



California Fair Political Practices Commission

September 14, 1988

Ms. Teressa K. Lippert
Folger & Levin
100 Green Street
San Francisco, CA 94111

Your Request for Advice
Our File No. A-88-323

Dear Ms. Lippert:

You have requested advice under the campaign disclosure provisions of the Political Reform Act (the "Act").^{1/}

FACTS

The Hotel Council of San Francisco is a non-profit trade association whose membership is composed of hotels in the San Francisco area. The Hotel Council or its members would like to sponsor political meetings with or fundraising events for political candidates in local elections. The meetings or events would be held in the hotel's convention rooms and would be attended by members of the Hotel Council, their employees and guests. Out-of-pocket costs for the meetings are expected to be less than \$500 each. The hotels rent their convention rooms to third parties for convention or banquet use. They also use the convention rooms in ways that are functionally equivalent to the way other businesses use conference rooms in their offices. Because of the hotels' ability to utilize convention rooms for their own business purposes, the hotels' executive and administrative offices often do not include conference rooms.

QUESTION

Will a hotel, which normally rents its convention rooms, be making in-kind contributions on behalf of candidates when it allows the use of its convention rooms to hold political fundraisers? It is anticipated that all the costs related to the fundraisers will remain under \$500.

^{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.

CONCLUSION

A hotel which provides the use of its convention rooms to candidates for fundraising purposes will be making in-kind contributions if the hotel normally charges for the use of the convention rooms.

ANALYSIS

Government Code Section 82015 provides an exception to the term "contribution." It states:

The term "contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising even held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred (\$500) or less.


The Commission has provided that if a corporation makes a room available to a candidate for fundraising purposes and it does not normally charge a fee for the use of the room, the corporation is not making a contribution as long as all costs related to the fundraiser remain under \$500. (Gross Advice Letter, No. A-83-200, copy enclosed.)

However, when a corporation, in this case a hotel, normally charges for the room, the value of the room plus any additional costs must be reported as in-kind contributions.

Please do not hesitate to contact me if you have additional questions concerning this matter.

Sincerely,

Diane M. Griffiths
General Counsel


By: Mary Ann Kvasager
Political Reform Consultant

DMG:MAK:kmt

F P F
FOLGER & LEVIN

ATTORNEYS AT LAW

TELEPHONE (415) 986-2800

TELECOPIER (415) 986-2827

TELEX 880516

AUG 15 1 55 PM 88

100 GREEN STREET

SAN FRANCISCO, CALIFORNIA 94111

LOS ANGELES OFFICE

1900 AVENUE OF THE STARS, 28TH FLOOR

LOS ANGELES, CALIFORNIA 90067

TELEPHONE (213) 556-3700

August 12, 1988

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

Dear Ms. Griffiths:

On behalf of our client, the Hotel Council of San Francisco, and pursuant to Government Code Section 83114, we request that the Fair Political Practices Commission ("FPPC") provide written advice concerning contributions to candidates as regulated by the Political Reform Act of 1974 (the "Act").

For the purposes of this letter, the relevant provisions of the Act are codified in Government Code Section 82015 as follows:

The term "contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred dollars (\$500) or less.

The focus of this advice request is on the term "office" in the context of a hotel.

The Hotel Council of San Francisco is a non-profit trade association whose membership is composed of hotels in the San Francisco area. The Hotel Council or its members would like to sponsor political meetings with or fund raising events for political candidates in local elections. The meetings or events would be held in the hotels' convention rooms and would be attended by members of the Hotel Council, their employees and guests. Out-of-pocket costs for the meetings are expected to be less than \$500 each. (This cost estimate is based on the charges that would be imposed were the hotel hired to provide equivalent refreshments and services in a meeting paid for by a third party, and not on the lower actual out-of-pocket cost to the hotel.)

We are aware that several years ago one of your staff members responded to a telephone inquiry by informally advising a hotel that a conference room would be regarded as an office for purposes of the definition quoted above but that, if a room is ordinarily rented out by a corporation, the value of the room may need to be reported as an in-kind contribution when used for political meetings (see enclosed telephone advice memo). This interpretation, if applied to require hotels to treat all meetings and events of the type described above as political contributions, would create an artificial distinction between hotels and other businesses in a way that we do not believe was intended by the legislature.

Although hotels do rent their convention rooms to third parties for convention or banquet use, they often use the rooms in ways that are functionally equivalent to the way other businesses use conference rooms in their offices. For example, the hotels hold board meetings and other business meetings in the convention rooms. (Of course, no charge is imposed when the hotel uses a convention room in this manner.) Because of the hotels' ability to utilize convention rooms for their own business purposes, the hotels' executive and administrative offices often do not include conference rooms.

We do not believe that the legislature intended that hotels should be treated differently than other businesses with respect to how the cost of political meetings must be reported merely because the only meeting room available in the hotel is a room that is sometimes rented. Such a distinction would raise serious questions of fairness and equal treatment. It would mean that a hotel would have to treat the cost of a political meeting on its premises as a political contribution while other businesses would be allowed to disregard the costs of identical meetings held in conference rooms that are never rented out because of the nature of the business. To avoid such inequities, the definition quoted above should be interpreted to allow hotels to host political meetings costing less than \$500 without having to report the costs as contributions. The \$500 limit on costs is sufficient to prevent abuse by hotels, particularly since cost is based on the fair market value of any refreshments or similar items provided for the meeting.

