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

January 26, 2010

Maryan Barkley

REDACTED

Warning Letter RE: Maryan Barkley, FPPC No. 07/077

Dear Ms. Barkley:

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 you that alleged you violated the Act by failing to identify yourself on a mass mailer that you sent to more than 200 individuals.

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found that while you were a public official you made the largest known contribution of money towards a mass mailer sent to approximately 764 individuals without properly identifying your name or address, in violation of Section 84305.

The Act provides that failing to properly identify yourself on a mass mailer is prohibited. Specifically the Act requires candidates and committees to properly identify themselves when sending a mass mailing. Section 84305, subdivision (a) 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 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

[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.

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.

Your actions violated the Act because no other contributor is evident who paid a larger portion of the mailer expenditures than you. On or about April 2, 2007, you admitted during a Bighorn Desert View Water District ("BDVWD") Board Meeting that you were part of a committee that had sent the tri-fold mailer. At that time you refused to identify the other participants. The printer's invoice was made out to you. The printer stated that you paid for the mailer using a personal check. You admitted to contributing towards the mailer in an amount less than $100. You admit to holding the other alleged participant's money and taking it to the printer. No other person has admitted to their involvement in the mailer. There is no evidence that any other person contributed money toward the mailer. Therefore, by paying for the largest known portion of the mailer, you were the "sender" under Regulation 18435. Our investigation has determined that during the relevant period, you were a director for the BDVWD, a public official under Section 82048. The tri-fold mailers were mailed out to approximately 764 individuals on or about February 10, 2007. Therefore, this was a "mass mailing" under FPPC Regulation 18435. The mailers did not have your name or address printed on them, in violation of Section 84305.

In mitigation, you revealed your involvement to the public prior to the recall. The mailer opposing the recall effort was not effective. The amount spent on the mailer was relatively small. You were recalled from your former position as a director of the Bighorn Desert View Water District and are not currently serving as a public official. You cooperated with the investigation.

We have decided to close this case with a warning letter. The information in this matter will be retained and may be considered should an enforcement action become necessary based on future conduct or newly discovered information. Failure to comply with the provisions of the Act in the future will result in penalties of up to $5,000 per 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.

Sincerely,

REDACTED

Ty D. Moore, Counsel
Enforcement Division