



California Fair Political Practices Commission

April 11, 1988

Honorable Gilbert W. Ferguson
California State Assembly
State Capitol
Sacramento, CA 95814

Re: Your Request for Advice;
Our File No. A-88-137

Dear Assemblyman Ferguson:

You have written seeking advice regarding Government Code Section 89001, which restricts mass mailings by elected officers once the officers have filed for election.

QUESTION

May you send at public expense the results of a questionnaire you sent to constituents to those constituents who responded and provided their return mailing address on the response?

CONCLUSION

Sending the questionnaire results to those respondents who happened to provide their return address would constitute a prohibited mass mailing at public expense.

FACTS

You have filed all of the necessary papers required to appear on the ballot in the June primary election, and you are currently an elected officeholder.

You sent out a questionnaire to your constituents. To date, you have received approximately 4,200 responses. You have enclosed a copy of one of those responses as an example. The questionnaire could be returned by tearing off the sheet and folding and stapling it. Your address was printed on the outside.

You did not ask that the respondents provide their return addresses. Nor did you ask them if they wished to receive copies of the results of the questionnaire. However, some respondents did place their return addresses on the outside front of the return questionnaire, in the normal location for a return address.

ANALYSIS

The Political Reform Act (the "Act")^{1/} states as one of its purposes that:

Laws and practices unfairly favoring incumbents should be abolished in order that elections may be conducted more fairly.

Section 81002(e).

Section 89001 addresses one of the practices which has been viewed as unfairly advantaging incumbents. This is the practice of sending out newsletters and other mass mailings at public expense to increase constituents' awareness of the incumbent. Section 89001 prohibits this practice once the incumbent has filed for reelection. The prohibition continues until the incumbent's candidacy ends.

As amended effective January 1, 1988, Section 89001 reads:

No newsletter or other mass mailing shall be sent at public expense by or on behalf of any elected officer to any person residing within the jurisdiction from which the elected officer was elected, or to which he or she seeks election, after the elected officer has filed either of the following:

(a) The nomination documents, as defined in Section 6489 of the Elections Code, for any local, state, or federal office to be voted upon at an election governed by Chapter 5 (commencing with Section 6400) of Division 6 of the Elections Code....

The term mass mailing is defined in Section 82041.5 as follows:

"Mass mailing" means 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.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.


Honorable Gilbert W. Ferguson
April 11, 1988
Page 3

A form letter providing the respondents with the results of the questionnaire would not be a prohibited mass mailing if the respondents had requested the results. However, your questionnaire did not ask if the respondents wished to receive the results. The mere fact that a respondent placed his or her return address on the outside of the return mailer does not constitute a request for a response by you. Consequently, a form letter providing the results of the questionnaire would be considered to be a mass mailing if you send 200 or more pieces in a calendar month to residents within your district. Since you have filed for reelection, such a mass mailing would be prohibited if sent at public expense.

I trust that this letter adequately responds to your request for advice. If you have any questions regarding the letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

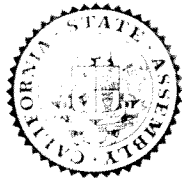

By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:plh

CAPITOL OFFICE ADDRESS
STATE CAPITOL BUILDING
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
PHONE (916) 445-7227

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Assembly
California Legislature



COMMITTEES
VICE CHAIRMAN
HOUSING AND
COMMUNITY DEVELOPMENT
MEMBER
TRANSPORTATION
HEALTH
WAYS & MEANS

GILBERT W. FERGUSON
ASSEMBLYMAN, SEVENTIETH DISTRICT

March 30, 1988

Diane Griffiths
General Counsel
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Ms. Griffiths:

I would appreciate a written ruling on whether or not under Government Code Section 89001, or any other applicable provision, it is permissible for me to send out a response mailing of more than 200 nearly identical pieces of mail stating the results of a newsletter questionnaire. The recipients of this mailing would be those individuals who responded by returning the completed questionnaire and exercised the option of including their return address.

I am enclosing a copy of the questionnaire. To date, we have received 4,200 responses and they are still coming in at an average of 10 per day.

I look forward to your response at your earliest opportunity on the question of permissibility and any relevant guidelines for the mailing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gil Ferguson".

GIL FERGUSON

GF: cdp

Enclosure

TRANSPORTATION SURVEY

Listed below are some proposals, from widely different sources and perspectives, intended to finance or better manage our transportation system. Please indicate if you support or oppose each proposal by printing a "yes" or "no" in the space provided, then fold, staple and mail this questionnaire back to me.

- * NO 1) A statewide \$1.7 billion bond measure for highways and freeways which would have to be approved by the voters.
- NO 2) Create a local sales tax for Orange County residents of one-half cent solely to be used for highway projects.
- NO 3) Raise the state's gasoline tax (not sales tax) 14 cents per gallon to provide an additional \$1.5 billion annually. This means adding 14 cents per gallon to the present 18 cents we are now paying (a total of 32 cents of tax per gallon of gas)--plus the 6 cents per dollar sales tax on gasoline.
- YES 4) Redirect the state's present gasoline sales tax away from social programs and into a special fund to be used for transportation only (this would generate about \$600,000,000 per year for transportation).
- NO 5) Diamond Lanes: Caltrans and the Orange County Transportation Commission propose using new lanes on the 5 and 405 freeways for carpools only. Federally funded and regulated, the current 2-person occupancy requirement will be increased to 3 per vehicle in the near future.
- YES 6) A truck ban on freeways and highways during peak periods is proposed by the South Coast Air Quality Management District. This prohibition might result in increased prices for consumer goods and further congestion of surface streets.
- YES 7) Car-pool Quotas: Requiring employer "car-pool quotas" or employer-provided incentives for employees to join car and van pools, including "flex-time" hours, to reduce peak period travel.
- YES 8) Creating new surface roads like the Moulton Parkway and other roads and parkways parallel to I-5 to carry local traffic between Mission Viejo, Laguna Niguel, South County and Irvine Industrial Complex and other places of work in central Orange County.

* ONLY IF NOT DOING ELSE WORK

FOLD AND STAPLE

W. J. THIBOT, JR.
3601 Escondido Drive
Corona del Mar, CA 92625



ASSEMBLYMAN GIL FERGUSON
State Capitol — Room 2016
Sacramento, CA 95814

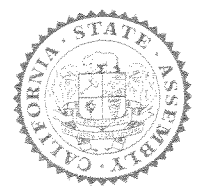
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GILBERT W. FERGUSON
ASSEMBLYMAN, SEVENTIETH DISTRICT

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Gil Ferguson
GIL FERGUSON

GF: cdp

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* ONLY IF NOTHING ELSE WORKS

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California
Fair Political
Practices Commission

April 5, 1988

Honorable Gil Ferguson
Member of the Assembly
State Capitol Building
P.O. Box 942849
Sacramento, CA 94249-0001

Re: 88-137

Dear Assemblyman Ferguson:

Your letter requesting advice under the Political Reform Act was received on April 4, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh