



# California Fair Political Practices Commission

May 7, 1990

Betty J. Roby  
Betty Roby & Associates  
701 High Street, Suite 202  
Auburn, CA 95603

Re: Your Request for Informal Assistance  
Our File No. I-90-287

Dear Ms. Roby:

This is in response to your letter requesting assistance concerning the mass mailing restrictions of the Political Reform Act (the "Act").<sup>1/</sup> Since your request does not refer to a specific governmental decision, we are treating your request as one for informal assistance.<sup>2/</sup>

#### QUESTION

What restrictions are imposed on publicly funded mass mailings, such as newsletters, by the Political Reform Act?

#### CONCLUSION

The Act provides that a publicly funded mailing is prohibited, absent application of an express exception, only if all of the following apply: (1) The item is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box; (2) The item sent was either prepared or sent in cooperation, consultation, coordination, or concert with the elected officer who is affiliated with the agency and includes the officer's name, office, photograph, or some other reference to the elected officer; or, the item features any elected officer who is affiliated with the agency which produces or sends the mailing; (3) The costs of distributing the

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<sup>1/</sup> 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.

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

item are paid for with public moneys; or more than \$50 in public money was spent in the design or production of the item and the item was designed or produced with the intent of sending the item;

(4) More than 200 copies of the same or substantially similar items are sent in a single calendar month.

#### DISCUSSION

##### Restrictions on Mass Mailings

In June 1988 Proposition 73 amended Section 89001 of the Act to provide: "No newsletter or other mass mailing shall be sent at public expense." A literal reading of this section led to the conclusion that all mass mailings involving public funds, irrespective of content or purpose, were prohibited by Section 89001. In response to a variety of questions concerning the distribution of tax notices, tax refund checks, community college schedules, sample ballots, and other mass mailings customarily sent by government agencies, the Commission adopted Regulation 18901<sup>3/</sup> to clarify which mailings were permissible and which were prohibited under the Act.<sup>4/</sup>

Regulation 18901(a) provides that a publicly funded mailing is prohibited only if all of the following apply:

(1) The item is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box.

(2) The item sent was either prepared or sent in cooperation, consultation, coordination, or concert with the elected officer who is affiliated with the agency and includes the officer's name, office, photograph, or some other reference to the elected officer; or, the item features any elected officer who is affiliated with the agency which produces or sends the mailing.

(3) The costs of distributing the item are paid for with public moneys; or more than \$50 in public money was spent in the

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<sup>3/</sup> A revised version of Regulation 18901 was adopted by the Commission in December 1989. The regulation will be submitted to the Office of Administrative Law in the near future. Effective January 18, 1990, the Commission began advising on the basis of the language of the new regulation. The issues in this letter have been analyzed under the revised regulation. A copy of the revised regulation has been enclosed.

<sup>4/</sup> The Commission's authority to interpret Section 89001 to avoid the absurd results of its literal application was upheld in Watson v. Fair Political Practices Com., Case No. B042250, Second Dist. Court of Appeal, 90 D.A.R. 1312 (February 6, 1990).

design or production of the item and the item was designed or produced with the intent of sending the item.

(4) More than 200 copies of the same or substantially similar items are sent in a single calendar month.

Regulation 18901(a)(1) only restricts items that are mailed or delivered, by any means, to a person's home, office or post office box. If items are set out for the public to pick up on their own, or are handed out in a public area, the restrictions of the regulation do not apply.<sup>5/</sup>

Moreover, if the item does not include the name, photograph or any reference to an elected official who is affiliated with the agency that produces and distributes the mailing, the item is not subject to the restrictions of the regulation. (Regulation 18901(a)(2).) An elected official is affiliated with an agency if the official is a member, officer or employee of the agency or a subunit (such as a committee) of that agency; has supervisory control over the agency; or appoints any of the members of the agency. (Regulation 18901(c)(1); Riddle Advice Letter, No. A-89-096, copy enclosed.) For example, members of the governing board of the school district are affiliated with the district.

Further, Section 89001 provides that no newsletter or other mass mailing shall be sent at public expense. Regulation 18901(a)(3) specifies that a mass mailing is "sent at public expense" within the meaning of Section 89001 if either the costs of distribution are paid for with public moneys<sup>6/</sup> or more than \$50.00 in public money is paid for costs of design or production, and the design or printing is done with the intent of sending the item. Thus, items which are produced and distributed at private expense are not subject to the restrictions of Regulation 18901.<sup>7/</sup>

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<sup>5/</sup> Please note however, that where an item falls within the restrictions of Regulation 18901, you should be cautious that the item is not redistributed by one of the prohibited means. We would suggest a cover letter be included with any bulk delivery to make clear that the items are not to be redistributed to persons at their home, places of employment or post office box. (Lavagetto Advice Letter No. A-90-199, copy enclosed.)