The issue of whether hotels must treat the costs of such political meetings as political contributions is particularly important in San Francisco where no person or entity may contribute more than \$500 to any candidate in a local general election. (We understand that similar monetary limits will also apply in state elections as a result of the initiatives approved in the June election.) The San Francisco City Attorney's office, which is charged with interpreting the San Francisco ordinance,

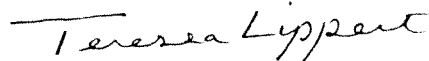
Diane Griffiths
August 12, 1988
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FOLGER & LEVIN

has indicated that it will defer to the FPPC's interpretation of the term "contribution" in this area. As a result, if the term "contribution" is interpreted in a manner which discriminates against hotels in the use of convention/conference rooms, the interpretation will have broader impact than simply calling into play the recordkeeping and reporting requirements of the Political Reform Act of 1974. Other businesses could both host a \$500 meeting in their conference rooms and make a \$500 contribution; hotels would be forced to choose between hosting a meeting and making a monetary contribution. Hotels would thus be materially disadvantaged in the quantity and type of political activity in which they could engage relative to other types of businesses.

For the reasons outlined above, we seek your written confirmation that the term "office" as used in the above-referenced Government Code section may include a hotel convention room otherwise used by the hotel in a manner functionally equivalent to the way other businesses use office conference rooms. Thank you for your consideration.

Very truly yours,



Teresa K. Lippert

TKL:gg
Enclosure
cc: Robert Begley

FOLGER & LEVIN

ATTORNEYS AT LAW

TELEPHONE (415) 986-2800
TELECOPIER (415) 986-2827
TELEX 880516

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Very truly yours,



Teressa K. Lippert

TKL:gg
Enclosure
cc: Robert Begley

7/27/82

TO: [] JEANNE [] JAY
[] LYNN [] BARBARA
[] RICH [] BOB S.
[] HELEN [X] OTHER Susan

FROM: Jeanne

DATE: 8/27/82

[] TELEPHONE ADVICE - SEE BELOW

[] CORRESPONDENCE ADVICE - SEE ATTACHED DRAFT
(IF YOU HAVE ANY COMMENTS, NOTIFY ADVISOR WITHIN 1 DAY)

FILE LOCATION: 82015

INCLUDE IN ADVICE PACKAGE: YES [] NO [X]

CALLER Carol Robertson

REPRESENTING Bonaventure Hotel

PHONE NUMBER: (213) 613-5690

(1) If a corporation invites a candidate to speak to its

QUESTION: employees and provides a conference room and refreshments
is it a reportable in-kind contribution?

(2) If a corporation, at the request of the League of Women
Voters, provides or pays for a room for a League-sponsored
debate, is it a reportable in-kind contribution?

ANSWER: (1) The exception in the definition of "contribution" for
meeting or fundraiser held in home or office is applicable
to corporation so long as the costs of the event are less than
\$500. However, if the room provided is a room the corporation
ordinarily rents out for such activities, the value of the room,
plus any additional costs, should be reported as a in-kind
contribution.

(2) No. The League of Women Voters is a non-partisan organi-
zation. They do not make contributions or expenditures, so

PRIVATE INDUSTRY COUNCIL

OF SAN FRANCISCO, INC.

MEMORANDUM

TO: EUNICE ELTON DATE: AUGUST 16, 1988

FROM: RAYMOND R. HOLLAND



SUBJECT: PROPOSITION 73, THE PIC JOURNAL, AND THE PIC'S ANNUAL REPORT

The front page of the Spring 1988 edition of the **PIC Journal** contains a photograph of Mayor Agnos, a brief description of his early work experience, and a promotion of the impending "Mayor's Summer Jobs Program". The fifth page of that edition contains a story about Mayor Agnos' awards to San Francisco employers on behalf of the Mayor's Committee for the Employment of Disabled Persons. Approximately 7,000 copies of this edition were written, produced, and (on May 2nd of this year) distributed by the PIC's subcontractor, the Public Media Center (PMC). The PMC subcontract is financed with public monies and the distribution (primarily to San Francisco employers) was handled by the U.S. Postal Service.

On June 7th of this year, California voters adopted Proposition 73. While this measure deals primarily with campaign contributions, it also amends the applicable State statute to prohibit publicly-financed mass mailings of editions of the **PIC Journal** such as that just described. That amendment became effective immediately.

Representatives of other Service Delivery Areas in the State have recently contacted this PIC to determine how that edition complies with the interim rules for Proposition 73. My response has been that had that edition been distributed after June 7th, it would not have been in compliance. On July 21st, the PIC distributed the Summer 1988 edition of the **PIC Journal**. Except for a minor and inadvertent violation (in the "President's Report" on the fifth page) of the California Fair Political Practices Commission (FPPC) interim rules (which the PIC received on July 19th), this edition does seem to be in compliance.

The FPPC is now developing regulations to implement this amended statute. In the meantime, the FPPC and the City Attorney's Office have issued the attached advisories concerning how this measure should be interpreted in the interim until those regulations are finally promulgated. As summarized by the City Attorney's Office, they are:

"Mass mailings (such as newsletters or reports) may not be sent at public expense if:

"(1.) sent by an elected official; or

"(2) sent by a governmental agency if the material contains any reference to an elected official by use of his or her name, signature or depiction in any photograph, other than the appearance of the official's name in the standard letterhead or logotype of the agency making the mailing."

