



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 3, 2020

Shawn Hagerty
BEST BEST & KRIEGER LLP
City Attorney
City of Santee
655 West Broadway, 15th Floor
San Diego, CA 92101

Re: Your Request for Advice
Our File No. A-20-063

Dear Mr. Hagerty:

This letter responds to your request for advice regarding the mass mailing provisions of the Political Reform Act (the “Act”).¹

Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Do the Act’s mass mailing provisions prohibit the Chamber of Commerce of the City of Santee from publishing and distributing a mailing which includes the name, title and photograph of an elected official when the City of Santee has an agreement with the Chamber to provide financial support for certain Chamber events and to purchase advertising space for City events and news in the Santee Magazine?

CONCLUSION

Yes. If the Chamber’s Magazine includes the name, title, photograph, or other reference to an elected City official anywhere in the Magazine, it would be a prohibited mass mailing under Section 89001.

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.

FACTS AS PRESENTED BY REQUESTER

Your firm serves as the City Attorney for the City of Santee. The City, recognizing the value provided by the Chamber in its efforts to showcase the City, has entered into an agreement with the Chamber to provide financial support for certain Chamber events and to purchase advertising space for City events and news in The Santee Magazine, which is published quarterly by the Chamber.

Pursuant to the current Agreement, the City pays the Chamber \$1,600 per issue in exchange for the Chamber's inclusion of two pages of City content (advertising and articles) in each issue. In practice, the City's contribution supports or funds the City content only (the City's content does not include the Mayor's Column), with no surplus contribution toward the mailing and distribution expenses of the Magazine. The City's payment of \$1,600 equates to a 1-page ad (\$1,200) plus a 1/4-page ad (\$400), with the remaining space filled with non-advertising content, such as news or articles.

It is your understanding that these are the Chamber's market rates for advertising space. The Chamber budgets approximately \$15,000 in advertising revenue per issue, meaning the City's payment of \$1,600 represents approximately 10% of the Chamber's advertising revenue per issue. The Chamber contracts with a mailing service to distribute the Magazine, and the City is not involved in its distribution. As City Attorney, you have confirmed with the Chamber that the City is purchasing only advertising space, and not funding the publication of the Magazine. The Magazine is distributed to each home and business in the City, meaning that more than 200 unsolicited, tangible items are delivered. The Magazine would include the "Mayor's Column," which includes his name, title and photograph. The Mayor has not authored a column for the Magazine pending advice from the Commission.

ANALYSIS

Section 89001 establishes that "no newsletter or other mass mailing shall be sent at public expense." Section 89002(a) provides that 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. 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 money; 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).

Thus, a mass mailing is prohibited if all of the factors set forth in Section 89002(a) are met. If all of the factors are not met, the mass mailing is not prohibited.

In this instance, the determinative question is whether the Magazine, published quarterly by the Chamber, is sent at public expense within the meaning of Section 89001. Section 89002 specifies that a mass mailing is sent at public expense within the meaning of Section 89001 if either of two events occurs: 1) any of the costs of distribution are paid for with public moneys; or 2) more than \$50 in public moneys is used to pay for the costs of design, production, and printing, and this activity is done with the intent to send the mailing other than as permitted by the regulation. (Section 89002(a)(3).)

We have advised that a mailing sent by a chamber of commerce is not sent at public expense for purposes of Section 89001 merely because the chamber receives some public moneys from a public entity, unless the public entity expressly funds the production and distribution of the mailing sent by the chamber. (*Curtis* Advice Letter, No. A-94-053; *Warner* Advice Letter, No. I-88-392; *Leslie* Advice Letter, No. A-89-521.) We have further advised that even if the production and distribution of the newsletter is funded only in part with public funds, the mailing must comply with Section 89001. (*Battersby* Advice Letter, No. A-94-303, *Moore* Advice Letter, No. A-99-234)

Therefore, the question your letter raises is whether the City expressly funds the production and distribution of the Magazine through the terms of its agreement to provide financial support for certain Chamber events and to purchase advertising space for the City.

In the *Volbrecht* Advice Letter, No. A-97-155, the City of Murrieta Chamber of Commerce published a monthly tabloid community newspaper that it mailed to all Murrieta residents. The City of Murrieta purchased three pages each month, at the rate of \$550 per page, to disseminate information about City programs and services. Based on those facts, we advised that the City expressly funded the production and distribution of the mailing sent by the Chamber in an amount greater than \$50. Similarly, we advised that a city expressly funded the production and distribution a chamber newspaper where the city contracted with the chamber to include four pages of city news and events in every edition of the monthly newspaper. (*Imperial* Advice Letter, No. A-98-103.)

The same rationale applies here. Under the current agreement, the City pays the Chamber \$1,600 per issue in exchange for the Chamber's inclusion of two pages of City content (advertising and articles) in each issue. Therefore, the City expressly funds the production and distribution of the mailing sent by the Chamber in an amount greater than \$50, and including the name, title, photograph, or other reference to the Mayor anywhere in the Magazine would be a prohibited mass mailing under Section 89001.

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

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

JW:aja