

1 GARY S. WINUK
Chief of Enforcement
2 MILAD DALJU
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
6
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

11
12 In the Matter of) FPPC No. 11/499
13)
14 YORBA LINDA WATER DISTRICT and) STIPULATION, DECISION and
MICHAEL BEVERAGE,) ORDER
15 Respondents.)
16)
17)

18 Complainant, the Fair Political Practices Commission, and respondents Yorba Linda Water
19 District and Michael Beverage (collectively “Respondents”), agree that this Stipulation will be
20 submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled
21 meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
23 matter and to reach a final disposition without the necessity of holding an administrative hearing to
24 determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
26 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
27 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
28 the right to personally appear at any administrative hearing held in this matter, to be represented by an

1 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that on or about June 6, 2011, Respondent Yorba Linda Water
5 District and Respondent Michael Beverage, an elected member of Yorba Linda Water District's Board
6 of Directors, used public funds to mail a newsletter that featured Respondent Michael Beverage to
7 22,271 members of Yorba Linda Water District, in violation of Government Code section 89001 (Count
8 1).

9 All counts are described in Exhibit 1, which is attached hereto and incorporated by reference as
10 though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

11 ///

1 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
2 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
3 of \$2,000. A cashier's check from Respondents in said amount, made payable to the "General Fund of
4 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,
5 to be held by the State of California until the Commission issues its decision and order regarding this
6 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
7 become null and void, and within fifteen (15) business days after the Commission meeting at which the
8 Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation shall be
9 reimbursed to Respondents. Respondents further stipulate and agree that in the event the Commission
10 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
11 any member of the Commission, nor the Executive Director, shall be disqualified because of prior
12 consideration of this Stipulation.
13
14

15 Dated: _____
16 Gary Winuk, Enforcement Chief,
17 On behalf of
18 Fair Political Practices Commission

19
20 Dated: _____
21 Michael Beverage, Respondent

22
23
24 Dated: _____
25 Phil Hawkins, President
26 On behalf of
27 Yorba Linda Water District, Respondent
28

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Yorba Linda Water District and Michael Beverage” FPPC No. 11/499, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

INTRODUCTION

Respondents are Yorba Linda Water District (“Respondent District” or the “District”) and Michael Beverage (“Respondent Beverage”), an elected member of the District’s Board of Directors at all time relevant to this matter. On or about June 6, 2011, Respondent District and Respondent Beverage (collectively “Respondents”) had a newsletter mailed to 22,271 members of the District that featured Respondent Beverage, an elected member of District’s Board of Directors, in violation of Political Reform Act (the Act”).¹

For the purposes of this Stipulation, Respondents’ violation of the Act is stated as follows:

COUNT 1: On or about June 6, 2011, Respondent Yorba Linda Water District and Respondent Michael Beverage, an elected member of Yorba Linda Water District’s Board of Directors, used public funds to mail a newsletter that featured Respondent Michael Beverage to 22,271 members of Yorba Linda Water District, in violation of Government Code section 89001.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations.

Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

Prohibition Against Sending a Newsletter or Mass Mailing at Public Expense

Section 89001 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

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.

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. (*Id.*)

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 sent in response to an unsolicited request.² (Regulation 18901, subd. (a)(4).) Under Regulation 18901, subdivision (b)(4), only those who subscribe to newspapers shall be deemed to have made unsolicited requests for material published in those subscription publications.

SUMMARY OF THE FACTS

Respondent District is a public agency that serves residents of Yorba Linda and portions of Placentia, Brea, Anaheim, and areas of unincorporated Orange County. Respondent District is governed by a locally elected board of directors. Respondent District’s board has five directors elected to four-year terms by registered voters within the District.

Respondent Beverage has been member of the District’s Board of Directors since 1992, and from January 2010, through December 2011, he served as the president of the District’s Board of Directors.

On or about June 6, 2011, Respondents caused a hired vendor to mail 22,271 substantially similar newsletters to 22,271 registered voters of Respondent District. The newsletter included a letter signed by Respondent Beverage and two pictures of Respondent Beverage. The newsletter’s production, printing, and mailing costs were \$8,653.05, which was paid for by the District.

Accordingly, Respondents committed the following violation of the Act:

² Subdivision (b) of Regulation 18901 contains numerous exceptions to the mass mailing prohibition, none of which apply in this instance.

Count 1

Sending a Newsletter or Mass Mailing Featuring an Elected Officer at Public Expense

On or about June 6, 2011, Respondent Yorba Linda Water District and Respondent Michael Beverage, an elected member of Yorba Linda Water District's Board of Directors, used public funds to mail a newsletter that featured Respondent Michael Beverage to 22,271 members of Yorba Linda Water District, in violation of Government Code section 89001.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the respondent(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

Recent fines approved by the Commission for sending a newsletter or mass mailing featuring an elected officer at public expense include:

In the Matter of San Bernardino Community College District, FPPC No. 11/472. This case involved sending a newsletter to approximately 202,000 households featuring all of the elected board members of the agency, at a cost of approximately \$24,000. A \$2,000 fine for that violation was approved by the Commission on November 10, 2011.

In the Matter of the San Gabriel Unified School District, FPPC No. 07/701. This case involved using public funds to design and produce two mass mailings, totaling 6,800 pieces of mail, which featured two elected officers of the school district. A \$3,000 fine was approved by the Commission on February 11, 2010.

In this matter, the violation included only one newsletter, and the cost to the public was relatively low. Additionally, Respondents do not have a history of enforcement action and cooperated with the Enforcement Division's investigation.

PROPOSED DECISION

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a \$2,000 penalty on Respondents is recommended.

* * * * *