



California Fair Political Practices Commission

October 6, 1988

Lisa E. Kranitz
Burke, Williams & Sorensen
Legal Counsel for SCAG
One Wilshire Building
624 South Grand Avenue, 11th Floor
Los Angeles, California 90017

Re: Your Request for Advice
Our File No. I-88-275

Dear Ms. Kranitz:

You have written on behalf of your client, the Southern California Association of Governments ("SCAG") to request guidance with regard to application of Government Code Section 89001,^{1/} as amended by Proposition 73, to mass mailings sent out by SCAG.

QUESTIONS

1. Does the president of SCAG's executive committee constitute an elected officer for purposes of the restrictions of Section 89001?
2. Does Section 89001 prohibit SCAG from sending out 200 or more letters to city councilmembers, county supervisors and other federal, state and local officials under a signature of the president of the executive committee?
3. Does Section 89001 prohibit SCAG from sending out 200 or more documents such as regional air plans to city councilmembers, county supervisors and other federal, state and local officials under cover letter signed by the president of the executive committee?

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

4. Does Section 89001 prohibit SCAG from sending out 200 or more letters, notices of informational meetings or plans to the public, including community activists and public interest groups who have not made an unsolicited request for those materials?

5. Does Section 89001 prohibit SCAG from sending out a newsletter to city councilmembers, county supervisors and interested members of the public when that newsletter contains a column signed by the president of the executive committee?

CONCLUSIONS

1. The president of SCAG's executive committee is an elected officer for purposes of Section 89001. Thus, if a mailing is otherwise prohibited by Section 89001, it is not exempted simply because the elected officer is acting in the appointed capacity of president of SCAG's executive committee.

2. Section 89001 would not prevent SCAG from sending mailings in the normal course of business to other governmental agencies or officials even if signed by the president of the executive committee.

3. Section 89001 would not prevent SCAG from sending such mailings in the normal course of business to other governmental agencies or officials.

4. Section 89001 would prohibit the sending of such a mailing only if the mailing includes in its contents a reference, including photograph or signature, to the president of the executive committee or any of SCAG's other elected officers. The mailing may be sent if the only mention of elected officers is in the SCAG standard letterhead.

5. Section 89001 would prohibit such a mailing if it includes 200 or more pieces sent to the public, not in response to unsolicited requests.

FACTS

The SCAG Executive Committee consists of several elected officers who serve on the executive committee by appointment. Currently, the president of the executive committee is a councilmember from the City of Buena Park.

SCAG makes numerous mailings, some of which have traditionally been signed by the president of the executive committee. Some of those mailings are sent only to other governmental entities or officials. Some are also sent to members of the public. These mailings are not sent in response to unsolicited requests from the recipients.

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ANALYSIS

The Political Reform Act (Sections 81000-91015) was amended by Proposition 73 on the June 7, 1988 ballot. The amendments made to Section 82041.5 (definition of mass mailing) and to Section 89001 (mass mailings sent at public expense) took effect immediately. (See Raye et al., Advice Letters, No. 88-220, copies enclosed.)

The Commission has determined that despite the literal reading of these two sections, which would appear to prohibit governmental agencies from sending any mass mailings not sent in response to unsolicited requests, certain types of governmental mailings are not prohibited. Id. At the July 26, 1988 meeting the Commission adopted an emergency regulation and approved the Raye et al. advice letters. A copy of the emergency regulation is enclosed.

It is the Commission's view that a mass mailing which is sent by an agency with which an elected officer is affiliated is one which is covered by Section 89001. This is true whether or not the elected officer is elected or appointed to his or her position with that agency. He or she is still an elected officer. (Section 82020.) The opportunity for furthering the elected officer's image and name recognition is still present.

Consequently, in response to your first inquiry, if a mailing is otherwise prohibited by Section 89001, it is not exempted simply because the elected officer is appointed to the SCAG Executive Committee.

We turn then to the specific mailings about which you have inquired. In response to your second inquiry, Section 89001 would not prevent SCAG from sending mailings in the normal course of business to other governmental agencies or officials, even if signed by the president of the executive committee, who is an elected city councilmember.

Your third question is a variation on the second question. The communication would be sent in the normal course of business to other governmental officers or agencies; therefore, it would be exempt and the transmittal letter could be signed by the president of the executive committee.

Your fourth question does not specify whether the mailing would include the name of the president or any other reference, including his or her signature, in its contents. If none would be included, then a mailing to interested persons of notices or agendas would be permitted. (Regulation 18901(b).) However, if the president was to sign a cover letter or notice, that would cause the mailing to be subject to Section 89001's

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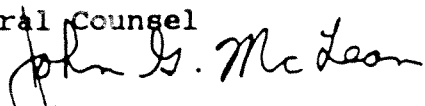
restrictions, unless the president's signature was a necessary part of a legally required notice. (See Raye, et al. advice letters and In re Miller (1978) 4 FPPC Ops. 26, No. 77-032, copy enclosed.) If that is the case, the mailings would be permitted under Regulation 18901(c)(5).

Your last question regards a newsletter sent both to other public agencies and to members of the public. It would contain a column signed by the president. This mailing would not be permitted under Section 89001 if it exceeds 200 or more pieces in a calendar month sent to members of the public. (Regulation 18901; Raye, et al. advice letters.)

I trust that the foregoing has been helpful to you in assessing SCAG's mass mailing programs. You should be aware that the Commission will be considering the adoption of a permanent regulation on this subject at the December meeting. I enclose a copy of the staff memorandum on the pre-notice discussion which occurred at the September 8 meeting of the Commission. A copy of the noticed regulation will be forwarded to you at a future date.

