

May 7, 2014

Kimberly D. Willy, Tax Counsel III  
Administrative Oversight Section (MIC: 82)  
Settlement & Taxpayer Services Division  
Board of Equalization Legal Department  
450 N Street  
Sacramento CA 95814

Re: Your Request for Advice  
**Our File No. A-14-064**

Dear Ms. Willy:

This letter responds to your request for additional advice on behalf of the Board of Equalization (“BOE”) Chairman Jerome E. Horton regarding mass mailing provisions of the Political Reform Act (the “Act”).<sup>1</sup> In your original advice request (*Willy Advice Letter, A-14-008*), you asked and we advised as follows:

(1) Would the mass mailing restrictions in Section 89001 and Regulation 18901 apply to the posters that reference both Mr. Horton and another BOE member?

Yes. All the criteria in Regulation 18901 would be met if a total of more than 200 of either poster are delivered by any means to recipients at their residence, place of employment, business or post office box and/or non-governmental business locations.

(2) Would Chairman Horton need to count the 25-30 posters that will be mailed featuring the other BOE member towards the 200 mass mailing limitation?

No. The reference to Chairman Horton in the other BOE member’s poster would fall under the “letterhead” exemption. Therefore, the other BOE member’s poster would not count towards Mr. Horton’s 200 mass mailing limitation.

---

<sup>1</sup> 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.

In your letter of April 2, 2014, you provided us with additional facts:

- Chairman Horton's name was added to the poster, with Member Two's permission, because the Chairman, along with other elected officials, was invited to the Voluntary Income Tax Assistance program ("VITA") and planned to attend and provide welcoming remarks to kick off the event in Member Two's district.
- In a "revised, redacted copy" of the poster you include with your latest request,<sup>2</sup> you state that Member Two's name and title appear above the Chairman's and in the same size and font as that of the Chairman's name and title.

You pose an additional question regarding the "official agency event" exception and whether it would apply to either of the two posters. In the *Willy Advice Letter*, A-14-008, we concluded the exception does not apply to either of the posters you included because:

(1) Chairman Horton's posters included more than one reference to him and included a photograph of him; and

(2) Member Two's poster also included more than one reference to Member Two and included the member's name, title and photograph.

While your new facts do not change the original conclusions, the new facts do support application of "official agency event" exception to the use of the Chairman's name in Member Two's posters. You clarified that the Chairman had planned a visit and welcoming remarks at the VITA kick off meeting at Member Two's district. This would be directly related to the Chairman's governmental duties and the meeting would be held jointly by Member Two and the Chairman, and that BOE is providing use of its facilities for the event. Therefore, it falls under the exception in Regulation 18901(b)(9)(A) which provides an exception to the Act's mass mailing restrictions for "[a]n announcement of any meeting or event of the type listed in paragraphs 1 or 2."

"1. An announcement sent to an elected officer's constituents concerning a public meeting which is directly related to the elected officer's incumbent governmental duties, which is to be held by the elected officer, *and which the elected officer intends to attend.*

"2. An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support.

"(B) Any announcement provided for in this subdivision (b)(9) shall not include the elected officer's photograph or signature and may include only a

---

<sup>2</sup> We note that the revised, redacted copy of the poster you provided appears different from the copy of the redacted poster we reviewed in your prior request for advice, *Willy Advice Letter*, A-14-008 (and may have been updated in response to our letter). We have focused solely on the latest revised poster for purposes of this analysis.

single mention of the elected officer's name except as permitted elsewhere in this regulation.”

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Emelyn Rodriguez  
Counsel, Legal Division

ER:jgl