



California
Fair Political
Practices Commission

**SUPERSEDED
IN PART**

March 27, 1990

By: 18215(c)(4)

Honorable Leo McCarthy
Lieutenant Governor
State of California
State Capitol, Suite 1114
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-90-163

Dear Lieutenant Governor McCarthy:

You have requested advice regarding the application of provisions of the Political Reform Act (the "Act")¹ with respect to the use of your name and photograph in advertisements by a private, nonprofit, educational institution.

This letter presents a difficult question concerning application of the contribution limits of Proposition 73. We have given conservative advice, and will provide a copy of this letter to the Commission for review at an upcoming Commission meeting.

QUESTIONS

1. Would the use of your name and likeness in the advertisement violate the mass mailing provisions of Section 89001 of the Act?

2. Would the use of your name and likeness in advertisements paid for by the University of San Francisco be considered a contribution to you by the university?

CONCLUSIONS

1. The use of your name and photograph in the advertisement would not violate the mass mailing provisions of the Act, because the advertisement will not be sent at public expense.

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. We conservatively advise that the proposed advertisements paid for by the University of San Francisco would be considered an in-kind contribution to you by the university.

FACTS

The University of San Francisco, a private, nonprofit institution, has requested permission to use your name, title and photograph in advertisements promoting a program for professional studies. Based upon conversations with your staff, it is our understanding that no public funds will be used to distribute the advertisement. We also understand that no costs of design, production or printing in excess of \$50 will be paid with public funds. However, the university does require that you sign a release before your name and photograph may be used in their advertisement. You wish to know if this use of your name and photograph would violate the mass mailing provisions of the Act or if it might be considered a contribution to you from the university.

ANALYSIS

Mass Mailing

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 (copy enclosed) clarifies that the purpose of Section 89001 is to prevent elected officers from using public funds to send newsletters and other mass mailings at public expense. It provides that 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).)

If public funds are not used to pay costs of design, production, printing, or distribution, the mass mailing restrictions do not apply. Furthermore, Regulation 18901 provides that, if the costs of distribution are not paid with public funds, and if no more than \$50 of public funds are used to pay costs of design, production or printing, the mailing is not considered to be sent at public expense. (Regulation 18901(a)(3).)

² A revised version of Regulation 18901 was adopted by the Commission on December 13, 1989. 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.

Since no public funds will be used to distribute the advertisement, and no costs of design, production and printing exceeding \$50 will be paid with public funds, the proposed advertisement will not be considered to be sent at public expense. Therefore, the advertisement will not violate the mass mailing provisions of the Act.

Contribution

Since the advertisement will be produced and paid for by a private university, you have asked whether it would be considered an in-kind contribution to you.

A contribution is any monetary or nonmonetary payment made for political purposes without full and adequate consideration. (Section 82015; Regulation 18215, copy enclosed.) A payment is made for political purposes if it is received by or made at the behest of a candidate, unless it is clear from the surrounding circumstances that the payment was received or made for personal purposes unrelated to his or her status as a candidate or elected officer. (Regulation 18215(a)(2).) A payment is made at the behest of a candidate if it is made in cooperation, consultation, coordination, or concert with the candidate. (Regulation 18215(b).) For purposes of the Act, an incumbent elected officer is considered a "candidate." (Section 82007.)

We have previously advised that a crime prevention brochure which included the photograph, name and title of an elected officer and which was to be distributed in the elected officer's district constituted an in-kind contribution to the elected officer. (Roos Advice Letter A-85-057, copy enclosed.)

The advertisement at issue here will be produced with your cooperation. It will include your photograph, name and title. As lieutenant governor, the entire state is your "district." You are currently a candidate for reelection and we are within three months of the primary election. Based upon all of these factors, we cannot say that it is clear that the proposed advertisements are unrelated to your status as a candidate or elected officer. Therefore, we conservatively advise that they would be considered an in-kind contribution to you from the university and subject to the contribution limits of the Act. (Section 85300-85307.)

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

Sincerely,

Kathryn E. Donovan
General Counsel

A handwritten signature in cursive script, appearing to read "Margaret W. Ellison".

By: Margaret W. Ellison
Counsel, Legal Division

KED/MWE/aa

Enclosures