"Mass mailings" are temporarily defined as "200 or more substantially similar pieces of mail sent in a calendar month". While it is clear that neither the PIC nor the PMC is an "elected official", "private industry councils", in general, have already been specifically defined as "governmental agencies" by the FPPC for purposes of applying the conflict of interests provisions of California's **Fair Political Practices Act of 1974** to appointed council members.

With respect to the publicly-financed productions and distributions of documents such as the **PIC Journal** and the **PIC's Annual Report**, the FPPC's interim rules are as follows:

"Periodicals, annual reports and other non-essential mailings sent out by governmental entities which are under the direction of elected officers are prohibited if the elected officer's name, signature or photograph appears in the mailing. However, elected officer's names are permitted if included only in the standard letterhead or logotype of the governmental agency making the mailing."

Until the final regulations interpreting Proposition 73 have been promulgated by the FPPC, all editions of both the **PIC Journal** and of the **PIC's Annual Report** ought to evidence strict compliance with these interim FPPC rules because, by virtue of the August 1983 "San Francisco Partnership Agreement", this PIC is effectively under the "shared direction" of the Mayor.

Because the federal **Job Training Partnership Act of 1982** specifically identifies the "Governor" (as opposed to the "State") and the "Chief Local Elected Official" (in San Francisco's case, the "Mayor", as opposed to the appropriate "unit of local government") as some of the essential personalities in this unique experiment in "public-private governance", this will make redaction of certain PIC-related news stories much more difficult, if not impossible. Where it is absolutely necessary to the substance of the story being reported, I suggest that use of the generic terms "the Governor" or "the Mayor" would probably prove to be acceptable to the FPPC if the more-acceptable, alternative use of their appointed agents (e.g., "the EDD", "Deputy Mayor So and So", "the Mayor's Office of Community Development", etc.) would simply not convey the substance of what needs to be communicated.

Obviously, the potential for unwanted (and, perhaps, unintended) censorship here is very great. These interim FPPC rules, if adopted as final regulations without modification, will also frustrate achievement of some of the specific objectives contemplated by Congress in the JTPA statute (e.g., please see the penultimate paragraph, which is now prohibited, on the last page of the spring edition of the **PIC Journal**). Where the effects of federal and of state legislation are in direct conflict, the former is generally deemed to have prevalence over the latter; perhaps, this would have some influence on the final regulations which are being considered by the FPPC.

Please let me know if you have any questions. I am consulting the FPPC representatives for additional temporary and more permanent guidance.

cc: Mayor Agnos
Eileen Maloney, Mayor's Office
Arthur C. Latno, Jr.
Members, PIC Board of Directors
PIC Staff
Herbert Chao Gunther, PMC
Barbara Grob, PMC

City and County of San Francisco:

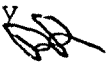
Office of City Attorney



Louise H. Renne,
City Attorney

July 15, 1988

TO: ALL BOARDS, COMMISSIONS AND DEPARTMENT HEADS

FROM: LOUISE H. RENNE
City Attorney
RANDY RIDDLE 
Deputy City Attorney

RE: PROPOSITION 73/MASS MAILINGS

On June 7, 1988, California voters adopted Proposition 73. This measure primarily deals with campaign contributions. However, Proposition 73 also amended California Government Code Section 89001, concerning mass mailings. As amended, Section 89001 provides:

No newsletter or other mass mailing shall be sent at public expense.

This amendment became effective immediately upon the passage of Proposition 73. The Fair Political Practices Commission currently is promulgating regulations to implement this provision. In the interim, the Commission has issued two advice letters, copies of which are attached to this memorandum, that provide some guidance on this issue. We have summarized these letters below.

The Commission has concluded that the amendments made to Government Code Section 89001 do not prohibit all governmental mailings. Rather, the Commission has issued the following general interpretation of Section 89001 as amended: Mass mailings (such as newsletters or reports) may not be sent at public expense if (1) sent by an elected official or (2) sent by a governmental agency if the material contains any reference to an elected official by use of his or her name, signature or depiction in any photograph, other than the appearance of the official's name in the standard letterhead or logotype of the agency making the mailing.

A mass mailing means 200 or more substantially similar pieces of mail sent in a calendar month. Mass mailing does not include a form letter or other mail which is sent in response to an unsolicited request or inquiry.

The Commission has articulated a number of specific exceptions and corollaries to this general rule:

- (1) Property tax assessment notices and tax bills may be sent by the assessor's office, even if the assessor is elected and the notices are signed by the assessor.
- (2) Utility rate change notices and utility bills for municipally-owned utilities may be sent.
- (3) Pay warrants, other warrants and tax refund checks may be sent, even when sent and signed by the State Controller or the State Treasurer, who are elected officers.
- (4) Legal notices, such as notices of land use changes, and all other notices required by law may be sent.
- (5) Tax forms, welfare notices and payments, and other mailings required by law or necessary for the functioning of governmental programs may be sent.
- (6) Responses to unsolicited requests from constituents or other members of the public are permitted. Mass mailings and newsletters to constituents or other members of the public, who have not made unsolicited requests to the elected officer, are prohibited.
- (7) Correspondence between governmental entities or officials in the normal course of governmental business is exempted.
- (8) Press releases sent only to the media are excepted from the mass mailing restrictions.
- (9) Mailings required by statute or court order are permitted.
- (10) Until further notice, the sending of otherwise prohibited newsletters or other mass mailings by means other than by mail is prohibited if the distribution results in the expenditure of public funds.

