FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

January 5, 2010

Mr. Dennis Powers

REDACTED

Advisory Letter Re. FPPC No. 090744, Cottonwood Concerned Citizens

Dear Mr. Powers:

The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"),[1] found in Government Code section 81000, et seq. This letter is in response to a complaint filed against unknown candidates or committees which were believed to be responsible for the sending two sets of mass mailers under the name "Cottonwood Concerned Citizens" which allegedly violated Section 84305 of the Act by failing to include a street address and city where the sender could be found. You were the sender of one set of mass mailers in this matter.

After investigation, we have determined that there is insufficient evidence to find you violated the Act. As a result, we are closing this case with this Advisory Letter.

Independent expenditure committees are required to report "independent expenditures" made to support or oppose California state and local candidates and measures on a Recipient Committee Campaign Statement. (Section 84200.) An "independent expenditure committee" is an individual or entity which makes "independent expenditures" totaling $1,000 or more in a calendar year. (Section 82013(b).) An "independent expenditure" is a payment made in connection with a communication (e.g., a campaign mailing or advertisement) which expressly advocates the election or defeat of a clearly identified California state or local candidate, or the qualification, passage or defeat of a clearly identified state or local measure, but which is not made to or at the behest of the affected candidate or committee. (Section 82031.)

Section 84305, subdivision (a), requires candidates and committees to properly identify themselves when sending a mass mailing. The subdivision specifically requires that:

> ... no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in

[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.

the mass mailing and on at least one of the inserts included within each piece of mail of the mailing in no less than 6-point type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the organization's address is a matter of public record with the Secretary of State.

Section 82041.5 defines a "mass mailing" as over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. Regulation 18435, subdivision (a), clarifies this Section, and further defines a mass mailing as over two hundred substantially similar pieces of mail sent in a calendar month. Regulation 18435, subdivision (b), defines the term "sender," as used in Section 84305, as the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing or posting of the mailing.

You and one other individual, without knowledge of each other's actions, decided to send mailers under the name "Cottonwood Concerned Citizens." Because you spent exactly $999.00, it appears you did not qualify as a committee. Therefore, you do not need to report your expenditures and the mass mailer provisions did not apply to this particular mailing.

Had you collected or spent more than $1,000, on your own or in collaboration with others, without identifying yourself as a committee and reporting your expenditures on a Recipient Committee Campaign Statement, you would have violated Sections 84200 of the Act. Additionally, as an independent expenditure committee, you would have violated Section 84305, subdivision (a), for failing to properly identify your committee on the mass mailer which you sent.

If we had determined that you violated provisions of the Act, we could have sought a penalty of up to $5,000 for each violation. However, we have determined that an enforcement action for a violation is not warranted. Although we have decided not to pursue an enforcement action in this matter, you are advised that your failure to comply with the provisions of the Act in the future could result in an enforcement action.

Your cooperation in ensuring that the requirements of the Act are consistently satisfied is greatly appreciated. If you have any questions regarding this matter, please feel free to contact me at 916-327-2019.

Sincerely,

REDACTED

Ty D. Moore
Counsel, Enforcement Division