



California Fair Political Practices Commission

December 29, 1989

David J. Aleshire
Rutan & Tucker
Central Bank Tower, Suite 1400
South Coast Plaza Town Center
611 Anton Boulevard
Post Office Box 1950
Costa Mesa, CA 92628-9990

Re: Your Request for Informal Assistance
Our File No. I-89-539

Dear Mr. Aleshire:

You have requested advice on behalf of the Rossmoor Community Services District regarding application of the mass mailing provisions of the Political Reform Act (the "Act").¹ Since your question is of a general nature, we are treating it as a request for informal assistance.²

QUESTION

May a community services district newsletter with which the elected board of the district has no involvement, be sent in a mass mailing at public expense?

CONCLUSION

The Act only prohibits the mass mailing at public expense of a community services district newsletter which contains references to elected officers. If the newsletter is prepared or sent in cooperation, consultation, coordination or concert with the board,

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. (Section 83114; Regulation 18329(c)(3).)

the newsletter may not make any reference to the board except for a roster listing of the board members. If the newsletter is not sent in cooperation, consultation, coordination or concert with the board, it may make references to the board members so long as they are not "featured" in the newsletter.

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. (Regulation 18901, copy enclosed.)³

Regulation 18901(c) provides:

Mass Mailings Sent at Public Expense

(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:

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

(2) (A) The elected officer is affiliated with the agency which produces or distributes the document; and

(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.

Thus, a mass mailing may not be sent at public expense by a community services district if it contains the name, office,

³ On December 13, 1989, the Commission adopted a revised version of Regulation 18901 (copy enclosed). While the revised regulation has not yet taken effect, our advice would be the same under that regulation.

photograph or any other reference to an elected officer of the district and the document is prepared or sent in cooperation, consultation, coordination or concert with the elected officer.

You have asked whether mere knowledge of the contents of the newsletter without any direction or control is sufficient to conclude that a document is sent in cooperation, consultation, coordination or concert with the elected officer. This depends on the factual situation. If the elected officer is made aware of the contents of the mailing prior to its sending, this is relevant in determining whether the document is considered to be sent in cooperation, consultation, coordination or concert with the elected officer. However, if the elected officer has no direction or control over the document and merely learns of the contents of the document after it has been sent, that factor does not lead to the conclusion that the document is sent in cooperation, consultation, coordination or concert with the elected officer.

Assuming a document is not sent in cooperation, consultation, coordination or concert with the elected officer, the document may contain references to the elected officer so long as he or she is not "featured" in the document as defined above.

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

Sincerely,

Kathryn E. Donovan
General Counsel



By: John G. McLean
Counsel, Legal Division

KED:JGM:aa

Enclosure

RUTAN & TUCKER

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CABLE ADDRESS RUTAN TUC CSMA

September 11, 1989

IN REPLY PLEASE REFER TO

GARVIN F. SHALLENBERGER*
JAMES R. MOORE*
PAUL FREDERIC MARK*
WILLIAM R. BIEL
RICHARD A. CURNUTT
LEONARD A. HAMPPEL
JOHN B. HURLBUT, JR.
MICHAEL W. IMMELL
MILFORD W. DAHL, JR.
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CLIFFORD E. FRIEDEN
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DIRCK J. EDGE
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MARK SMITH FLYNN
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ERNEST W. KLATTE, III
GUY E. MAILLY
KATHLEEN FORBATH ESFAHANI
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DANA B. TASCHNER
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SCOTT M. SCHOENWALD
SARAH J. KNECHT
DAN SLATER

*A PROFESSIONAL CORPORATION

Mr. John McLean
Legal Division
CALIFORNIA FAIR POLITICAL
PRACTICES COMMISSION
428 "J" Street, Suite 800
P.O. Box 807
Sacramento, California 95804-0807

**Re: Warning Letter FPPC No. 89/192, concerning the
Rossmoor Community Services District**

Dear Mr. McLean:

I am legal counsel to the Rossmoor Community Services District. We recently received Warning Letter No. 89/192 from the FPPC and have had subsequent conversations and correspondence with the FPPC concerning this letter. We recently received some backup material concerning this complaint which outlines internal conversations which the FPPC had in considering whether to issue the Warning Letter. In addition, I had a telephone conversation with Connie Pereira concerning this subject. This has raised a question in my mind whether I correctly understand Regulation 18901. It is evident from the materials forwarded to me that you were a principal person consulted concerning this matter and I thought I would seek to have you clarify the issue for me.

Assume the following facts. A community services district publishes a newsletter. The editor of the newsletter is the general manager of the district. The general manager is hired by the board and paid with district funds. The newsletter is paid for with district funds. The

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Mr. John McLean
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general manager has complete editorial discretion over the newsletter. He and his staff decide what subjects should be covered, write all the articles, edit the articles, and review the printing proofs of the newsletter. The board members of the district have no involvement whatsoever in the preparation of the newsletter. However, after the newsletter is printed, copies of the newsletter are made available to the board members as courtesy copies. However, since the newsletter has been printed, no changes can be made. Also assume that from time to time board members may make comments to staff concerning past volumes of the newsletter such as "I sure like that article on the community fun fair. Given the affiliation of the newsletter to the district, is the mere knowledge of the contents of the newsletter and occasional gratuitous, nondirectory, observation constitute a violation of Regulation 18901?"

I am a city attorney for several cities besides being general counsel to the district. The above hypothetical is not intended to suggest that any of my clients operate in this manner. However, it is a scenario I can readily envision for many local public agencies in the state. My assumption has been that as long as the elected officials are not attempting to control or direct the newsletter by suggesting its content or having editorial input, it is okay to use their names if they are not featured. It has now been suggested to me that mere knowledge of the contents of the newsletter without any direction or control is sufficient to constitute a violation. If mere knowledge is sufficient to constitute a violation, then I think this information should be disseminated to organizations such as the League of California Cities to prevent inadvertent violations which are probably now commonly occurring.

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Thank you for providing me with this information.

Sincerely,

RUTAN & TUCKER

A handwritten signature in black ink, appearing to read "David J. Aleshire", written over the typed name.

David J. Aleshire
General Counsel

DJA/cls

cc: Mr. Daniel E. Stone
Ms. Cheryl Patterson

5/276/012086-0001/035



California Fair Political Practices Commission

September 20, 1989

David J. Aleshire
Rutan & Tucker
P.O. Box 950
Costa Mesa, CA 92628-9990

Re: Letter No. 89-539

Dear Mr. Aleshire:

Your letter requesting advice under the Political Reform Act was received on September 15, 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