<sup>6/</sup> Section 85102(e) defines "public moneys" to include 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 evidence of indebtedness received or held by state, county, district, city, town, or public agency officers in their official capacity.

<sup>7/</sup> However, the payment for a mailing by a private entity may be treated as a contribution to a public official. (McCarthy Advice Letter, No. A-90-163, copy enclosed.)

Finally, Regulation 18901 applies only to a "mass mailing" as defined in the Act. "Mass mailing" means over two hundred substantially similar pieces of mail, but does not include mail which is sent in response to an unsolicited request, letter or other inquiry. (Section 82041.5; Regulation 18901(a)(4).) If less than 201 of the same or substantially similar items are sent in calendar month, the regulation would not restrict the mailing. Separate mailings may be counted together if the items sent are substantially similar. "Substantially similar" is defined in Regulation 18901(c)(3) as follows:

(A) Two items are "substantially similar" if any of the following applies:

(i) The items are identical, except for changes necessary to identify the recipient and his or her address.

(ii) The items are intended to honor, commend, congratulate, or recognize an individual or group, or individuals or groups, for the same event or occasion; are intended to celebrate or recognize the same holiday; or are intended to congratulate an individual or group, or individuals or groups, on the same type of event, such as birthdays or anniversaries.

(iii) Both of the following apply to the items mailed:

a. Most of the bills, legislation, governmental action, activities, events, or issues of public concern mentioned in one item are mentioned in the other.

b. Most of the information contained in one item is contained in the other.

Thus, if two mailings, each of less than 200, are substantially similar they will be counted together to determine whether more than 200 items are sent in a calendar month.

Items that are mailed in response to unsolicited requests for information are not counted toward the 201 that equate to a mass mailing. Regulation 18901(c)(4) provides that an otherwise prohibited newsletter or mass mailing is exempted from the restrictions of Section 89001 and Regulation 18901 if it contains only information or material sent in response to an unsolicited specific request. As used in this regulation, a request is unsolicited if it is not requested or induced by the elected officeholder or any third person acting at his or her behest.

(Regulation 18901(c)(4)(A); Alquist Advice Letter, No. I-89-109, copy enclosed.)<sup>8/</sup>

Exceptions

Regulation 18901 sets forth a series of limited exceptions to the prohibition. For example, there are exceptions provided for the inclusion of an elected officer's name in the following types of mailings under certain specified circumstances:

(1) Mailings which include an elected officer's name only in the letterhead or logotype on stationery, forms or envelopes of the agency.

(2) A press release sent to members of the media;

(3) Inter and intra-governmental mailings sent in the normal course of business.

(4) Items sent in connection with the payment or collection of funds by an agency.

(5) Items sent by an agency responsible for the administration of a government program where the item sent is essential to the functioning of the program.

(6) Legally required mailings.

(7) Telephone directories, organization charts, or similar listings or rosters which include the names of elected officers as well as other individuals in the agency.

(8) Announcements of meetings or events.

(9) Agendas or other writings that are required to be made available pursuant to Sections 11125.1 and 54957.5 of the Government Code.

(10) Bills, files, histories, journals, committee analyses, floor analyses, agendas of an interim or special hearing of a committee of the Legislature, or index of legislation, published by the Legislature.

(11) Business cards which do not contain the elected officer's photograph or more than one mention of the elected officer's name.

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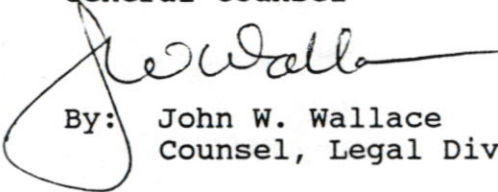
<sup>8/</sup> A person who subscribes to newspapers or other periodicals published by persons other than elected officers shall be deemed to have made unsolicited requests for materials published in those subscription publications. (Regulation 18901(c)(4)(E).)

Most of the above exceptions have additional requirements that have not been noted here. Please refer to the regulation prior to relying upon an exception. These exceptions are narrowly construed.

I trust this letter addresses your concerns. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel



By: John W. Wallace  
Counsel, Legal Division

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Enclosures