Sincerely,

Diane M. Griffiths
General Counsel


By: John G. McLean
Counsel, Legal Division

DMG:JGM:ld

Enclosures

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September 1, 1988

Diane Griffiths
General Counsel
Fair Political Practices Commission
928 J. Street
Suite 800
P.O. Box 807
Sacramento, California 95804-0807

Re: Application Of Proposition 73 To Councils Of
Governments

Dear Ms. Griffiths:

We have received and read with interest the Commission's August 17, 1988 update on Proposition 73 and 68. We have some concern however that the Commission has not addressed the issues raised in our July 12, 1988 letter regarding Proposition 73 applicability to a Council of Governments' (COGs) Executive Committee. As indicated in our previous letter (copy attached) a COG's Executive Committee is made up of various city councilmembers and county supervisors who are appointed to their position on the Executive Committee.

We believe that the update of August 17, 1988 and the amendment to Regulation 18901 answer our second and third questions in the negative. However, we still believe that the answers to the first, fourth and fifth questions are equally important and should be addressed and answered by the Committee at one of the scheduled future hearings.

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We also request a written response to all of the questions raised in the letter.

Thank you for your consideration of these issues. We look forward to your reply. Please feel free to contact me if I can be of any assistance in this matter.

Very truly yours,



LISA E. KRANITZ
For BURKE, WILLIAMS & SORENSEN
Legal Counsel for SCAG

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Enclosure
cc: Colin Lennard
John McLean
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July 12, 1988

Mr. John Larson
Chairman
Fair Political Practices Commission
428 J. Street
Suite 800
Sacramento, California 95814

Re: Proposition 73's Application To A Regional Council
of Governments

Dear Mr. Larson:

This letter is written in follow-up to a conversation with Mr. John McLean last week regarding the applicability of Proposition 73 to the Southern California Association of Governments ("SCAG"). SCAG is a regional council of governments which covers six counties in the Southern California region. SCAG has an Executive Committee which consists of various city councilmembers and county supervisors. Although these individuals are elected to the position in their respective local jurisdictions, they are appointed to SCAG's Executive Committee.

SCAG sends out various materials to various individuals and groups, often under signature of the President of the Executive Committee. The signature only states that the individual is President of the Executive Committee; no mention is made of the individual's elected position. Currently the President is a councilmember from the City of Buena Park. It is our hope that you will consider the following questions at your meeting on July 26, 1988:

1) Does the President of SCAG's Executive Committee constitute an elected officer for purposes of Proposition 73? Assuming the answer is yes;

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2) Does Proposition 73 prohibit SCAG from sending out letters to city councilmembers, county supervisors and other federal, state and local officials under signature of the President or would this come under the exemption of communication with other governmental entities;

3) Does Proposition 73 prohibit SCAG from sending such documents as regional air plans to city councilmembers, county supervisors and other federal, state and local officials under cover letter signed by the President of the Executive Committee or would this come under the exemption of communication with other governmental entities;

4) Does Proposition 73 prohibit SCAG from sending out letters, notices of informational meetings (such as when SCAG held workshops on the draft Regional Housing Needs Assessment) or plans to the public, including community activists and public interest groups such as the Sierra Club; and

5) Does Proposition 73 prohibit SCAG from sending out a newsletter to city councilmembers, county supervisors and interested members of the public when that newsletter contains a column signed by the President of the Executive Committee?

It is our belief that Proposition 73 would not apply to any item sent out by SCAG which bears the signature of the President, as the Executive Committee is chosen by appointment and not elected. The primary thrust of Proposition 73 was to prohibit the use of public moneys for the purpose of seeking elective office; material sent out under the signature of the President of the Executive Committee, without any reference to the individual's elective office, would not further the seeking of elective office. This is especially true in light of the fact that the mailings reach a much broader audience than those in the President's own jurisdiction.

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We thank you very much for your consideration of these issues at your July 26, 1988 meeting and we look forward to your response. Please feel free to contact me if I can be of any assistance in this matter.

Very truly yours,



LISA E. KRANITZ
For BURKE, WILLIAMS & SORENSEN
Legal Counsel for SCAG

lek/am
cc: Colin Lennard
Anne Baker, SCAG
John McLean
lek/LTR8710



California Fair Political Practices Commission

September 7, 1988

Lisa Kranitz
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One Wilshire Building
624 South Grand Avenue, 11th Floor
Los Angeles, CA 90017

Re: Your Request for Advice
Our File No. 88-349

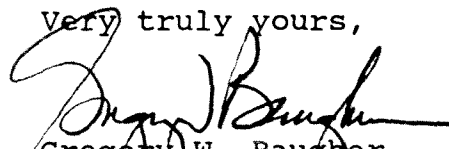
Dear Ms. Kranitz:

Your letter requesting advice concerning the recently enacted campaign finance reform initiatives (Government Code Section 85100, et seq.) was received on September 6, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean, an attorney in the Legal Division, directly at (916) 322-5901.

Because of the delayed operative date of most of the provisions of these initiatives, and the numerous inquiries we are receiving relative to implementation, we are attempting to respond to questions regarding interpretation in an organized and efficient fashion. Due to the volume of requests and complexity of the issues involved, we will answer your question in a timely manner, but not within the usual twenty-one working days. (Government Code Section 83114(b).)

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. 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,



Gregory W. Baugher
Executive Director

GWB:plh:3