



# California Fair Political Practices Commission

May 22, 1991

Francis Chin  
General Counsel  
Metropolitan Transportation  
Commission  
Joseph P. Bort Metro Center  
101 Eighth Street  
Oakland, CA 94607-4700

Re: Your Request for Informal Assistance  
Our File No. I-90-403

Dear Mr. Chin:

This is in response to your letter requesting assistance on behalf of the Metropolitan Transportation Commission concerning the mass mailing restrictions of the Political Reform Act (the "Act").<sup>1/</sup> Since your letter seeks general guidance, we are treating your request as one for informal assistance.<sup>2/</sup> This will confirm our previous telephone advice.

## QUESTION

1. May a newsletter which includes a list of agency events and the names of the agency officials who will be present at the events be distributed with public funds as an announcement of an official agency event?

2. May a monthly announcement notice distributed by the agency at public expense include the names of agency officials?

## CONCLUSION

1. A newsletter which includes a list of agency events and the names of elected officials affiliated with the agency who will

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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).)

be present at the events is subject to the mass mailing restrictions of the Act. Unless the newsletter is published completely independent of elected officials or an exception applies, their names cannot be included. The exception for announcements of official agency events does not apply to announcements included within the body of a newsletter.

2. The exception for announcements of official agency events may apply to meetings listed in the monthly announcement notice if they constitute "official agency events." We have previously advised that this exception does not apply to regularly-scheduled meetings of the agency or to ongoing programs. It is also possible that some events may qualify as constituent meeting notices.

#### FACTS

The Metropolitan Transportation Commission ("MTC") is a regional transportation planning agency created by statute. (Section 66500.) It is governed by a board of appointed commissioners. However, some of the commissioners are also elected officers of other agencies.

As part of MTC's efforts to keep its constituents informed, the commission publishes and circulates a monthly newsletter and also separately sends out notices of meetings to persons on a mailing list. Over 7,000 copies of the newsletter are sent each month. The newsletters do not refer to any of the commissioners, with the exception of the roster listing of the commissioners on the front page.

You have asked whether the announcement of meetings may include the name of elected officers who will chair the meeting or who are in attendance. Further, you have asked whether MTC's newsletter may include an "announcements column" to announce meetings to be chaired or attended by commissioners when those commissioners are also elected officers. This column would include the name of the officials who will chair or be in attendance at the meeting.

#### ANALYSIS

##### 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>

According to Regulation 18901(a)(1), Section 89001 only restricts mass mailings to a person's home, office, place of employment or post office box. If items are displayed for members of the public to pick up on their own, or are handed out in a public area, the restrictions of the regulation do not apply.

In addition, if the item does not include a reference to an elected officer who is affiliated with the agency that produces or distributes the mailing, the item is not subject to the restrictions of the regulation. (Regulation 18901(a)(2).) Thus, commission newsletters are not restricted with respect to references to elected officers not affiliated with MTC or to appointed members who are not also elected officers of another agency.<sup>5</sup>

Regulation 18901 also permits limited use of the name of elected officials who are affiliated with the agency if the item sent has not been prepared or sent in cooperation, consultation, coordination or concert with the elected officer. Under such circumstances, use of the elected officer's name is permitted provided the officer is not featured in the mailing. (Regulation 18901(a)(2)(A); Regulation 18901(c)(2).)

Section 89001 and Regulation 18901 also do not restrict mailings that are not sent or produced 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.

However, if a mass mailing has been prepared or sent at public expense, is delivered to recipients at their home, office, place of employment or post office box, and is sent in cooperation, consultation, coordination or concert with the af-

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<sup>3/</sup> A revised version of Regulation 18901 was adopted by the Commission in December 1989. This advice is rendered pursuant to the revised regulation.

<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., (1990) 217 Cal.App.3d 1059.

<sup>5</sup> An elected officer is "affiliated" with an agency if the officer 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.)

filiated elected officer, any use of the elected officer's name, photograph or office, or any reference to the officer is generally prohibited. (Regulation 18901(a)(2)(B).)

#### Exceptions

Regulation 18901(b) sets forth a series of limited exceptions to the prohibition in Section 89001. One such exception permits the inclusion of an elected officer's name in certain announcements.

(b) Notwithstanding subdivision (a), mass mailing of the following items is not prohibited by Section 89001:

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(9) (A) An announcement of any meeting or event of the type listed in paragraphs 1 or 2.

1. An announcement sent to an elected officer's constituents concerning a public meeting which is directly related to the elected officer's incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend.

