

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

June 15, 1977

77-163

George J. Roth
Deputy Attorney General
555 Capitol Mall, Suite 350
Sacramento, CA 95814

Re: No. CV 77/65 IL

Dear Mr. Roth:

This letter is in response to your letter of April 29, 1977, requesting the Commission's views on Attorney General Opinion Request No. CV 77/65 IL. Initially, if your opinion interprets the provisions of the Political Reform Act, we request that it be contained in an indexed letter rather than a published opinion.

The questions posed by Senator Russell concern Elections Code Sections 11800-802 which prohibit the sending of publicly financed mass mailings made by or on behalf of locally elected officials after the filing of their declarations of candidacy. As you know, the Political Reform Act contains a similar provision with respect to state officials in Government Code Section 89001. Pursuant to its power to pass regulations interpreting the provisions of the Act, the Fair Political Practices Commission adopted 2 Cal. Adm. Code Section 18901 which is attached hereto. This regulation defines the types of mailings which are not "newsletters or other mass mailings" or "sent by or on behalf of an elected official." This regulation should give you an idea as to the types of mailings which the Commission believes were intended to be subject to the Act's mass mailing prohibition.

Next we turn to a consideration of the three questions posed by Senator Russell. First, he asked whether the four enclosed mailings were "newsletters" or "mass mailings" within the meaning of Section 11800, et seq. Pursuant to the Commission's regulation, all of the mailings in question would be "newsletters" or "mass mailings" if they were sent by or on behalf of an elected state official.

Second, Senator Russell asked whether, with respect to those mailings which are subject to the prohibition, the inclusion of the candidate's name in the masthead would be permissible. Pursuant to subsection (b) of the Commission's regulation, a mailing which contains the name of an elected state officer in the masthead is deemed to have been sent by or on behalf of that officeholder unless:

- (1) It is mailed by a state department in the executive branch, a legislative committee or other governmental entity;
- (2) The elected state officer's name appears only on the standard letterhead and there are no other references to the officer in the mailing; and
- (3) The stationery used is the official stationery of the state department, legislative committee or other governmental entity.

Thus, if the mailings in question refer to an elected state officer in the masthead, they would be prohibited since such pamphlets are not the official stationery of the agency. Totally apart from the standards set forth in the current and proposed regulations, one could conclude that inclusion of the candidate's name in the masthead of the mailing would not violate the provisions of Section 11800, et seq. However, such a decision would have to be made on a case-by-case examination of the mailing and masthead involved. Obviously, the larger and more prominent the display of the candidate's name, the more likely such a masthead would violate the spirit of the prohibition. However, this type of subjective case-by-case approach may entice candidates to continue the age-old practice of sending publicly financed literature to the voters in the heat of an election campaign in hopes that they may receive a political advantage from the mailing.

The discussion which follows analyzes each of the mailings in question as if it were made at the state rather than the local level and therefore were subject to the provisions of Regulation 18901.

A. Annual Report & 1977 Civic Calendar:

This mailing includes both a message from and a picture of the current City Mayor. In addition, it contains pictures of the Vice-Mayor and members of the City Council. This mailing would be prohibited pursuant to the standards

set forth in the Commission's regulation. Moreover, since these pictures could give the incumbent Mayor and members of the City Council a campaign advantage, we believe this mailing should be prohibited under 11800, et seq.

B. Presenting the City of Burbank:

In the article entitled "City Braces Against Disaster" the Mayor is mentioned by name. Thus, pursuant to the standards set forth in the Commission's regulation, this mailing would be prohibited. However, due to the brief nature of the mention of the Mayor and its inconspicuous placement in the mailing, one can conclude that such a mailing necessarily need not be prohibited by Section 11800, et seq.

C. Inside The City:

This mailing appears to be permissible pursuant to the standards set forth in the Commission's regulation.

D. Golden State Redevelopment Project News Letter:

This mailing would not be prohibited pursuant to the standards set forth in the Commission's regulation. Moreover, we do not think it contains the type of material which Section 11800, et seq. intended to prohibit.

