

State of California



Fair Political Practices Commission

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Technical Assistance/Administration	•••	Executive/Legal	•••	Enforcement	•••	Conflict of Interest
(916) 322-5660		322-5901		322-6441		322-6444

October 20, 1977

77-10-205

Honorable Fred W. Chel
 The State Assembly
 2750 Bellflower Blvd., Suite 208
 Long Beach, CA 90815

Re: Opinion Request
 No. 77-028

Dear Mr. Chel:

Thank you for your letter of September 23, 1977, requesting an opinion on behalf of a local organization in your district concerning the mass mailing provisions of the Political Reform Act. Because the request does not raise a substantial question of interpretation under the Act, no formal opinion will be issued. However, I hope your constituents will find helpful the following informal advice provided pursuant to Government Code Section 83114(b).

You have advised us that a local candidate plans to have one or more voters in each precinct write personal letters to other voters in that precinct. No one person will send out more than 200 letters. All expenses related to stationery, envelopes and mailing costs will be paid by the candidate's committee.

Before answering the specific questions posed in your letter, we must answer the threshold question of whether any of the mailings in question are "mass mailings" within the meaning of Government Code Section 82041.5.^{1/} The term "mass mailing" is defined as "two hundred or more identical or nearly identical pieces of mail, but does not include a form letter or other mail which is sent in response to a request, letter or other inquiry." Since no one person will send more than 200 letters, the mailings described above will not be mass mailings unless some or all of the letters sent by one person are "identical or nearly identical" to letters sent by other persons.

^{1/} All statutory references are to the Government Code unless otherwise noted.

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If each person sends letters which are totally of his or her own making, it is reasonable to assume that they will not be identical or nearly identical to those letters sent by other persons. However, if the committee provides a form letter to each person, all the letters sent would be essentially identical.

Obviously, there are an almost endless number of variations which can fall between a letter written originally by the sender and a form letter provided to the sender by a campaign committee. Consequently, each situation must be examined separately to determine whether the mailings in question are "nearly identical." The following factors are among those that may be considered. We believe that form letters which merely have personal notes added at the beginning or end are "nearly identical" within the meaning of the statute. In addition, if the committee provides a sample form letter to persons writing on behalf of the candidate, it is reasonable to assume, in the absence of specific evidence to the contrary, that most people are following the form letter. In such a case we would consider the letters sent by one person to be nearly identical to the letters sent by all the other persons. If a committee provides more than one sample letter to its supporters, we would ordinarily divide the total number of letters sent by the number of form letters used to determine if a mass mailing was sent. So, for example, if persons were given three forms to choose from and 600 total letters were sent, we would assume, absent evidence to the contrary, that 200 copies of each form letter were sent. If, on the other hand, a committee provided its supporters with a list of possible topics and a list of persons to whom a letter might be sent, while leaving composition of each letter to the sender, we would presume that the resulting letters were not "nearly identical."

Assuming that there exists a "mass mailing" within the meaning of the Act, we turn next to the specific questions you pose. You ask first whether a copy of any of the mailings in question must be sent to a public agency. Section 84305 of the Act provides that a copy of any mass mailing in support of or in opposition to a state candidate or state measure must be sent to the Fair Political Practices Commission. In the instant case, a copy of the mailings in question need not be sent to the Commission since, even if they are a mass mailing, they do not support or oppose a state candidate or state measure.

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Second, you ask whether such mailings may be sent first class. Nothing in the Political Reform Act prevents the sending of such mailings by first class mail.

Third, you ask whether such mailings must carry any specific identification. Section 84305 provides:

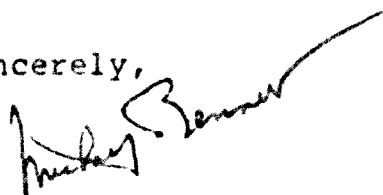
No person shall make an expenditure for the purpose of sending a mass mailing unless the sender shows on the outside of each piece of mail in the mass mailing and on at least one of the inserts included within each piece of mail of such mailing the sender's name, street address and city in no less than six-point type. 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....

The Commission has defined the term "sender" as the person who pays the greatest share of the costs attributable to the designing, printing and posting of the mailing. 2 Cal. Adm. Code §18435. Accordingly, under the facts you have posed, the name and address of the committee must appear on each letter and envelope which is a part of a mass mailing.

Lastly, to the extent that the provisions of Section 84305 are adhered to, you need not comply with the provisions of Elections Code Section 29410. With respect to those mailings which are not subject to the provisions of Section 84305, you may wish to consult the Attorney General for an interpretation of the Elections Code.

If you wish to appeal the denial of your opinion request you may do so pursuant to 2 Cal. Adm. Code Section 18321. If you have any further questions, please do not hesitate to contact Ted Prim, an attorney with the Commission's staff.

Sincerely,



Michael Bennett
Executive Director

MB:TP:plh

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Assembly California Legislature

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FRED W. CHEL
MEMBER, CALIFORNIA LEGISLATURE
THIRTY-EIGHTH ASSEMBLY DISTRICT
EAST LONG BEACH, CALIFORNIA HAWAIIAN ISLANDERS AND CHINESE HILLS

REPLY TO: <input checked="" type="checkbox"/> DISTRICT OFFICE <input type="checkbox"/> SACRAMENTO OFFICE
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CHAIRMAN
JOINT COMMITTEE
ON
AGING

77205

September 23, 1977

Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

Gentlemen:

Pursuant to a request by a local constituent group, I would appreciate receiving your opinion.

Local municipal elections are scheduled in the Spring of next year, and a candidate plans to have one or more voters in each precinct write personal letters to registered voters in that precinct. The voter or voters signing the letter to other voters within their precinct would be sending out less than 200 such letters, and they would be mailed first class. The cost of the envelopes and the letterhead (bearing the signatory's name and address, i.e. the local voter who is mailing the letter to the other voters within the precinct), as well as the cost of producing the letter and the mailing costs, would be paid for by the candidate's campaign committee. It is the constituent group's intention to obtain one or more voters in each precinct to send such letters.

In connection with the foregoing fact situation, the following questions are posed:

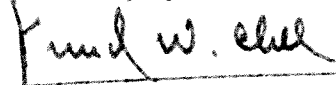
1. If the total number of letters signed and mailed by any one voter to other voters is less than 200, is a copy required to be filed with any public agency?
2. Regardless of the number of letters being signed and mailed by any one voter to other voters within the precinct (but less than 200) is there any prohibition in law in mailing such letters first class?
3. Is there any requirement in law that the letter

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signed and mailed by a voter or other voter within the precinct carry any identification thereat in print or by a candidate's campaign committee, and if so, what exact identification should be set forth? Also, in that connection, must such identification be contained both on the letter as well as on the envelope?

Your opinion on these questions posed by a constituent group is appreciated.

Very truly yours,



FRED F. CHEL
Assemblyman, 58th District

FWC:ja