2. An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support.

(B) Any announcement provided for in this subdivision (b)(9) shall not include the elected officer's photograph or signature and may include only a single mention of the elected officer's name except as permitted elsewhere in this regulation.

Regulation 18901(b)(9), emphasis added.

Regulation 18901(b)(9) would permit the use of an affiliated official's name in an announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support. This exception was included

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<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.

in the Act to permit, for example, a community college to include the name of an elected officer as a commencement speaker in a graduation program. We have construed this exception narrowly to apply to announcements sent by the agency rather than by individual elected officers and to apply to specific events rather than to ongoing programs.<sup>7</sup> The term "event" is construed as applying to a special event and not as extending to regularly-scheduled meetings of the agency. Because the types of applicable announcements may vary, the exception contains no limits on type size, typeface, type color.

The second type of meeting announcement which may include the name of an elected official affiliated with the agency sending the mailing, is a notice sent by an elected official to his or her constituents announcing a meeting to be held by the elected official. The requirements for this exception are basically as follows:

1. The announcement must be sent to the elected officer's constituents;
2. It must concern a public meeting directly related to the elected officer's incumbent governmental duties;
3. The meeting must be held by the elected officer;
4. The elected officer must intend to attend the meeting.

"Constituents": We have given telephone advice that "constituents" means the voters in the elected officer's district. Basically, we would include anyone in the district, whether or not the person is actually registered to vote. For example, we have given telephone advice that an elected officer could send a mailing using district property rolls, even though this might result in mailings to absentee owners living outside the district.

"Public meeting...directly related to...incumbent governmental duties": There should be some type of assembly providing an encounter between the elected officer and his or her constituents. The announced meeting should be open to the public and must relate to the governmental duties of the elected officer holding the meeting. For example, the meeting may focus on constituent concerns and the need for legislation or other action to remedy them; the elected officer may discuss pending legislation and how it will affect the district; the elected officer may explain the effect of legislation which has been adopted.

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<sup>7</sup> The exceptions to Section 89001 are to be narrowly construed. (Lancaster Advice Letter, No. I-89-026; Clark Advice Letter, No. I-89-031; Kurle Advice Letter, No. A-89-099; copies enclosed.)

"Held by the elected officer": A meeting is held by an elected officer when the elected officer exercises direction and control over the agenda, is responsible for making all physical and financial arrangements for the meeting, and conducts the meeting. A meeting is not held by an elected officer if the elected officer merely participates in an event put on by someone else.

"Intend to attend": The elected officer should intend to be present for all or substantially all of the meeting.

The exception for announcements of official agency events may apply to meetings listed in the monthly announcement notice if they constitute "official agency events." It is also possible that some events may qualify as constituent meeting notices. Please note that the exception set forth in subdivision (b)(9) only permits a single mention of the elected officer's name. If several events or meetings to be listed involve the same elected officer, the listing would have to be structured in a manner which limits the reference to the elected officer to a single mention.

We have not previously been asked whether an announcement covered by the exceptions set forth in subdivision (b)(9) of Regulation 18901 could be included within the text of an agency newsletter. We have given previous advice with respect to incorporation of an otherwise excepted item into the text of another item sent. For example, we have advised that an exception applicable to bills, legislative histories and indices of legislation published by the Legislature is applicable to excerpts of such documents incorporated into the text of another item sent. (Regulation 18901(b)(10); Leidigh Advice Letter, No. A-90-219, copy enclosed.) However, as stated in the Leidigh letter, incorporation of other types of exempted items must be determined on a case-by-case basis. For example, we have advised that an exception applicable to legally-required documents such as ballot pamphlets does not apply to permit an excerpt from a ballot pamphlet to be included in a newsletter. (Regulation 18901(b)(7); Culver Advice Letter, No. A-90-140, copy enclosed.)

Arguably, Regulation 18901 could be interpreted as permitting a meeting announcement excepted by subdivision (b)(9) to be incorporated into the text of a newsletter. However, this would permit inclusion of an elected official's name in the newsletter in formats which would otherwise constitute impermissible "featuring" as defined in subdivision (c)(2). We believe that it is more consistent with the scope of Section 89001 and with our prior practice of narrowly construing exceptions to Regulation 18901 not to construe the exception for announcements to apply to announcements included in the body of an agency newsletter.

I trust that the foregoing has adequately responded to your request for advice as to the applicability of the mass mailing provisions to meeting announcements. If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin  
Acting General Counsel



By: Margaret W. Ellison  
Counsel, Legal Division

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Enclosures