As explained, the Commission is in the process of adopting regulations which will supersede this interim advice. We will advise you when these regulations are adopted. If you have any questions concerning whether a particular mailing or distribution of materials is prohibited by Proposition 73, you should contact Deputy City Attorney Randy Riddle at 554-4211.

2533g



California Fair Political Practices Commission

July 1, 1988

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State Capitol
Sacramento, CA 95814

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Department of Justice
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Sacramento, CA 95814

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Office of the Legislative Counsel
State Capitol, Room 3021
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Los Angeles, CA 90012

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Paul Valle-Riestra
Staff Attorney
League of California Cities
1400 K Street
Sacramento, CA 95814

Re: Your Requests for Advice
Our File No. A-88-220

Dear Mr. Raye, et al.:

This letter is a follow-up to our previous advice letter, dated June 16, 1988, addressing questions regarding newsletters and other mass mailings sent at public expense. Following dissemination of that letter, we have received several requests for further guidance on this subject.

Mr. Vance Raye, et al.
July 1, 1988
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QUESTIONS

1. May your clients rely on the exceptions contained in 2 California Code of Regulations Section 18901 pending adoption of a superseding regulation?

2. May materials which were printed at public expense prior to the passage of Proposition 73 be sent out (a) at public expense; (b) with postage paid for by private entities; or (c) by means of distribution other than the U.S. Postal Service?

CONCLUSIONS

1. Although reasonable minds may differ regarding the intent of the voters in adopting Proposition 73, pending adoption of a superseding regulation by the Commission, elected officeholders and agencies may rely on the exceptions contained in 2 California Code of Regulations Section 18901.^{1/} Local government agencies should assume that the provisions contained in the regulation now apply to local officials and agencies. The time period referred to in subdivision (a) of Regulation 18901 is no longer applicable. The advice contained in this letter applies only until the Commission adopts a superseding regulation or issues advice which modifies this letter.

2. Pending adoption of a superseding regulation or advice, materials printed at public expense prior to passage of Proposition 73 may be distributed only if (a) any costs of distribution (including by means other than the U.S. Postal Service) are paid for with other than public funds; and (b) the costs of production and printing are reimbursed to the public agency.

FACTS

Many public agencies have already printed or have pending various written communications to members of the public which exceed 200 pieces in number. The Commission has received many telephone inquiries regarding publications which do not appear to fall directly into one of the categories listed in the June 16 advice letter. Some of the circumstances described are as follows:

^{1/} This regulation was last amended January 26, 1983. On April 5, 1988, the Commission voted to repeal the regulation and adopt a new regulation. However, in view of the passage of Proposition 73, the Commission has withdrawn those actions from the Office of Administrative Law and they will not become effective. Hence, the pre-existing regulation remains.

Mr. Vance Raye, et al.
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1. Correspondence from a legislator to members of the public which bears the legislator's name and signature and which was printed, inserted and addressed, but not mailed, prior to the passage of Proposition 73.

2. Community college course catalogues which include the names and photographs of the elected community college trustees and which were printed, but not mailed, prior to the passage of Proposition 73.

3. A periodic agency newsletter which is sent out to persons affected by agency decisions and which contains a column signed by an elected officer. As part of its normal layout, a roster is included of the members of the governing board and other agency officials, some of whom are elected officers.

4. Press releases distributed by an elected officer to more than 200 newspapers and radio and television stations.

5. Newsletters which have been printed and which contain an elected officer's name and photograph. The elected officer is interested in distributing the newsletters by means other than the U.S. Postal Service.

ANALYSIS

As with our previous interim advice letter, this letter does not purport to be a final interpretation of the amendments to Government Code Sections 82041.5 and 89001 made by Proposition 73.^{2/} The purpose of this letter is simply to provide interim guidance to allow certain governmental mailings to proceed until the Commission adopts a regulation superseding current Regulation 18901. A copy of that regulation is attached for your convenience.

Based upon our previous letter and the attachments thereto, we now advise that, on an interim basis, you and your clients

^{2/} These sections are part of the Political Reform Act, which is contained in 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.

Mr. Vance Raye, et al.
July 1, 1988
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and all others similarly situated may rely upon the exceptions contained in Regulation 18901.^{3/}

The attached regulation applies on its face to "state" elected officers and "state" agencies. This regulation was adopted under a prior version of Section 89001, which referred only to "state" elected officers. The limitation to state elected officers and agencies no longer applies. Local elected officers and local agencies must assume that the regulation now applies equally to them.

We stress that this is interim advice only until the Commission meets on July 26, 1988, to consider these advice letters and a possible emergency regulation to supplant the attached version of Regulation 18901.

