



California Fair Political Practices Commission

March 6, 1990

Anthony L. Miller
Office of the Secretary of State
1230 J Street
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-90-138

Dear Mr. Miller:

You have requested informal assistance with respect to the mass mailing provisions of the Political Reform Act (the "Act").¹

QUESTION

May the name and signature of the Secretary of State be in the certificate of correctness which is required to be included in the election ballot pamphlet pursuant to Section 88005(d)?

CONCLUSION

The name and signature of the Secretary of State may be included in the election ballot pamphlet in the certificate of correctness, because the certificate is required by law.

FACTS

Prior to the passage of Proposition 73, you were advised that the name and signature of the Secretary of State could appear in the certificate of correctness required by Section 88005(d)

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.

Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

(Miller Advice Letter No. A-88-257, copy enclosed). You have submitted portions of the 1990 sample ballot pamphlet and wish to know if the use of the Secretary of State's name and signature is still appropriate.

ANALYSIS

Section 89001 of the Act provides that "no newsletter or other mass mailing shall be sent at public expense." A mass mailing is defined as two hundred or more substantially similar pieces of mail. (Section 82041.5.) Regulation 18901² clarifies that the purpose of Section 89001 is to prevent elected officers from using public funds to send out newsletters and other mass mailings at public expense. A mass mailing may not be sent at public expense if it contains the name, office, photograph or any other reference to an elected officer affiliated with the agency producing or sending the mailing and is prepared or sent in cooperation, consultation, coordination or concert with the elected officer. (Regulation 18901(a).)

The regulation contains an exception for legal notices or other items sent as required by law in which the use of the elected officer's name, office, title, or signature is necessary in the notice or other mailing. (Regulation 18901(b)(7).) The certificate of correctness required by Section 88005(d) comes within this exception. We have reviewed the proposed format of your certificate and believe that, with one exception, the use of the Secretary of State's name and signature has been limited to what is reasonably required to be included in such a certificate. The one exception is that the Secretary of State's title should not be included in the name of the certificate. This will confirm that, pursuant to our telephone conversation of February 16, 1990, you have now changed the certificate to read "Certificate of Correctness."

The portions of the sample ballot provided contained the title "Secretary of State" in several other places. In our telephone conversation of February 16, those uses were discussed as follows:

1. The title could be used in the letterhead of the general letter describing the contents of the pamphlet and emphasizing the importance of voting. The regulation contains an exception

² A revised version of Regulation 18901 was adopted by the Commission on December 13, 1989, and a statutorily required public comment period expired January 17, 1990. Although the revised version of the regulation is still in the rulemaking process, it represents the policy of the Commission. Therefore, we are advising agencies that they may rely on it. The advice contained in this letter is based upon the revised version of Regulation 18901, a copy of which is enclosed.

permitting use of the elected officer's name in the letterhead of the agency stationery. (Section 18901(b)(1).)

2. The title cannot be used at the end of the letter in place of a signature. (Section 18901(b)(1).)

3. The title must be removed from the outside of the pamphlet, except for the following:

a. It may appear in the return address of the form, since the form is a mailer used in place of an agency envelope. (Section 18901(b)(1).)

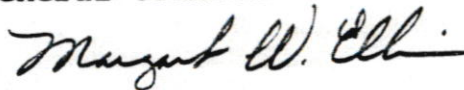
b. It may appear in the postage meter stamp, based upon your representation that this use is required by postal law. (Section 18901(b)(7).)

This will confirm that the modifications provided to us in accordance with the above advice comply with the requirements of Section 89001 and Regulation 18901.

If you have any questions regarding the above, you may contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

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Enclosure