



California Fair Political Practices Commission

January 17, 1990

Vicki Kasad
City Clerk, City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92330

Re: Your Request for Informal Assistance
Our File No. I-89-505

Dear Ms. Kasad:

This is in response to your request for advice regarding your responsibilities under the provisions of the Political Reform Act (the "Act").¹ Because your request is in the nature of a general inquiry, we are treating your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTION

The City of Lake Elsinore is contemplating the placement of an advertisement in the local chamber of commerce directory. The advertisement would include photographs of each city councilmember with a brief biography below each photograph. Does such an advertisement violate the mass mailing provisions of the Act?

CONCLUSION

The advertisement in the chamber of commerce directory violates the mass mailing provisions of the Act because the advertisement will be paid for with public funds and distributed by a volunteer delivery mechanism, the chamber of commerce.

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).)

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. The Commission adopted Regulation 18901 (copy enclosed) to implement Section 89001.

Regulation 18901(c) provides in relevant part:

(c) Except as otherwise provided in this section, a newsletter or other mass mailing may not be sent within the meaning of Government Code Section 89001 if:

* * *

(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.

Regulation 18901(c).

Since the city councilmembers are affiliated with the city, the city may not produce or distribute the advertisement which features the councilmembers. Accordingly, the advertisement may not be "sent" at public expense.

A mass mailing is "sent at public expense" where any of the costs of design, production, printing or distribution is paid for with public moneys (Regulation 18901(a)) and the mass mailing is distributed by one of the following means:

- (1) United States Postal Service;
- (2) Any commercial delivery service;
- (3) Agency personnel or agents of the agency;
- (4) Volunteer delivery mechanisms;
- (5) Paid advertisement in any subscription publication such as a newspaper of general circulation;
- (6) Electronic mail communications.

Regulation 18901(g)

Presumably, the Chamber of Commerce will distribute the copies of its directory, and more than 200 such copies will be delivered in a calendar month. This will result in the advertisement, which has been paid for with public funds, being distributed by a voluntary delivery mechanism within the meaning of subdivision (g)(4) of Regulation 18901. (Regulation 18901(a).) Accordingly, it is a mass mailing prohibited by Section 89001.

On December 13, 1989, the Commission adopted an amended version of Regulation 18901 (referred to, for purposes of this letter, as Regulation 18901R, copy enclosed). This amended Regulation 18901R is expected to become effective sometime in March; however, we are advising agencies that they may rely on the new regulation after January 17, 1990, when a statutorily required public comment period has expired. Under this amended version, an analysis of the facts you have provided results in the same conclusion.

Presumably, the Chamber of Commerce will distribute and deliver its directories to the recipients at their residence, place of employment, business, or post office box, within the meaning of subdivision (a)(1) of Regulation 18901R. Since the advertisement contains the photographs of the councilmembers, they are featured within the meaning of subdivisions (a)(2)(A) and (c)(2) of Regulation 18901R. Further, by paying the advertisement costs, the city is essentially paying for some of the costs of distribution within the meaning of subdivision (a)(3)(A) of Regulation 18901R. Accordingly, if more than 200 pieces of the directory containing the advertisement are distributed in any calendar month, it will be deemed to be a mass mailing prohibited by subdivision (a) of Regulation 18901R. (Regulation 18901R (a)(4).)

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I trust this letter provides you with the guidance you requested. If you have any further questions regarding this matter please contact me at (916) 322-5901.

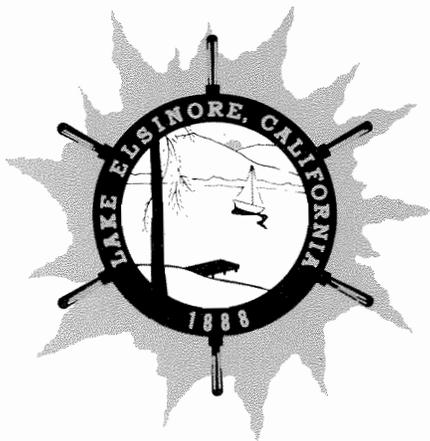
Sincerely,

Kathryn E. Donovan
General Counsel


Jeevan S. Ahuja
Counsel, Legal Division

KED/JSA/aa

Enclosures



City of Lake Elsinore

CITY HALL

130 SOUTH MAIN STREET
LAKE ELSINORE, CALIFORNIA 92330

Telephone (714) 674-3125

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August 22, 1989

Fair Political Practices Commission
Legal Assistance Division
Post Office Box 807
Sacramento, CA 95804-0807

Subject: Request for Legal Opinion

Gentlemen:

The City of Lake Elsinore is contemplating the placement of a City Advertisement in the local Chamber of Commerce Directory. The advertisement would include photographs of each Councilman with brief biographies below them. Is this an acceptable form of advertisement in connection with the mass mailing regulations set forth in Proposition 73 last year?

Thank you in advance for your assistance in this matter.

Sincerely,

VICKI KASAD, CITY CLERK
CITY OF LAKE ELSINORE