the agency.

In the present situation, one brochure does not contain any reference to an elected officer. Accordingly, it may be sent in a mass mailing at public expense. The other brochure contains photographs of members of the Legislature. Therefore, it may not be sent in a mass mailing at public expense. However, Section 89001 excludes from the term "mass mailing" materials which are sent in response to an unsolicited request. Since materials sent in response to an unsolicited request are not subject to the mass mailing prohibition, such materials may include the name, office or photograph of the elected officer. The question becomes

whether materials distributed in the ways you have described are sent in response to an unsolicited request.

Regulation 18901(h), which defines "unsolicited" specific request, provides that:

..."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.

Therefore, an unsolicited request for materials is made if individuals come to an agency's offices or to a meeting held by the agency or official, and pick up these materials for themselves of their own volition. This exception does not apply to materials made available at private locations unless a meeting of the public agency or official is being held. (Connelly Advice Letter, No. A-89-198, copy enclosed.) Materials which are actively distributed or which 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."

The museum brochure may be made available on the counter at the museum office or mailed to individual tourists who have made unsolicited requests for the brochures. (Leidigh Advice Letter, No. I-89-175, copy enclosed.) However, the brochures which are handed out to school groups or provided in bulk for distribution in hotels and motels will be considered to be sent 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).) Similarly, brochures distributed by tour guides are "sent" within the meaning of the prohibition. (Connelly Advice Letter, No. A-89-198.)

I hope this answers your questions regarding the mass mailing provisions as they pertain to the museum brochures. If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel

By:  Jill R. Stecher
Counsel, Legal Division

KED:JRS:plh
Enclosures



CALIFORNIA STATE CAPITOL MUSEUM

State Capitol, Room 124 • Sacramento, California 95814 • (916) 324-0333 • TTY 324-2092

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STATE LEGISLATURE
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Chairman

DEPARTMENT OF PARKS
AND RECREATION

Henry R. Agonia
Director

April 19, 1989

Lilly Spitz, Legal Counsel
Fair Political Practices Commission
423 J Street, Suite 800
Sacramento, California 95814

Dear Ms. Spitz:

Please advise me if the attached museum/tour information brochure is covered under the current fair political practices legislation?

This brochure was first printed in 1982 following the completion of the State Capitol Restoration Project. It has been used since that date to provide tour and museum information for visitors to the Sacramento area. We have given the brochure out in the following ways:

At our tour desk located within the Capitol building.

To school groups following guided tours of the Capitol.

In bulk, to a private company who distribute them to local Hotels and Motels for visitors to pick up (normally at a rack within the lobby).

By request, we have mailed individual brochures to tourist who call or write for information.

In my opinion, there is nothing within this brochure of a political nature. It focuses on the tours available within our Capitol, which is one of the most outstanding examples of historic restoration within the western United States.

Please don't hesitate to call me if I can provide additional information. I look forward to receiving the results of your review.

Sincerely,

John Knott
Museum Director

cc: Dick Troy

Attachment



California Fair Political Practices Commission

April 27, 1989

John Knott
Museum Director
California State Capitol Museum
State Capitol, Room 124
Sacramento, CA 95814

Re: Letter No. 89-242

Dear Mr. Knott:

Your letter requesting advice under the Political Reform Act was received on April 21, 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,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh