



California Fair Political Practices Commission

July 5, 1989

Senator Bill Lockyer
Tenth Senatorial District
22300 Foothill Blvd., Suite 415
Hayward, CA 94541

Re: Your Request for Advice
Our File No. A-89-342

Dear Senator Lockyer:

You have requested advice concerning the mass mailing provisions of the Political Reform Act (the "Act").¹ The advice on this issue presents significant policy questions and therefore will be provided to the Commission for consideration at a future meeting. The mass mailing regulation will be discussed at the July 12th meeting of the Commission. In the meantime, we have provided a conservative and cautious interpretation of the Act. This letter confirms the telephone advice provided to your staff on June 30, 1989.

QUESTIONS

1. If a senior citizen center requests a quantity of brochures which include your name and photograph, is the requested quantity exempt from the mass mailing limit of 200 copies?
2. If the center is a private, nonprofit organization, is there a limit on the number of brochures it can distribute?
3. Does it make any difference if the center mails the brochures at public expense or hand delivers them to the person requesting them?

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.

4. If the brochures are made available to a senior forum or exposition, at the request of the forum organizers, to be picked up by participants at a booth-type setting, does the limit apply?

CONCLUSIONS

1. A request from a senior citizen center for a quantity of brochures is not exempt from the mass mailing limit.

2. Under the facts provided, the center will be considered a volunteer delivery mechanism and will be limited to distribution of 200 copies per calendar month.

3. The limitation of 200 per month applies whether the brochures are mailed or hand delivered.

4. If the brochures are made available to be picked up, the limitation of 200 per month applies unless the brochures are made available at the offices of a public agency or at a meeting of a public agency.

FACTS

You have a brochure dealing with senior citizens' issues and printed at public expense. The brochure contains your name, photograph and office address. You are requesting clarification with respect to distribution of the brochures in accordance with mass mailing provisions of the Act.

ANALYSIS

Section 89001 provides that no mass mailing shall be sent at public expense. A mass mailing means over 200 substantially similar pieces of mail unless sent in response to an unsolicited request, letter or other inquiry. (Section 82041.5.)

Regulation 18901 (copy enclosed) clarifies that the purpose of Section 89001 is to prevent elected officers from using public funds to send out newsletters and other mass mailings. Regulation 18901 also provides several exceptions to the general prohibition regarding mass mailings. However, all exceptions are to be construed narrowly. (Stirling Advice Letter, No. A-89-132, copy enclosed.)

The regulation provides, in part:

(b) A newsletter or other mass mailing is not prohibited by Government Code Section 89001 if it contains only information or material sent in response to unsolicited specific requests contained in written correspondence (including petitions) or

oral inquiries received by the elected officer or by an agency with which the officer is affiliated.

Regulation 18901(b), emphasis added.

An "unsolicited" request is defined, in part, as follows:

..."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.

Regulation 18901(h), emphasis added.

Thus, a communication is unsolicited if it is not requested or induced by the elected officer and if it is limited to providing materials for the person making the request. When an elected officer receives a request for multiple sets of materials, it is in reality a request to be a volunteer mechanism for distribution. The redistribution would be deemed to be "sent" by the elected officer through a "volunteer delivery mechanism" and subject to all of the mass mailing provisions. (Regulation 18901(g)(4).)

In view of the above, your office could not treat a request for multiple copies of the brochure as exempt from the mass mailing requirements. Therefore, since the brochure contains your photograph and a reference to your office, you may not send more than 200 copies per month. In addition, any redistribution by the senior center would also be subject to the mass mailing restrictions. Therefore, you and the center could not mail or hand deliver more than a total of 200 unsolicited copies of the brochure in a calendar month.

A similar analysis would apply with respect to distribution at a senior forum or expo where the materials are made available at the request of forum organizers. These organizers would constitute a volunteer delivery mechanism and the distributions would be subject to the mass mailing requirements. Distribution at the forum or expo would be aggregated with other distributions by you and the total would be limited to 200 copies in calendar month. Persons who pick up copies of the materials from a distribution box or counter are making an unsolicited request only when the distribution occurs at a public agency or in conjunction with a meeting of the agency. (Regulation 18901(h); Connelly Advice Letter, No. A-89-198, copy enclosed.)

If a private agency such as a senior center wishes to make your brochure available to its members, it could pay the state for the brochures in an amount sufficient to cover the cost of design, production, and printing. Since there would then be no public money involved, the mass mailing provisions would not apply. Alternatively, you could remove your photograph and any other references to you or your office from the brochure. It could then be mailed at public expense.

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

Sincerely,

Kathryn E. Donovan
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

KED/MWE/aa

Enclosures

CALIFORNIA STATE SENATE

SACRAMENTO OFFICE
STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
(916) 445-6671

DISTRICT OFFICES

22300 FOOTHILL BLVD. SUITE 415
HAYWARD, CALIFORNIA 94541
(415) 582-8800

6140 STONERIDGE MALL ROAD
SUITE 515
PLEASANTON, CALIFORNIA 94566
(415) 947-6041

4725 THORNTON AVE #104
FREMONT, CALIFORNIA 94536
(415) 790-3605

BILL LOCKYER

TENTH SENATORIAL DISTRICT
SOUTHERN ALAMEDA COUNTY



May 31, 1989

COMMITTEES

CHAIRMAN JUDICIARY
APPROPRIATIONS
ELECTIONS
GOVERNMENTAL ORGANIZATION
INDUSTRIAL RELATIONS
REVENUE AND TAXATION
TOXICS AND PUBLIC SAFETY
MANAGEMENT

Fair Political Practices Commission
Ms. Kathy Donovan
428 J Street, Suite 800
Sacramento, CA 95814

Dear Ms. Donovan:

I am writing to request a clarification concerning the Proposition 73 provision regulating mass mailing.

There is some confusion about "solicited" and "unsolicited" requests for information. I have a brochure with my photograph and office address, dealing with senior citizens' issues, and printed at public expense. If a Senior Center becomes aware of this brochure through other community sources and calls my office requesting a quantity, is this unsolicited and therefore exempt from the 200 limit?

Other related questions in this situation: If the Senior Center is a nonprofit organization, but not a public agency, is there a limit on the number of brochures they can distribute? Does it make a difference if the brochures are mailed (at public expense) or hand delivered to the person requesting them? If the brochures are made available to a Senior Forum or Expo, at the request of Forum organizers, to be picked up at a booth-type setting by participants, does the limit apply?

Thank you for addressing these concerns about the distribution of material in accordance with Proposition 73. Please direct your response to my district office at 22300 Foothill Blvd., Suite 415, Hayward, CA 94541.

Sincerely,

BILL LOCKYER

BL:vo

RECEIVED
MAY 31 1989



California Fair Political Practices Commission

June 1, 1989

Senator Bill Lockyer
State Capitol
Sacramento, CA 95814

Re: Letter No. 89-342

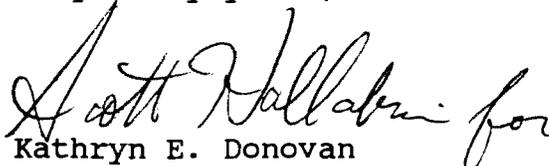
Dear Mr. Lockyer:

Your letter requesting advice under the Political Reform Act was received on June 1, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison 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,


Kathryn E. Donovan
General Counsel

KED:plh

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Sincerely,
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