The third question posed by Senator Russell is an extension of his second question. Therefore, I believe the analysis contained in the foregoing paragraph is applicable. Thus, under the Commission all references to a state candidate or officeholder are prohibited by Government Code Section 89001 except for those specified in part (b) of Regulation 18901.

Enclosed also please find an amended version of Regulation 18901. In light of new information received from several state agencies, the Commission asked the staff to re-examine Regulation 18901. The enclosed draft represents a

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preliminary proposal for amending the current regulation. Even though this preliminary draft may be altered prior to submission to the Commission, I thought it might be helpful in assisting your office to formulate guidelines for interpreting Elections Code Sections 11800, et seq.

If you have any further questions, please feel free to contact either Ted Prim or me.

Sincerely,



Michael Bennett
Executive Director

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Enclosure

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PROPOSED AMENDMENTS

18901.

(a) No legislative newsletter or other mass mailing shall be sent at public expense by or on behalf of any elected state officer after the elected state officer has filed a declaration of candidacy for any office. This prohibition terminates when

- (1) The election for which the declaration of candidacy was filed is conducted; or
- (2) The officer obtains a court order revoking his declaration of candidacy.

(b) A mailing is not a "legislative newsletter or other mass mailing" unless it consists of 200 or more identical or nearly identical pieces of mail sent in a calendar month. In determining whether a mailing consists of 200 or more such pieces, the following types of mail shall not be considered.

- (1) Mailings sent in response to written correspondence, petitions, oral inquiries, or specific requests including requests contained in coupons;
- (2) Press releases sent only to the media;

(3) Mailings in the normal course of business from a governmental entity or official to any other governmental entity or official;

(4) Mailings made in connection with the payment or collection of funds by the state;

(5) Mailings to persons subject to government programs administered by the officer when such mailings are essential to the functioning of the program;

(6) Mailings necessitated by statute or court order; and

(7) Any mail which is sent to persons outside the constituency for which the officer has filed a declaration of candidacy to represent.

(c) A mailing will not be deemed to be sent "by or on behalf of any elected state officer" if all of the following occur:

(1) It is mailed by a state agency in the executive branch, a legislative committee or other governmental entity;

(2) The elected state officer's name appears only on standard stationery, envelopes, or forms, and there are no other references, including signature, to the officer in the mailing; and

(3) The stationery, envelopes, and forms used are the official stationery, envelopes, and forms of a state agency, legislative committee or other governmental entity.

(d) The Commission may at its discretion exempt a mailing from the provisions of Section 89001 when, in a hearing before the Commission, an elected state officer presents

(1) Compelling evidence that an essential function of state government will be irreparably affected if the mailing is not sent; and

(2) Convincing evidence that no alternative method of communication or format is available to accomplish the essential governmental function.



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OFFICE OF THE ATTORNEY GENERAL

Department of Justice

555 CAPITOL MALL, SUITE 350

SACRAMENTO 95814

(916) 445-9555

April 29, 1977

Daniel H. Lowenstein, Chairman
Fair Political Practices Commission
925 J Street, Suite 522
Sacramento, California 95814

Re: Opinion Request No. CV 77/65 IL

Dear Mr. Lowenstein:

We have received a request for an opinion from Senator Newton R. Russell regarding the applicability of Elections Code sections 11800-11802 to certain publications which have been routinely and periodically mailed by the City of Burbank or jointly by the Burbank Redevelopment Agency and the Burbank Chamber of Commerce to either all or certain groups of residents of the City of Burbank or all of the City's employees. A copy of the request is enclosed.

In accordance with our customary policy of soliciting the legal views of interested parties, and particularly since these sections seem to be patterned after the regulations adopted by the Fair Political Practices Commission, we would appreciate hearing from you as soon as possible with regard to this matter. If you do not wish to submit views, please advise us to that effect.

Thank you for your cooperation.

Very truly yours,

EVELLE J. YOUNGER
Attorney General


GEORGE J. ROTH
Deputy Attorney General

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Encl.

cc: Senator Newton R. Russell