

October 31, 2012

Camille A. Goulet
General Counsel
Los Angeles Community College District
770 Wilshire Blvd
Los Angeles, CA 90017-3896

Re: Your Request for Informal Assistance
Our File No. I-12-152

Dear Ms. Goulet:

This letter responds to your request for advice regarding the mass mailing provisions of the Political Reform Act (the “Act”).¹ Nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions. In addition, because you have sought general guidance not limited to a particular mailing, we are treating your request as one for informal assistance.²

QUESTIONS

1. If a publication is prepared at the expense of the Los Angeles Community College District (“District”) but distributed only by email or by an emailed hyperlink to a District website, will it be in violation of the mass mailing provisions under Regulation 18901?³

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

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).)

³ You qualify this question by stating that “[f]or purposes of this question, the District assumes that the publication legitimately relates to the District business, that the District expense is more than \$50, that the email is sent to 200 or more people, and that the publication does not fit within an exemption to the mass mailing provisions.”

2. May a “press release” that is exempt from Regulation 18901 be issued to a non-media email list of 200 or more people?

3. If a publication is prepared at District expense, such as a college's catalog, and posted on a website without any printed distribution to provide it to students and potential students, is it exempt from Regulation 18901?

4. May the District send an email to 200 or more people allowing them to use a hyperlink to sign up for a newsletter expressly published by an elected official?⁴

5. Do the roster-listing provisions of Regulation 18901 allow for use of photographs in publications if all elected officials are equally presented, such as a roster with photographs?

CONCLUSIONS

1 - 4. None of the actions proposed by the District will violate the mass mailing provisions under Regulation 18901 because those provisions do not apply to the distribution of information by electronic mail or posting to websites.

5. No. The roster listing provisions of 18901 expressly prohibit the use of an elected official’s photograph and this prohibition is not overcome by including photographs of *all* of the elected officials in the publication.

FACTS

The District possesses photographs of its elected officials that have been taken during various official activities, including ground-breaking ceremonies and graduations. As provided above, it is interested in using these photographs in certain publications that will be distributed by email or posted to a District website.

ANALYSIS

Questions 1 through 4 – Email/Websites

Section 89001 provides that “[n]o newsletter or other mass mailing shall be sent at public expense.” Regulation 18901 interprets this provision and lists four criteria to be applied in the determination of a “mass mailing” under the Act. Specifically, Regulation 18901(a) states that

⁴ For purposes of our advice we are assuming that the official’s newsletter referred to in this questions is also distributed electronically and therefore is exempt from the mass mailing provisions of the Act. If the newsletter is in fact a tangible item (see discussion below), you may want to seek additional advice on the nature of the mailing list created in response to the email solicitations and whether they are considered unsolicited specific requests for the newsletter under Regulation 18901(c)(4).

“except as provided in subdivision (b), a mailing is prohibited by Section 89001 if all of the following criteria are met:

- (1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. For purposes of this subdivision (a)(1), the item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.
- (2) The item sent either:
 - (A) Features an elected officer affiliated with the agency which produces or sends the mailing, or
 - (B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.
- (3)(A) Any of the costs of distribution is paid for with public moneys; or
(B) Costs of design, production, and printing exceeding \$ 50.00 are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this regulation.
- (4) More than two hundred substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b).

According to Regulation 18901(a)(1), a publicly-funded mailing is a prohibited mass mailing if it is delivered as a tangible item to the recipient at his or her residence, place of employment or business, or post office box. Consistent with Regulation 18901, the ban is currently applicable to *tangible* items only. (*Doyle* Advice Letter, No. I-94-364.) Because distribution of information over the Internet is not distribution of a tangible item, the District will not violate the mass mailing provisions under the Act by sending information, including photographs, via email or posting such information on its website.⁵

We assume that none of the communications you are describing in questions 1 - 4 are campaign related. A local agency such as the District may not use public moneys for campaign related communications. (See Regulation 18420.1.) Accordingly, we will not address this issue further.

Question 5 - Roster-listing provisions under Regulation 18901

⁵ By way of historical background, “electronic mail communications” was initially included in Regulation 18901 from March 12, 1989 until December 13, 1989, but was subsequently removed. (Commission minutes, December 12-13, 1989; staff memorandum entitled “Adopt Regulation 18901 - Mass Mailings Sent at Public Expense,” December 1, 1989.) On October 6, 2000, in response to public inquiry and a CalPERS request concerning re-examining of regulation 18901, the Commission adopted staff’s proposal to “choose to await consideration of e-mails in this context until a more comprehensive discussion can be had, which considers the impact of the Internet and electronic communication on all aspects of the Political Reform Act.” (Commission minutes, October 6, 2000; staff memorandum entitled “Approval of Regulation Calendar for the Year 2001,” September 26, 2000.)

You have asked whether a publication such as a roster containing photographs of all of the District's elected officials is prohibited under the Act's mass mailing provisions. If a mailing "features an elected officer," the mailing is subject to the prohibition of Section 89001. (Regulation 18901(a)(2)(A).) That phrase is defined to mean "that the item mailed includes the elected officer's photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color." (Regulation 18901(c)(2).)

By including the photographs of the District's elected officers in a roster, the prohibition under Regulation 18901(a)(2)(A) would be met. Assuming the other three criteria⁶ under Regulation 18901(a) described above were also met, the District would violate the Act's mass mailing provisions because there is no applicable exception under Regulation 18901(b). Indeed, the roster-listing exceptions expressly prohibit the use of photographs and there is no suggestion, either express or implied, that this prohibition is overcome by including photographs of *all* of the elected officials in the roster. (Regulation 18901(b)(1) & (8).)

Accordingly, the inclusion of all of the elected officials' photographs in a roster so that they are equally presented would be a prohibited mass mailing under the Act.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Jack Woodside
Senior Counsel, Legal Division

JW:jgl

⁶ Of course, if any of the remaining three criteria under Regulation 18901(a) were not met, the mass mailing provisions under the Act would not apply to this situation. Because your question is limited to the use of the elected officials' photographs in a roster, we do not analyze this issue further.

