



California Fair Political Practices Commission

February 15, 1989

Joan R. Gallo
City Attorney
City of San Jose
151 West Mission Street
San Jose, CA 95110

Re: Your Request for Advice
Our File No. I-88-296

Dear Ms. Gallo:

This is in response to your request for written advice regarding interpretation of the new mass mailing restrictions amended into the Political Reform Act (the "Act")^{1/} through Proposition 73. Because your request is one for general advice rather than for advice concerning a specific action pending before your agency, we are treating your request as one for informal assistance.^{2/}

QUESTION

1. Is use of the city's internal mail system included in the prohibition against use of alternative delivery systems to distribute mass mailings at public expense?

Assuming some public funding is involved and the city's mail system will be used to distribute the mass mailing:

2. May city departments, such as the police department or the library department, produce and distribute to employees of

^{1/} Government Code Sections 81000-91015. 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.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation Section 18329(c)(3).)

their departments, mass mailings which refer to elected officials other than in a standard logotype or letterhead?

3. May any city employee organization produce and distribute through the city's mail system, newsletters and other mass mailings which refer to elected officials other than in a standard logotype or letterhead?

4. May a city councilmember, who is an employee organization member, write a signed or unsigned article for that organization's mass mailing?

5. If an employee organization lists its membership, other than in a standard logotype, may it list the names of those members who are members of the city council?

CONCLUSIONS

1. Use of the city mail system is included in the prohibition against use of alternative delivery systems to distribute mass mailings at public expense.

2. City departments may produce and distribute within their departments mass mailings which refer to elected officials other than in a standard logotype or letterhead, where the mailings are done in the normal course of business.

3. The Act does not allow city employee organizations to distribute newsletters and other mass mailings at public expense, when the mailings contain material not distributed in the normal course of business which refer to elected officials other than in a standard letterhead or logotype of the organization.

4. A city councilmember who is a member of an employee organization may submit an unsigned article for the organization's newsletter. The name of the elected official may not, however, be referenced in the article, nor may the elected official have his or her signature or byline accompanying the article.

5. The name of a city councilmember who is a member of an employee organization may be listed in the organization's membership roster along with the names of all other members of the organization.

FACTS

Several organizations of city employees are permitted by the city to use the city's mail system to distribute newsletters and other informational materials to other city employees. These organizations are officially recognized by the city manager as

"employee organizations." Anyone affiliated with the city may join. The organizations focus on issues of special interest to their membership.

For example, a group of city employees who are parents has created an organization focusing on child care issues. The organization schedules guest lectures, has toy and clothing exchanges, and provides a babysitting co-operative and a support group. The organization is also planning a quarterly newsletter with circulation of more than 200 in a calendar month, and would like to distribute it through the city's mail system.

Two city councilmembers are members of this organization. Neither councilmember is an officer of the organization nor an editor of the newsletter.

ANALYSIS

Section 89001 provides that no newsletter or mass mailing shall be sent at public expense. "Mass mailing" is more than two hundred substantially similar pieces of mail sent in a calendar month. (Section 82041.5 and Regulation 18901(d), copy enclosed.) A newsletter or other mass mailing is "sent at public expense" if any of the costs of design, production, printing or distribution are paid for with public moneys (Regulation 18901(a)), and if it is distributed by agency personnel or agents of the agency. (Regulation 18901(g)(3).) Thus, any mass mailing sent at public expense may not feature the name, photograph or signature of an elected official affiliated with the agency which produces or distributes the document. (Regulation 18901(c).)

The employee organization newsletters falls within the definition of "mass mailings" whenever more than 200 pieces are sent in a calendar month. The city's mail system is a prohibited method of distributing such materials, since agency personnel are involved in distribution. Thus, whenever 200 or more newsletters are to be distributed in a calendar month the organization may not distribute them through the city's mail system unless one of the specific exceptions in Regulation 18901 applies.

Intra-agency Communications

Subsection (f)(3) of Regulation 18901 provides that intra-agency communications sent in the normal course of business to employees, officers, deputies and other staff are not prohibited by Section 89001. Thus, city departments, such as the police department or the library department, may distribute at public

expense mass mailings to their employees, where the material is sent in the normal course of business.

