



California
Fair Political
Practices Commission

SUPERSEDED

By: 90-524

December 7, 1989

Honorable Tim Leslie
Assemblyman Fifth District
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Your Request for Advice
Our File No. A-89-521

Dear Assemblyman Leslie:

This is in response to your letter requesting advice concerning the application of the mass mailing provisions of the Political Reform Act (the "Act")^{1/} to your third annual small business conference. This letter confirms the telephone advice provided to Cindy Woods of your office on November 21, 1989. Please note that the Commission is in the process of revising Regulation 18901, which implements the statutory mass mailing restrictions. We anticipate the adoption of the amendments at the December 13, 1989 Commission meeting. A draft of the proposed amendments is enclosed.

QUESTIONS

1. May the attached invitation for your small business conference include your name and title without violating the mass mailing restrictions of the Act?
2. May local chambers of commerce that are cosponsoring the small business conference advertise the small business conference in their newsletters?
3. May you charge a fee for attendance at your small business conference to cover the expenses of the conference?

^{1/} Government Code Section 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.

CONCLUSIONS

1. If the attached invitation is sent at public expense to more than 200 persons it will violate the mass mailing restrictions of the Act. Where an elected officer initiates a mailing and the name of the elected officer appears in the document, it is prohibited under Section 89001. Moreover, since the small business conference is not a public meeting nor an official event of the Legislature, it is not exempted from the requirements of the mass mailing statute. However, the invitations may be sent on standard letterhead provided the text does not include the name of elected officials.

2. Local chambers of commerce may advertise the event in any manner they desire provided public money is not used in connection with the production or distribution of the advertisements. The fact that the chambers of commerce may receive public moneys to operate does not make the chambers public entities nor the newsletter publicly funded for the purposes of the mass mailing statute.

3. The mass mailing statute does not prohibit charging a fee to cover the expenses for the conference.

FACTS

As Assemblyman for the Fifth District, you are currently planning to sponsor a small business conference in cooperation with the local chambers of commerce in your district. The conference will consist of discussions and workshops with local small business professionals on a variety of topics of interest to those persons wishing to establish a small business.

You have asked if you are permitted to mail over 200 invitations for the conference which will include your name. You also have asked whether local chambers of commerce in your district may advertise the conference at their own expense in their regularly published newsletters and whether the chambers will be limited in any way as to the content of these advertisements. Finally, you have asked if you may charge a fee for the conference to cover the expenses for food and accommodations without violating the mass mailing restrictions of the Act.

ANALYSIS

The Mass Mailing

A mass mailing is defined as more than 200 substantially similar pieces of mail sent in the same calendar month. (Section 82041.5; Regulation 18901(d), copy enclosed.) Section 89001 provides that no newsletter or other mass mailing shall be sent at public expense. Regulation 18901(c) provides

that a newsletter or other mass mailing may not be sent within the meaning of Section 89001 if:

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

(A) The elected officer exercises direction or 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.

Thus, where the elected officer initiates the mailing and the name of the elected officer appears in the document, it is prohibited under Section 89001. According to your letter, you intend to initiate the mass mailing to inform your constituents of the small business conference. In addition, the sample you sent us includes your name in its text. Consequently, unless the mailing falls within one of the exemptions specified in Regulation 18901(f), it may not be sent in its current form.

The Constituent Meeting Exception

Regulation 18901(f) provides that the following newsletters or other mass mailings are not prohibited by Section 89001 if 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;

* * *

(10) Announcements of the time, date, place, and subject matter of official agency events which include a listing of elected officers and others who will participate in the events.

The exceptions to Section 89001 are to be narrowly construed. (Lancaster Advice Letter, No. I-89-026; Clark Advice Letter, No. I-89-031; Kurle Advice Letter, No. A-89-099; copies enclosed.) In light of this policy, it does not appear the event for which your mailing is intended falls within either of the exemptions. The exemption in subdivision (f)(8) applies to notices of a public meeting to be held by the elected officer with his or her constituents. The meeting must directly relate to the incumbent officer's governmental duties. While the event is cosponsored by your office, it does not appear to be the type of meeting covered by this exception. Moreover, the invitation also fails to qualify as an announcement of an official agency event as described in subdivision (f)(10). This event is not sponsored by the Legislature. (Eaves Advice Letter, No. I-89-189, copy enclosed.)

