



California Fair Political Practices Commission

October 16, 1989

Honorable Patrick Johnston
Assemblyman, Twenty-sixth District
31 East Channel Street, Room 306
Stockton, CA 95202

Re: Your Request for Advice
Our File No. A-89-543

Dear Assemblyman Johnston:

You have requested written advice with respect to your duties under the Political Reform Act (the "Act").¹ In particular, you seek written advice regarding the mass mailing provisions of the Act.² The following represents conservative advice under the current mass mailing regulation.³

QUESTION

If a constituent contacts your office and requests 200 or more copies of a booklet, which was printed at state expense and has "Compliments of Assemblyman Patrick Johnston" printed on it, can the constituent pick up the booklets and distribute them as he pleases?

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 Although your letter requested a written opinion, your staff has agreed that an advice letter is appropriate.

³ A proposal for revising the mass mailing regulation is scheduled for pre-notice discussion at the October 13 meeting of the Commission in Los Angeles. Included in the proposal are suggestions for revising the definition of "sent" and the definition of "unsolicited request." A copy of the proposed regulation and supporting memorandum is enclosed for your review.

CONCLUSION

The booklet, as described, comes within the mass mailing restrictions of the Act. The copies distributed by the constituent will count towards the allowable number which you may distribute in a calendar month.

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. It sets forth circumstances in which the use of an elected officer's name or photograph is prohibited in a mass mailing sent at public expense. (Regulation 18901(c).)

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.) None of the exceptions would apply to exclude from the general prohibition booklets with "Compliments of Assemblyman Patrick Johnston" printed on them.

A mass mailing is "sent" if it 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).

We have previously advised that 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. (Lockyer Advice Letter, No. A-89-342, copy enclosed.)

With respect to unsolicited requests, the regulation provides:

(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.

In view of the above, your office could not treat a request for multiple copies of the booklet as exempt from the mass mailing requirements. Therefore, since the booklet contains your name and reference to your office, you may not send more than 200 copies per month. In addition, the proposed redistribution by the constituent would also be subject to the mass mailing restrictions.

If a constituent wishes to distribute your booklet, the constituent could pay the state for the booklets in an amount sufficient to cover the cost of design, production, and printing. Alternatively you could pay for the books from your campaign funds, provided this is permissible under the personal use law.⁴

⁴ California Elections Code, sections 12400 et seq. The personal use laws are currently administered by the Attorney General's office.

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Since there would then be no public money involved, the mass mailing provisions would not apply. Alternatively, you could remove any references to you or your office from the booklet. 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



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STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
(916) 445-7931

31 E. CHANNEL STREET
RM. 306
STOCKTON, CA 95202
(209) 948-7479

PATRICK JOHNSTON
ASSEMBLYMAN, TWENTY-SIXTH DISTRICT
REPRESENTING SAN JOAQUIN COUNTY

September 15, 1989

Kathryn Donovan
General Counsel
Fair Political Practices Commission
PO Box 807
Sacramento CA 95804

Re: Proposition 73
Solicited/Unsolicited Material

Dear Ms. Donovan:

This letter is to request a written opinion regarding the solicited/unsolicited provision of Proposition 73. Specifically, if a constituent contacts my office and requests 200 copies or more of a particular booklet, which was printed at state expense and has "Compliments of Assemblyman Patrick Johnston" printed on it, can the constituent pick up the booklets and distribute them as he pleases?

Thank you for your attention to my request. Please address your response to my District Office, 31 East Channel Street, Room 306, Stockton CA 95202.

Sincerely,

PATRICK JOHNSTON
Assemblyman, 26th District

PJ:lcc