



FAIR POLITICAL PRACTICES COMMISSION

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July 1, 2010

✓ Mr. John Benoit
County Administrative Center

REDACTED

RE: Warning Letter
FPPC No. 10/487, John Benoit

Dear Mr. Benoit:

The Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act") found in Government Code Section 81000, and following. As you are aware, the Commission received a complaint against you alleging violations of the mass mailing provisions of the Act. Specifically, the complaint alleges that you sent a mass mailing at public expense, prohibited by the Act in Section 89001. The Commission has decided to close this case with this warning letter.

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found that on or about April 7, 2010, you, as a public official, caused 5,000 mailings to be produced and sent, by Riverside County, at a public expense of \$1,333. These mailings feature your name and photograph, and read, in pertinent part "John J. Benoit: 4th District Supervisor, County of Riverside: Presents: Home Preservation Summit."

Government Code section 89001 of the Act prohibits the sending of a newsletter or mass mailing at public expense. Section 82041.5 defines a "mass mailing" as more than 200 substantially similar pieces of mail, not including a form letter or other mail sent in response to an unsolicited request, letter or other inquiry.

A mailing is prohibited by section 89001 if four criteria are met. First, the item is "delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box." (Regulation 18901, subd. (a)(1).) The item may be any tangible item, such as a videotape, record, button, or written document. (*Ibid.*)

Second, the item features an elected officer affiliated with the agency that produces or sends the mailing. (Regulation 18901, subd. (a)(2)(A).) An item features an elected officer when the item includes, among other things, the elected officer's photograph or signature. (Regulation 18901, subd. (c)(2).) A mailing containing the name, office, photograph or any

other reference to an elected officer who consults or acts in concert with the agency to prepare or send the mailing also fulfills the second criteria.

Third, any of the cost of distributing the item is paid for with public moneys. (Regulation 18901, subd. (a)(3)(A).) In the alternative, the cost of designing, producing, and printing the item exceeding \$50 is paid for with public moneys and the design, production, or printing is done with the intent of sending the item other than as permitted by the Act's mass mailing rules. (Regulation 18901, subd. (a)(3)(B).)

Fourth, more than 200 substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request.¹ (Regulation 18901, subd. (a)(4).)

Although this mailing was produced and sent at public expense, you repaid the county the cost of production of the mailing on April 14, 2010, on your own initiative, after an internal review revealed that this was a violation of the Act, and before any contact by the FPPC. We determined that further enforcement action pertaining to the mass mailing at public expense is not warranted since you reimbursed the county shortly after the mailing was produced and took steps to mitigate the violation prior to media attention or contact by the FPPC.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

Please feel free to contact me with any questions you may have regarding this letter.

Sincerely,

REDACTED

Zachary W. Norton
Commission Counsel
Enforcement Division

¹ Subdivision (b) of Regulation 18901 contains numerous exceptions to the mass mailing prohibition, none of which apply in this instance.