We have received many questions concerning a few of the exceptions in Regulation 18901. Therefore, we will address them more specifically here:

1. Until further Commission action, press releases sent only to the media are excepted from the mass mailing restrictions. (Regulation 18901(d)(1).)
2. Mailings required by statute or court order are permitted. (Regulation 18901(d)(5).)
3. Newsletters and other mass mailings sent out by an agency, as opposed to an elected officer, are permitted so long as the elected officer's name appears, if at all, only in the agency's standard letterhead or logotype, and there is no other reference (including the signature) to the elected officer in the mailing. (Regulation 18901(c).) In its recent reconsideration of Regulation 18901, the Commission concluded that any photographic depiction of the elected officer is also a prohibited reference to the officer. (See also Gonzalves Advice Letter, No. A-88-021.)

^{3/} The attached regulation was originally adopted October 18, 1977. It was last amended January 26, 1983. Subsequently, in April 1988, the Commission approved further amendments which have been withdrawn from the Office of Administrative Law in light of the passage of Proposition 73. Consequently, those amendments have not, and will not, take effect.

Mr. Vance Raye, et al.
July 1, 1988
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However, an agency newsletter may list the members of governing boards and other agency officers in a standard roster-type listing, so long as the names of elected officers are in the same type size and typeface as others listed. In its recent reconsideration of Regulation 18901, the Commission clarified that such a roster listing in a periodic agency newsletter is considered part of the standard letterhead for that publication.

4. Regulation 18901 also provides that mass mailings sent at public expense qualify as mass mailings only if 200 or more pieces are sent in a calendar month. (Regulation 18901(b).) This has been the Commission's long-standing interpretation. Following passage of Proposition 73, many of you have asked whether the calendar month provision still applies. Again, in the interim until the July 26 Commission meeting, you may rely upon this provision in Regulation 18901.

Under the regulation, the Commission has previously advised that materials which are not mailed through the U.S. Postal Service are not considered mass mailings. (Tom Advice Letter, No. A-84-107.) However, that advice letter indicated that this might be subject to change.

We have been asked whether it is permissible to disseminate by means other than the U.S. Postal Service 200 or more pieces of mail which have been prepared and printed at public expense and which include the names or photographs of elected officers. For example, would dissemination via Federal Express, United Parcel Service, or other private delivery service avoid the prohibition contained in Section 89001?

The Official Title and Summary prepared by the Attorney General (California Ballot Pamphlet, Primary Election, June 7, 1988, at p. 32) projects a cost savings from curtailing these mailings. We do not believe that the voters intended that other, perhaps more expensive, methods of dissemination could be substituted for use of the U.S. Postal Service.

Consequently, in this interim advice, we conclude that sending of otherwise prohibited newsletters or other mass

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mailings by any means which results in expenditure of public moneys for any of the costs of the mailing is not permitted.^{4/}

We have been asked about having private entities pay for the distribution of materials which were prepared and printed at public expense, either before or after the passage of Proposition 73. In the past, we have considered the cost of printing and production of a mass mailing to be a part of the cost of sending it. (Senate Rules Committee Advice Memo, No. T-84-148. See also Regulation 18435.) Therefore, in the interim, we conclude that the costs of printing and production of a mass mailing must be reimbursed if the mailing is to be distributed at private expense and is not otherwise excepted from Section 89001.

This result is particularly clear when the distribution will be paid for by an elected officer's campaign committee. Since the mailing would be sent out at the behest of a candidate, the costs of production and printing of the mailing would be considered non-monetary ("in-kind") contributions from the agency to the committee if not reimbursed. (Regulation 18215. See Bergeson Advice Memo, No. T-84-011.)

Given this result, we see no basis in this interim advice to distinguish between mailings sent out by campaign committees and those sent out by other private entities. In order to be certain that the prohibition on mass mailings sent at public expense is not violated, the entire cost of producing, printing and distributing the publication must be paid from private

^{4/} The verb "sent" is defined more broadly than mailing and includes means of distribution other than the U.S. Postal Service. Webster's Dictionary includes: to deliver; to dispatch by a means of communication; to cause to be carried to a destination; and to convey or cause to be conveyed or transmitted by an agent.

"Public moneys" is defined in Section 85101(e) of Proposition 73 by reference to Penal Code Section 426. That section defines the term as follows:

The phrase "public moneys," as used in the two preceding sections, includes all bonds and evidence of indebtedness, and all moneys belonging to the state, or any city, county, town, district, or public agency therein, and all moneys, bonds, and evidences of indebtedness received or held by state, county, district, city, town, or public agency officers in their official capacity.

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funds if the mailing is not otherwise excepted by the provisions of Regulation 18901. This conclusion is the same regardless of whether the publication was prepared and printed prior to June 8 or after that date.

In summary, our interim advice concerning the five examples used in the facts section of this letter is:

1. and 2. Previously printed correspondence may be sent only if the costs of production and printing, as well as the costs of distribution, are paid by private sources. This will require reimbursement of production and printing costs originally paid for with public funds.

3. A column in a newsletter, signed by an elected officeholder, must be deleted if the newsletter is to be sent at public expense. However, a standard roster listing of the agency's officers is permissible.

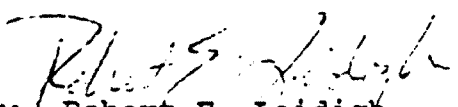
4. Press releases may be distributed solely to the media.

5. Newsletters and other mass mailings containing references to elected officers (other than in the standard letterhead, logotype or roster) may not be distributed at public expense. They may be distributed at private expense only if all public agency costs for production and printing are fully reimbursed.

