

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18901.1. Campaign Related Mailings Sent at Public Expense.

(a) Except as provided in subdivision (b), a mailing is prohibited by Section 89001 if all of the following criteria are met:

(1) The item sent is a tangible item, such as a written document, videotape, record, or button and is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box.

(2) The item sent either:

(A) Expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, as defined in Section 82025(c)(1).

(B) When taken as a whole and in context, unambiguously urges a particular result in an election.

(3) Public moneys are paid for either of the following:

(A) The costs of distributing the item.

(B) Costs, exceeding \$50, that are reasonably related to designing, producing, printing, or formulating the content of, the item including, but not limited to, payments for polling or research and payments for the salary, expenses, or fees of the agency's employees, agents, vendors, and consultants, and the costs are paid by the agency with the intent of sending the item other than as permitted by this regulation.

(4) More than two hundred substantially similar items are sent during the course of an election, including items sent during the qualification drive or in anticipation of an upcoming election, but excluding any item described in subdivision (b).

(b) Notwithstanding subdivision (a), a mailing of the following items is not prohibited by Section 89001:

(1) An agency report providing the agency's internal evaluation of a measure sent to a member of the public upon the individual's request.

(2) A written argument sent to a voter in the voter information pamphlet.

(3) A communication clearly and unambiguously authorized by law.

(c) For the purposes of subdivision (a)(2)(B), an item unambiguously urges a particular result in an election if it meets either of the following criteria:

(1) It is clearly campaign material or campaign activity such as bumper stickers, billboards, door-to-door canvassing, or other mass media advertising including, but not limited to, television, electronic media or radio spots.

(2) When considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose.

(d) For purposes of subdivision (a)(4), an item is “substantially similar” to another item if both items expressly advocate or unambiguously urge the election or defeat of the same candidate or measure.

(e) For purposes of subdivision (c)(2), when considering the style, tenor, timing of an item, factors to be considered include, but are not limited to, whether the item is any of the following:

(1) Funded from a special appropriation related to the measure as opposed to a general appropriation.

(2) Is consistent with the normal communication pattern for the agency.

(3) Is consistent with the style of other communications issued by the agency.

(4) Uses inflammatory or argumentative language.

(f) A mailing sent at public expense that features, or includes the name, office, photograph, or other reference to, an elected officer affiliated with the agency which produces or sends the mailing may also be prohibited under Section 89001 as provided in Section 89002.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82041.5 and 89001, Government Code.

HISTORY

1. New section filed 9-22-2009; operative 10-22-2009. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2009, No. 39).

2. Amendment of subsection (a)(2)(A) filed 8-6-2015; operative 8-6-2015 pursuant to section 18312(e)(1)(A), title 2, California Code of Regulations. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 32).

3. Amendment of subsections (a)(2)(A), (c)(1) and (f) filed 2-13-2018; operative 3-15-2018 pursuant to title 2, section 18312(e)(1)(A) of the California Code of Regulations. Submitted to OAL for filing and printing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2018, No. 7).

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