Regulation 18901(e) states an additional exception to the mass mailing statute when the name of the elected official appears solely on the standard letterhead, forms or envelopes of the official's agency. Regulation 18901(e) provides:

(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).

Emphasis added.

This exception permits inclusion of the name of the elected official in the standard letterhead of the stationery of the agency. Consequently, you may send the invitation in question on your letterhead, provided your name is removed from the text of the invitation. This is because the exception in Regulation 18901(e) is limited to the inclusion of the elected official's name on the standard letterhead, forms and envelopes of the agency and not in any text.

The Chamber of Commerce

As stated above, Section 82041.5 and Regulation 18901(d) define a "mass mailing" as more than 200 substantially similar pieces of mail sent in a calendar month. However, for a mass mailing to fall within the coverage of the mass mailing restrictions of the Act, not only must over 200 copies of the mailing be distributed, but public moneys must have been involved in the mailing.

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).) While presumably 200 copies of the chamber of commerce newsletters with the advertisement will be mailed prior to the conference, it appears that the advertisement is not being paid for with public money. Although chambers of commerce generally receive some public money to operate, they are still not public entities for the purposes of the mass mailing regulation. Further, the receipt of public money to operate would not automatically make the chambers' newsletters publicly funded mass mailings. (Warner Advice Letter, No. I-88-392, copy enclosed.)

Thus, the chambers of commerce may advertise the event in any manner they desire provided you do not use public money for the production or distribution of the newsletter.

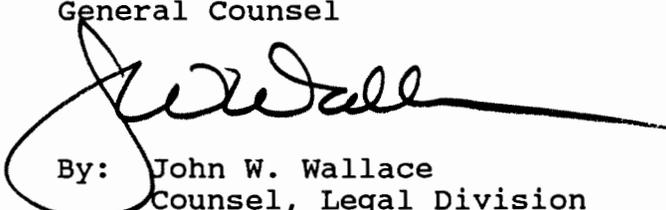
Conference Fees

The mass mailing regulation in no way affects whether you may charge a fee for your conference. However, please note that unless fair and adequate consideration is received for the fees charged the attendees of the conference, the fees may be either contributions or gifts to you under the Act. (Sections 82015 and 82028.) In that case, you will be subject to the limitations and reporting requirements imposed by the Act upon contributions and gifts. (See generally, Sections 84100 through 84400 and 85100-85700.)

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures

□ STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(916) 445-4445

□ DISTRICT OFFICE
1098 MELODY LANE, SUITE 301
ROSEVILLE, CA 95678
(916) 969-3660
(916) 782-3660
(916) 624-0100

ASSEMBLY REPUBLICAN
TASK FORCES:
EDUCATION REFORM
UNCOMPENSATED CARE
WORKERS COMPENSATION

Assembly California Legislature



TIM LESLIE
ASSEMBLYMAN, FIFTH DISTRICT

COMMITTEES:

CHAIRMAN
CONFERENCE ON THE
PRESERVATION OF THE FAMILY

MEMBER
EDUCATION
JUDICIARY
PUBLIC EMPLOYEES,
RETIREMENT AND SOCIAL
SECURITY
SUBCOMMITTEE ON
EDUCATION REFORM
ASSEMBLY HIGH
TECHNOLOGY CAUCUS
LEGISLATIVE TOURISM CAUCUS
SELECT COMMITTEE ON YOUTH
AND DRUG ABUSE PREVENTION
JOINT SELECT TASK FORCE
ON THE CHANGING FAMILY

August 31, 1989

Mr. John McLean
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear John:

My office is in the process of planning our third annual small business conference for the small businesses located within the Fifth Assembly district. A member of my staff recently contacted Lilly Spitz, (your assistant) for a verbal confirmation of what is allowable under Proposition 73 with regard to mailing privileges. I would like to request written confirmation of the options available to my office. My specific questions are as follows:

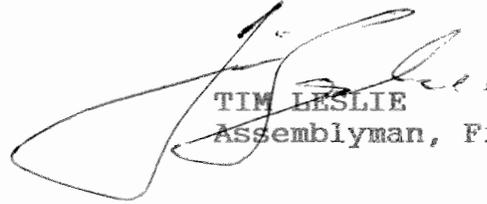
1. If I choose to use the allowed postcard to mail to my entire small business mailing list, am I permitted to charge a minimal fee for attendance at the conference to cover expenses of the conference only (i.e., accommodations and food)?
2. If I choose to use the allowed postcard as above (regardless of the monetary aspect), may the local Chambers of Commerce, with whom I am co-sponsoring the conference, advertise the conference in their Chamber newsletters? Are there any restrictions on what the Chambers may advertise if they are co-sponsoring the event with my office?