The exceptions to the mass mailing prohibition must be narrowly construed. In the example you offered regarding a city employee organization, the organization's purpose is to share information regarding a personal interest which a number of employees have in common, that of child care. Although the information shared may be of concern to a broad range of city employees, information of this type included in a newsletter of an employee child care organization is not sent in the normal course of business of the agency. We conclude, therefore, that employee organizations may not distribute at public expense newsletters and other mass mailings which feature elected officials because the material sent is not done so in the normal course of business.

Signed or Unsigned Articles

Once it is established that an agency's newsletter or mass mailing may not be used to feature elected officials, Regulation 18901 provides guidance regarding precisely what is prohibited. Among other things, Subsection (c)(2)(B) provides that an elected officer is "featured" in a mass mailing if he or she is singled out for attention of the reader by use of his or her signature or in the manner of display of his or her name or office in the layout of the document.

Thus, a city councilmember who is a member of an employee organization may submit an unsigned article for publication in the organization newsletter. However, the name of the elected official may not be referenced in the article, nor may the elected official have his or her signature or byline accompanying the article.

Rosters

Subsection (f) of Regulation 18901 sets out the exceptions to the prohibitions on the sending of mass mailings at public expense. Included in the list of exceptions are roster listings which include the names of elected officers as well as other individuals in the agency, where the name of each individual listed appears in the same type size and typeface. (Regulation 18901(f)(7).) Therefore, the name of a city councilmember, who is a member of an employee organization, may be listed in the organization's membership roster along with the names of all other members of the organization.

Joan Gallo
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I trust that this analysis provides you with some guidance in meeting the new obligations of Proposition 73. If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh

Enclosure



CITY OF SAN JOSE, CALIFORNIA
OFFICE OF THE CITY ATTORNEY

151 WEST MISSION STREET
SAN JOSE, CALIFORNIA 95110
(408) 277-4454

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JOAN R. GALLO
City Attorney

July 21, 1988

DIANE GRIFFITHS
General Counsel
FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 800
Sacramento, CA 95814

RE: Request for Written Advice (Gov. Code § 83114(b))
City of San Jose

Dear Ms. Griffiths:

As the City Attorney for the City of San Jose, I am requesting written advice pursuant to Government Code Section 83114(b) regarding interpretation of Proposition 73's prohibition against mass mailings.

FACTS

Several organizations of City employees are permitted by the City to use the City's mail system to distribute newsletters and other informational materials to other City employees. For example, an organization of City employees who are parents has distributed a newsletter discussing child care issues. Two Councilmembers are members of that organization. Neither Councilmember is an officer of the organization nor an editor of the newsletter.

QUESTIONS

1. Is use of the City mail system included in the prohibition against use of alternative delivery systems to distribute otherwise prohibited mass mailings?
2. Assuming some public funding is involved and the City's mail system will be used to distribute the mass mailing:
 - a. May City departments, i.e., the Police Department or the Library Department, produce and distribute to employees of their departments, mass mailings which refer to elected officials other than in a standard logotype or letterhead?

DIANE GRIFFITHS

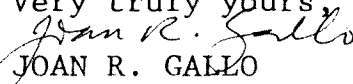
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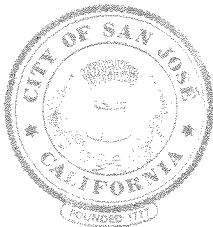
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- c. May a City Councilmember who is an employee organization member write a signed or unsigned article for that organization's mass mailing?
- d. If an employee organization lists its membership, other than in a standard logotype, may it list the names of those members who are councilmembers?

Thank you in advance for your assistance in this matter.

Very truly yours,

JOAN R. GALLO
City Attorney

JRG:MAM:mjw



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OFFICE OF THE CITY ATTORNEY**

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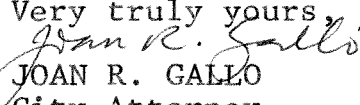
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