As previously noted, the Commission will be meeting on July 26 in Sacramento to consider these as well as other issues. As always, public comment will be considered. If you have questions regarding the contents of this letter, you may contact the Commission's Legal Division at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:ld

Enclosure

cc: Other Interested Parties



California Fair Political Practices Commission

June 16, 1988

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Re: Your Requests for Advice
Our File No. A-88-220

Dear Mr. Raye, et al.:

Each of you has telephoned the Commission offices seeking advice on behalf of your respective clients. Your questions are about the amendments to Government Code Sections 82041.5 and 89001 made by Proposition 73, which was adopted by the

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voters on June 7. The amendments deal with the subject of newsletters and mass mailings sent by elected officials at public expense. These amendments became effective and operative on June 8, 1988.^{1/} Hence, the urgency of a quick response to your requests.

QUESTIONS

Your questions are all related, and they will be stated serially.

1. Do the amendments made by Proposition 73 prohibit all governmental mailings consisting of 200 or more pieces of substantially similar mail?

2. If all such governmental mailings are not prohibited, which of the following examples are prohibited by amended Government Code Sections 82041.5 and 89001?

- a. Property tax assessment notices and tax bills.
- b. Utility rate change notices and utility bills.
- c. Pay warrants, other warrants and tax refund checks.
- d. Legal notices, such as notices of proposed land use changes sent to neighboring property owners.
- e. Tax forms, welfare forms and other similarly required mailings.
- f. College class schedules, parks and recreation schedules and college course catalogues.
- g. Periodicals and reports containing items of general information.
- h. Responses to inquiries from constituents or other members of the public.
- i. Newsletters and other unsolicited correspondence to constituents or other members of the public.

^{1/} The bulk of the initiative added Chapter 5, dealing with campaign contribution limitations, to the Political Reform Act (Government Code Section 81000 et seq.). That chapter is expressly made operative on January 1, 1989. (See Section 85104 of Proposition 73.) However, the amendments to the two sections in question here were not a part of Chapter 5 and hence were operative and effective immediately. (Calif. Const., Art. 2, Sec.10(b).)

CONCLUSIONS

1. The amendments made to Government Code Sections 82041.5 and 89001 did not prohibit all governmental mailings of 200 or more pieces of substantially similar mail. The voters did not intend to halt the sending of essential governmental information, warrants, or tax refund checks.

2. a. Property tax assessment notices and tax bills may be sent by the assessor's office, even if the assessor is elected and the notices are signed by the assessor.

b. Utility rate change notices and utility bills for municipally-owned utilities may be sent.

c. Pay warrants, other warrants and tax refund checks may be sent, even when sent and signed by the State Controller or the State Treasurer, who are elected officers.

d. Legal notices, such as notices of land use changes, and all other notices required by law may be sent.

e. Tax forms, welfare notices and payments, and other mailings required by law or necessary for the functioning of governmental programs may be sent.

f. Public colleges' class schedules, parks and recreation schedules and college course catalogues may be sent provided standards discussed below are met.

g. Periodicals, annual reports and other non-essential mailings sent out by governmental entities which are under the direction of elected officers are prohibited if the elected officer's name, signature or photograph appears in the mailing. However, elected officers' names are permitted if included only in the standard letterhead or logotype of the governmental agency making the mailing.

h. Responses to unsolicited requests from constituents or other members of the public are permitted.

i. Mass mailings and newsletters to constituents or other members of the public, who have not made unsolicited requests to the elected officer, are prohibited. This includes mailings involving 200 or more pieces of correspondence which are substantially similar in content (such as a form letter). Correspondence between governmental entities or officials in the normal course of governmental business is exempted.

ANALYSIS

The Political Reform Act (the "Act")^{2/} contains various provisions relating to the electoral process and the conduct of campaigns. Among the Act's stated purposes is that:

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

Section 81002(e).

Chapter 9 of the Act is entitled "Incumbency" and contains two sections. The first eliminates the practice of listing incumbents names first on the ballot. (Section 89001.) The second prohibits elected officers from sending newsletters or other mass mailings at public expense.

Prior to adoption of Proposition 73, the mass mailing prohibition was limited to the time period following the filing of candidacy documents by an incumbent elected officer. Proposition 73 removed that time restriction. As amended, Section 89001 reads:

No newsletter or other mass mailing shall be sent at public expense.

Proposition 73 also revised the existing definition of "mass mailing" contained in Section 82041.5. That section defines a mass mailing as 200 or more pieces of substantially similar mail. It exempts form letters or other mail sent in response to an unsolicited request. Prior to passage of Proposition 73, Section 82041.5 exempted mailings sent in response to any request, even requests made in response to a solicitation by the elected officer. Proposition 73 altered this exemption. As amended, Section 82041.5 reads:

"Mass mailing" means two hundred or more substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry.

^{2/} 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.

Based upon the bare language of these two amended sections, several of you have questioned whether all mass mailings by governmental entities are now prohibited. Others have simply requested that the Commission provide clear guidance as to what is now permitted or prohibited.

Based upon the number of questions which the Commission has been receiving, it is clear that the statutory language is ambiguous, in at least some respects. In construing an ambiguous statutory provision, it is well settled that:

The literal language of enactments may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers.

Amador Valley Joint Union High School Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 245.

