



California Fair Political Practices Commission

May 25, 1989

Lynne Andersen
Legislative Assistant
Assemblyman William J. Filante
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Your Request for Advice
Our File No. A-89-273

Dear Ms. Andersen:

We have received your request for advice regarding the mass mailing provisions of the Political Reform Act (the "Act"),¹ as amended by Proposition 73 on the June 7, 1988 ballot.

QUESTION

Does the sample postcard, which Assemblyman Filante uses to notify his constituents about assembly district mobile office hours, fall within an exception to the mass mailing provisions?

CONCLUSION

Neither the text nor the purpose of the sample postcard falls within an exception to the mass mailing provisions. Regulation 18901(f)(8) only allows elected officials to notify their constituents of public meetings, not district office hours.

FACTS

In the past, Assemblyman Filante has used postcards to notify a large number of his constituents about assembly district mobile office hours, which are held periodically throughout the year. The postcard is sent to each household in a certain zip code.

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.

The sample postcard, which you submitted for our review, contains the following message:

ASSEMBLYMAN
BILL FILANTE, M.D.

Invites you to
Come and visit
his 9th A.D. Mobile Office.
Take this opportunity to discuss
any problems you may have or
share your views on important
state and local issues.

Bill will be at:
Long's Drug Store
1707 Grant Avenue
Novato
12 p.m. to 2 p.m.
Saturday, April 22, 1989

For more information call (415) 479-4920

The postcard also contains a photograph of Assemblyman Filante and the seal of the State Assembly.

The return address on the back of the postcard contains Assemblyman Filante's name, office, and address.

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 in Section 82041.5 as two hundred or more substantially similar pieces of mail. 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.

At its December 6, 1988 meeting, the Commission adopted Regulation 18901 (copy enclosed), which implements Section 89001. Regulation 18901(a) provides:

(a) Except as provided herein, a newsletter or other mass mailing is "sent at public expense" within the meaning of Government Code Section 89001 if any of the costs of design, production, printing or distribution, is paid for with public moneys as defined in Government Code Section 85102(e).

Regulation 18901(c) 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 or her 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.

Regulation 18901(f) lists several exceptions to the general rule that no newsletter or mass mailing shall be sent at public expense. However, all exceptions to the mass mailing provisions are to be construed narrowly. (See Estate of Banerjee (1978) 21 Cal. 3d 527, 540.) For example, Regulation 18901(f)(8) provides that:

(f) The following newsletters or other mass mailings are not prohibited by Government Code Section 89001 if the mailing is sent to the persons specified in each instance below and the mailing consists of:

* * *

(8) Mailings sent to the elected officer's constituents which directly relate to that elected official's incumbent governmental duties and which solely include the time, date, place, and a concise description of the subject matter of a public meeting to be held by the elected officer; (Emphasis added.)

To apply this exception, the mailing must directly relate to the elected official's incumbent governmental duties, and may only include the time, date, place, and a concise description of the subject matter of the meeting. The name of the elected officer may be used once in the notice in order to identify the elected officer holding the meeting. However, the mailing may not be signed by the officer. (Clark Advice Letter No. I-89-031, copy enclosed.)

As can be seen, this exception pertains specifically to "public meetings" and not to district office hours. The purpose of the exception is to allow elected officials to notify their constituents of public meetings. In reviewing the sample postcard, it appears that neither the purpose nor the text complies with the restrictions of the regulation. Since the exception is to be construed narrowly, Assemblyman Filante's sample postcard may not be utilized.

Assemblyman Filante may use a postcard to notify his constituents of a public meeting pursuant to Regulation 18901(f)(8), however he may not be "featured" by use of his photograph, signature, or display of his name in large type size. (Regulation 18901 (c)(2)(B).) He may use his name once in the description of the meeting. For example, the notice may say "Assemblyman Filante invites you to a community meeting", as long as that is the only reference to himself in the mailing. The statement "for more information call", followed by the district office telephone number is not permitted. (Connelly Advice Letter No. I-89-110, 111 and 112, copy enclosed.)

If Assemblyman Filante uses a postcard that complies with the requirements of Regulation 18901(f)(8), another exception governs the use of an elected official's name as part of the return address on a postcard or envelope. Regulation 18901(e) establishes an exception if certain criteria are met. It states:

(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, forms 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).

As used in this subdivision, the term "letterhead or logotype" includes a listing of agency or committee officials or members, in which all who are listed appear in the same typeface and type size and location in the layout of the newsletter or other mass mailing.

As used in this subdivision, the term "standard letterhead or logotype" refers to any regularly used by the agency, subunit or the elected officer....

Therefore, the postcard must be the "standard" form used by your office and the return address must be the "standard letterhead or logotype" regularly used. If such standard letterhead is regularly used by your office, Assemblyman Filante's name may be included in the return address. As stated above, all exceptions to the mass mailing provisions are to be construed narrowly.

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

Sincerely,

Kathryn E. Donovan
General Counsel


By: Jill R. Stecher
Counsel, Legal Division

KED:JRS:plh

Enclosure

PLEASE RESPOND TO

SACRAMENTO ADDRESS
STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
TEL. 445 7827

DISTRICT OFFICE ADDRESSES
30 NORTH SAN PEDRO ROAD,
SUITE 190

SAN RAFAEL, CA 94903
TEL: (415) 479-4920
ATSS 597-1211

11 ENGLISH STREET
PETALUMA, CA 94952
TEL: (707) 762-5706
(707) 938-8157

California Legislature



WILLIAM J. FILANTE, M.D.

ASSEMBLYMAN, NINTH DISTRICT
(MARIN AND SONOMA COUNTIES)

COMMITTEES:
VICE CHAIRMAN:
RULES

MEMBER:
HEALTH
HOUSING AND COMMUNITY
DEVELOPMENT
WATER, PARKS, AND
WILDLIFE

TO: JOHN MCLEAN
FROM: LYNNE ANDERSEN, LEGISLATIVE ASSISTANT
DATE: MAY 5, 1989
RE: MOBILE DISTRICT OFFICE MAILING

John, attached is a card that has previously been sent to announce mobile district office hours in the district. It has been sent to each household in a certain zip code.

This year, it has been approved for mailing by the Legislative Counsel under Prop. 73 regulations. However, I would also like an opinion from the FPPC.

If the mailing is not under Prop. 73 regulations, please forward any changes that can be made to make it comply.

Should you have any questions, please contact me at 5-7827.

Thank you for your consideration.

/lra



California Fair Political Practices Commission

May 9, 1989

Lynne Andersen
Legislative Assistant
William J. Filante, M.D.
Assemblyman, Ninth District
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Letter No. 89-273

Dear Ms. Andersen:

Your letter requesting advice under the Political Reform Act was received on May 8, 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

89-073

PLEASE RESPOND TO

COMMITTEES:
VICE CHAIRMAN:
RULES

SACRAMENTO ADDRESS
STATE CAPITOL
 P.O. BOX 942849
SACRAMENTO, CA 94249-0001
TEL: 445-7827

California Legislature

MEMBER:
HEALTH
HOUSING AND COMMUNITY
DEVELOPMENT
WATER, PARKS, AND
WILDLIFE

DISTRICT OFFICE ADDRESSES
30 NORTH SAN PEDRO ROAD,
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ASSEMBLYMAN, NINTH DISTRICT
(MARIN AND SONOMA COUNTIES)

11 ENGLISH STREET
PETALUMA, CA 94952
TEL: (707) 762-5706
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