



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 10, 2022

Jim Irizarry
Office of Mark Church,
Chief Elections Officer & Assessor – County Clerk – Recorder
555 County Center
Redwood City, CA 94063

Re: Your Request for Advice
Our File No. A-22-010

Dear Mr. Irizarry:

This letter responds to your request for advice regarding the mass mailing provisions of the Political Reform Act (the “Act”).¹

Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Are the Recruitment Notice, Parole Flyer and Same-Day Voter Registration Flyer planned by the County of San Mateo Registration and Elections Division relating to the upcoming June 7, 2022 election potentially prohibited as a mass mailing of campaign material due to the fact that each includes the name of the Chief Elections Officer, an official who is appearing on the ballot?

CONCLUSION

The Parole Flyer and Same-Day Registration Flyer are permissible, as neither meets the definition of a mass mailing subject to the prohibitions so long as the flyers are not delivered to recipients at their residences, places of employment, or businesses. Should the Recruitment Notice meet the definition of a mass mailing, it would nevertheless be permitted under the “letterhead” exception, except during the 60 days prior to an election where the Chief Elections Officer will appear on the ballot.

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 18109 through 18998 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.

FACTS AS PRESENTED BY REQUESTER

You are the Assistant Chief Elections Officer for the County of San Mateo. As Mark Church, the current Chief Elections Officer & Assessor – County Clerk – Recorder, will be appearing on the June 7, 2022 ballot, you seek guidance as to whether specified materials bearing Mr. Church's name are permissible.

You provided information, including copies of the communications, in your original request, as well as additional information provided by email on February 10, 2022. The planned communications – including the Recruitment Notice, Parole Flyer, and Same-Day Voter Registration Flyer – each include at the top of the page the seal of the County of San Mateo, along with the words, “OFFICE OF MARK CHURCH, **CHIEF ELECTIONS OFFICER & ASSESSOR-COUNTY CLERK-RECORDER**, REGISTRATION & ELECTIONS DIVISION.” The communications do not include Mr. Church's photograph or signature, nor is he referred to again in the rest of the communications. Planned distribution for the communications include:

1. **Recruitment Notice** – The recruitment notice to fill job opportunities for the June 7, 2022 Statewide Direct Primary Election will be sent to employment offices and libraries, and will be directly mailed to potential applicants. The notice will be made available online and hard copies dropped off at various locations. It will also be mailed to over 100 businesses and community organizations.
2. **Parole Flyer** – The flyer advising those on parole or probation of their right to vote and seek further information will be sent to local probation offices and community centers. The flyer will be made available online and printed copies delivered in-person to various agencies and organizations assisting those on parole or probation. The flyer may also be distributed in hard copy form at various events. It will only be mailed individually upon request, such as when an office or organization that has agreed to post or distribute to appropriate clientele. You anticipate distributing about 1,000 flyers.
3. **Same-Day Voter Registration Flyer** - The flyer advising voters on same-day registration options will be dropped off or delivered to city offices, libraries, community-based organizations and Vote Centers. The flyer may also be distributed in hard copy form at various events.

ANALYSIS

Section 89001 provides a general rule that “no newsletter or other mass mailing shall be sent at public expense,” while Section 82041.5 defines “mass mailing” as “over two hundred substantially similar pieces of mail” not including a “form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry.” While the express terms of Section 89001 are exceptionally broad, Section 89002(a) limits the application and states that a mailing is prohibited under the Act if the mailing is a tangible item delivered to a person's residence; features an elected officer; the distribution is paid for with public moneys; and more than 200 substantially similar items are sent in a calendar month. Additionally, Section 89002(b) provides a variety of

exceptions to the mass mailing prohibition. In pertinent part, subdivision (b)(1) provides an exception for “an item in which the elected officer’s name appears only in the letterhead or logotype” “Logotype” is interpreted, for the purposes of the mass mailing provisions of the Act, to be essentially synonymous with “letterhead” and includes a trademark or nameplate, such as an agency’s seal. (*Geiogue* Advice Letter, No. I-91-084.) Such items may not include the elected officer’s photograph, signature, or any other reference to the elected officer unless another particular exception applies. (Section 89002(b)(1).)

Notwithstanding the exception found in Section 89002(b)(1), a mass mailing meeting the criteria of Section 89002(a)² may not be sent “within the 60 days preceding an election by or on behalf of a candidate whose name will appear on the ballot at that election.” (Section 89003.)

The communications in question are being prepared, printed and distributed by the San Mateo County Registration and Elections Division, with an assumed total cost exceeding \$50 each. There will be more than 200 of each flyer printed. Further, each of the flyers includes the name and office of an elected officer affiliated with the agency producing the communications – as Mr. Church’s name and title appear at the top of each flyer.

Recruitment Notice

The facts provided state that the Recruitment Notice will be sent to employment offices, libraries and community organizations.³ They will also be sent to potential applicants and businesses. Therefore, to the extent that more than 200 are delivered by any means to recipients at their residence, place of employment or business, or post office box, the Notice would meet the criteria of Section 89002(a), and would be subject to the mass mailing restriction of Section 89001 unless an exception applies. Here, the “letterhead” exception of Section 89002(b)(1) is applicable, as Mr. Church’s name appears only in the letterhead of the Notice, and he is not mentioned again throughout. Additionally, there is no signature or photo of Mr. Church on the Notice.

While permissible under the letterhead exception, the Notice may be subject to the temporal restriction of Section 89003. That is, to the extent that the Notice meets the criteria of Section

² Section 89002: (a) Except as provided in subdivision (b), a mailing is prohibited by Section 89001 if all of the following criteria are met:

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

(2) The item sent either:

(A) Features an elected officer affiliated with the agency that produces or sends the mailing.

(B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency that produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.

(3) Any of the costs of distribution are paid for with public money or the costs of design, production, and printing exceeding fifty dollars (\$50) are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this section.

(4) More than 200 substantially similar items are sent in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b).

³ As discussed further below, Notices sent to public places for the public to pick up do not meet the Section 89002(a) criteria.

89002(a), the Notice may not be sent within the 60 days prior to the election in which Mr. Church's name will appear on the ballot.

Parole Flyer & Same-Day Voter Registration Flyer

From the facts provided it does not appear that the Parole Flyer or Same-Day Voter Registration Flyer meet the definition of a "mass mailing" subject to the prohibitions. While you intend on distributing over 200 of each of the flyers, these will not be mailed to individuals at their homes, nor will they be delivered to recipients at their residences, places of employment, or businesses. (Sections 82041.5; 89002(a)(1); *see Willy* Advice Letter, A-14-008 [...posters that are dropped off at a government agency or other public place for the public to pick up featuring [an elected officer] are not subject to the restrictions under Section 89001.'].) The Parole Flyer will be distributed to local parole offices and community centers⁴, while the Same-Day Voter Registration Flyer will be delivered to city offices, libraries, community-based organizations and Vote Centers. Accordingly, these flyers are not prohibited pursuant to Section 89001, nor are they barred during the 60 days prior to the election under Section 89003.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel



By: Erika M. Boyd

Senior Counsel, Legal Division

EMB:dkv

⁴ You indicated the Parole Flyer would only be mailed to individuals upon specific request. "Mass mailings" do not include the distribution of materials specifically requested. (Section 82041.5.)