To determine the intent of the voters, we must examine the words of the statute in light of the surrounding times and pre-existing legislation and construction of that legislation. (See, Amador Valley Joint Union High School Dist. v. State Bd. of Equalization, supra, at 245 and cases cited therein; In re Marriage of Bouquet (1976) 16 Cal.3d 583, 587; Consumers Union v. California Milk Producers Advisory Bd. (1978) 82 Cal.App.3d 433.)

The voters' pamphlet containing the summary, analysis and arguments is an appropriate place to look for the voters' intent. (Amador Valley Joint Union High School Dist. v. State Bd. of Equalization, supra at 245-246.) The only references to the issue at hand which appeared in the voters' pamphlet are as follows:

Prohibits sending newsletters or other mass mailings, as defined, at public expense.

Official Title and Summary
Prepared by the Attorney
General

Public funds cannot be used by state and local elected officials to pay for newsletters or mass mailings.

Analysis by the Legislative
Analyst

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One thing seems clear from the foregoing quotes: Nothing in them placed the voters on notice that adoption of Proposition 73 would lead to a ban on mailing of legal notices, warrants, utility billings, tax notices, tax refunds, and community college class schedules.

What does appear certain is that the voters were advised that elected officials would be curtailed in their practice of using public funds to send out newsletters or other mass mailings. This is underscored by another passage from the voters' pamphlet:

No candidate may accept any public funds for the purpose of seeking elective office.

Analysis by the Legislative Analyst

This statement in the pamphlet was made in reference to Section 85300, the lead section dealing with campaign contribution limitations contained in the measure. That section provides:

No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office.

(Emphasis added.)

Taking the ballot arguments in favor of Proposition 73 as a whole, the primary thrust of the measure was the prohibition on use of public moneys for the purpose of seeking elective office. Newsletters and similar mass mailings may be used to further the image of an elected officer and thus assist the officer in seeking election to that office or another office. Name recognition is consistently recognized as an important component of electability. The amendments to Sections 82041.5 and 89001 appear to have been included in Proposition 73 to prevent end runs around the prohibition on expending public moneys in the quest for public office.

Prior to its passage by the voters, the proponents of Proposition 73 publicly stated that its provisions were not intended to prevent essential governmental mailings which were not designed to foster the public image of elected officials. At the Commission's July 28, 1987, hearing on Proposition 73 and other campaign reform measures, Assemblyman Ross Johnson, one of the measure's proponents, expressed his intent that most state agency mailings would continue to be permitted because no incumbent elected officer is involved with these publications.

To further clarify their intent, all three proponents have submitted a letter to the Commission expressing their collective intent in authoring the measure. While the Commission is not bound by their statements, we have considered their collective expression of intent in interpreting the pertinent provisions.^{3/} A copy of the proponents' letter is attached.

The proponents indicate that it was their intent to accept and expand upon the Commission's regulation interpreting the prior version of Section 89001. Regulation 18901 has long excluded from the prohibition certain necessary and essential governmental mailings. The proponents indicate that they intended for these exclusions to remain. Of course, they also indicate that they intended to make certain other changes to the prohibition, specifically to make it apply at all times and to prohibit mailings in response to requests solicited by the elected officer.

In order to accomplish what clearly appear to be intended changes, we are considering proposing emergency amendments to Regulation 18901. In the interim, the following advice is being rendered to you and to all others similarly situated. This advice will be presented to the Commission itself for review at its July 26 meeting.^{4/}

1. All mass mailings sent at public expense by governmental agencies are not prohibited. There is no basis to conclude that the voters intended this result.

2. a. Property tax assessment notices and tax bills may be sent. These notices, which have not been prohibited in the past, do not give incumbents an unfair advantage in seeking election.

^{3/} The Commission has the primary responsibility for interpreting and implementing the Political Reform Act, including the additions and amendments made by Proposition 73. (See, Section 83111 and Voters' Pamphlet, Proposition 73, Analysis by the Legislative Analyst.) However, the Commission can look to the expressed intent of the proponents for guidance. (In re Marriage of Bouquet, supra at 588 (considering a bill author's letter as evidence of legislative intent under certain circumstances.))

^{4/} The process for adopting an emergency regulation and, ultimately, a permanent regulation will allow the Commission to receive public input from all interested parties. The Commission's consideration of this advice at its next meeting will also allow for public comment.

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b. The same is true for utility rate change notices and utility bills. The Commission's regulation has always excluded such mailings from the prohibition contained in Section 89001.

c. Pay warrants, other warrants and tax refund checks likewise have been excluded and continue to be excluded from the prohibition.

d. The same is true for legal notices and other mailings required by law or court order.

e. Tax forms, welfare forms and other mailings which are necessary to the functioning of governmental programs likewise have been excluded and continue to be excluded from the prohibition.

f. Community college class schedules, parks and recreation schedules and community college course catalogues are not prohibited as long as the name, signature or photograph of an elected officer is not contained therein, since there is no legal requirement for their inclusion.

g. Periodicals and reports containing items of general interest are prohibited if sent by an elected official or if they contain any reference to an elected official by use of his or her name, signature or depiction in any photograph, other than the appearance of the official's name in the standard letterhead or logotype of the agency making the mailing.

h. Form letters or other mass mailings sent in response to requests from constituents or the public are permitted so long as the requests were not made in response to a solicitation by the elected officer or his or her agency.

i. However, newsletters and other substantially similar correspondence sent to 200 or more constituents or other members of the public are prohibited if not sent in response to unsolicited requests from the addressees.^{5/}

^{5/} Under the Commission's long-standing regulation, the Senate Rules Committee would be permitted to send out its inquiries regarding appointees subject to Senate confirmation. However, the names of members of the committee may only appear in the committee's letterhead and the inquiries may not be signed by any members of the committee.