I would appreciate any additional information you can provide me in regard to what is and isn't allowed under Proposition 73 for an event of this nature.

SEP 6 9 28 AM '89
F P P C

Your timely consideration and response to these questions would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Leslie", written over the typed name.

TIM LESLIE
Assemblyman, Fifth District

TL:cw



California Fair Political Practices Commission

September 12, 1989

Honorable Tim Leslie
Assemblymember, Fifth District
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Letter No. 89-521

Dear Assemblyman Leslie:

Your letter requesting advice under the Political Reform Act was received on September 6, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean 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



California Fair Political Practices Commission

October 23, 1989

Cindy Woods
c/o Assemblyman Tim Leslie
Fifth District
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Your Request for Advice
Our File No. 89-521

Dear Ms. Woods:

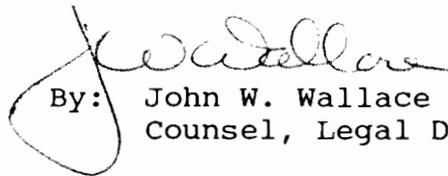
This is in regard to your letter requesting advice concerning the application of the mass mailing provisions of the Political Reform Act (the "Act") to Assemblyman Tim Leslie's third annual small business conference.¹

As we discussed in our telephone conversation of September 29, 1989, any advice with respect to the questions you have posed is necessarily dependent on the validity of the mass mailing itself. Many of the exceptions to the mass mailing regulation are fact oriented, and as such may or may not be applicable to the situation described in your advice request. Consequently, we will be unable to provide you with advice unless we receive a copy of the mailing in question.

If you have any questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

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.

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JOINT SELECT TASK FORCE
ON THE CHANGING FAMILY
ASSEMBLY HIGH
TECHNOLOGY CAUCUS
LEGISLATIVE TOURISM CAUCUS

October 31, 1989

Mr. John Wallace
Counsel, Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804-0807

Dear John:

Per your request, please find enclosed a draft of the postcard we would like to use for the Assemblyman's upcoming Small Business Conference.

Please review this information and provide me with the response to our initial questions in view of the type of mailing we are proposing.

Your timely response to this request will be appreciated. If you have any questions, please do not hesitate to contact me at (916) 726-8543 or (916) 969-3660.

I look forward to hearing from you.

Sincerely,


CINDY A. WOODS
Conference Coordinator

:cw
Enclosure

OCT 31 9 25 AM '89

FPPPC

NOV 1 9 25 AM '89

FPPPC

SMALL BUSINESS CONFERENCE

Tuesday evening -- February 27, 1989

5:00 p.m. -- 5:45 p.m. Registration

6:00 p.m. -- 9:00 p.m. Workshops

North Highlands Community Center

6040 Watt Avenue (one mile North of McClellan)
North Highlands

Please join **Assemblyman Tim Leslie** and the Fifth Assembly District Chambers of Commerce for discussion and workshops with local small business professionals on such topics as Developing a Business Plan, Personnel Management and Labor Laws, Stress Management, Sales and Marketing, New Tax Laws and Government Mandates.

FPPC TRANSMITTAL OF CORRESPONDENCE

CORRESPONDENT: Justice Jim ADVISE #: 89-521
Assembly, 5th district

RE: mass mailing 30
DATE REC'D: 9/6/89 DATE DUE: 10/5/89 10-31

DIANE
KATHY
JOHN Mc
JEANETTE

JOHN W.
LILLY
JEEVAN
SCOTT

MARGARET
JILL
CHERYL
BLANCA
TA&A

21-DAY LETTER SENT: _____ CC TO: _____

REQUEST FOR ADD'L INFO SENT: _____

COMMENTS: _____

9-28 4:35 pm.
Extended to 10-31 by Requester.
9-29 10:Am requested copy of MARGARET Cindy Woods.
John Attardo said would send.
Dear John:

My office is in the process of planning our third annual small business conference for the small businesses located within the Fifth Assembly district. A member of my staff recently contacted Lilly Spitz, (your assistant) for a verbal confirmation of what is allowable under Proposition 73 with regard to mailing privileges. I would like to request written confirmation of the options available to my office. My specific questions are as follows:

No Question of Cert.

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→ Draft.
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