The Commission's regulation contains a long-standing exclusion for mass mailings sent to other governmental entities in the normal course of business. It is the Commission's belief that these mailings do not reach the members of the public and hence do not directly affect potential voters to the potential benefit of elected officers. These exclusions continue to apply.^{6/}

In summary, Proposition 73 does not ban all governmental mailings. It does prohibit the sending by elected officers of newsletters and certain other unsolicited mass mailings at any time. The previous restrictions were limited to certain time periods. Under the previous restrictions, it also was possible for an elected officer to entice members of the public to request to receive mass mailings on an ongoing basis. Now, members of the public must affirmatively request these mailings on their own, without urging by elected officers or their agencies.

I hope this letter sufficiently responds to your clients' initial questions about these new provisions of the Act. If you have further questions, you should direct your inquiries to the undersigned at (916) 322-5901.

Yours truly,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

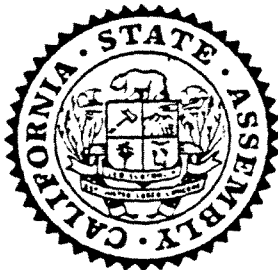
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Enclosure

^{6/} This is in accord with the views expressed by the proponents.

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ASSEMBLYMAN ROSS JOHNSON
CALIFORNIA LEGISLATURE

June 9, 1988

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

Dear John:

One of our intentions in proposing Proposition 73 was to eliminate legislative newsletters and mass mailings by incumbents at public expense. As can be seen from the measure, Section 89001 of the Government Code was amended, which is the last of the two Sections contained in Chapter 9 (commencing with Section 89000) of the Government Code. Chapter 9 is entitled "Incumbency".

The Commission has long defined what constitutes a mass mailing (see Sec. 18901, Title 2, Cal. Code Regs). It was our intention that this existing regulation would simply be expanded (with slight modification to reflect the amendment to Sec. 82041.5 Gov. C. regarding "substantially similar" and "unsolicited" mailings) to be continuously in effect, rather than only limited to the candidate's district when that candidate is seeking elective office.

In this regard, it is worthwhile to note that the commission, over the past years, has consistently given Section 89001 a common sense rather than a literal construction. For example, there is nothing in the definition of mass mailing contained in Section 82041.5 nor in the prohibitions of Section 89001 (as these sections read prior to the approval of Proposition 73) which limits the 200 piece prohibition to "a calendar month" as the existing regulation so construes these provisions. Moreover, a literal reading of Section 89001, as it existed prior

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Mr. John Larson
June 9, 1988
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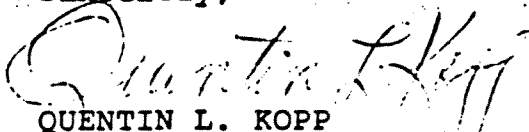
to Proposition 73, would prohibit the sending of a newsletter or mass mailing by an elected official, period. Rather than the commission adopting a literal construction which would have prevented the sending of any newsletter and mass mailing at public expense by an elected officer during specified time periods, the commission, by regulation, construed the phrase "by or on behalf of" to allow the exceptions contained in Subdivision (b) of Section 18901 of the California Code of Regulations. It was our expectation, based on prior FPPC regulations, that the commission would likewise give the amended form of Section 89001 a similar reasonable construction.

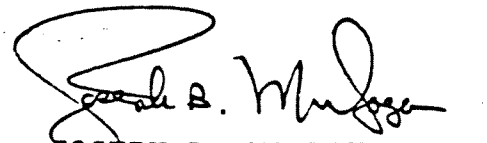
It was not our intention to affect state or local governmental entities sending mailings in the course of their official governmental duties. This authority is not currently within the power of the commission nor is it a matter contemplated by the Political Reform Act.

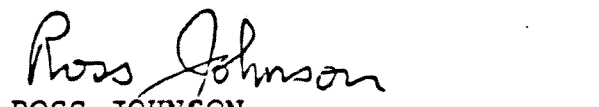
I draw to your attention the ballot analysis by the Legislative Analyst, which stated: "Public funds cannot be used by state and local elected officials to pay for newsletter or mass mailings." It is clear by the Analyst estimate that the measure would save \$1.8 million that only legislative newsletters and mass mailings by incumbents were contemplated. If notices of utility rate increases, ballot pamphlets, community college schedules, or the variety of materials that state and local entities routinely mail on a daily basis also were contemplated, the estimated savings would be substantially higher. As you know, the voters rely on the ballot analysis which in my view reflects our intent. Voters who adopted Proposition 73 are looking to the FPPC for a reasonable and common sense interpretation to effectuate their intent.

I would appreciate discussing this section with you and your staff personally and look forward to getting together to discuss our intent regarding Proposition 73. Thank you for your assistance.

Sincerely,


QUENTIN L. KOPP
Senator, 8th District


JOSEPH B. MONTOYA
Senator, 26th District


ROSS JOHNSON
Assembly Member, 64th District