



# California Fair Political Practices Commission

September 14, 1990

Bob Connelly  
Chief Administrative Officer  
Assembly Rules Committee  
State Capitol -- Room 3016  
Sacramento, CA 94249-0001

Re: Your Request for Informal Assistance  
Our File No. I-90-524

Dear Mr. Connelly:

This is in response to your request for advice concerning the application of the mass mailing provisions of the Political Reform Act (the "Act").<sup>1</sup> Specifically, we are providing this advice with respect to descriptions of typical meetings held by Assembly members submitted to us by Mr. Bill Cavala. Because this advice is rendered to assist you in advising members of the Assembly, we are treating this request as one for informal assistance pursuant to Regulation 18239(c)(1) (copy enclosed).<sup>2</sup>

#### PRELIMINARY DISCUSSION

According to information that you have given us, it is common for legislators to hold meetings centered around a single issue or set of issues. The legislator arranges the time and place, invites participants, arranges the meeting schedule, introduces speakers, determines the services or information to be provided, obtains insurance and is present to meet with constituents and discuss legislation.

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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. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

Mr. Bill Cavala of the Assembly staff has furnished descriptions of typical meetings held by members of the Assembly. You wish to know if notices announcing these meetings may be sent to a legislator's constituents pursuant to an exception to the prohibition on mass mailings. (Section 89001; Regulation 18901, copy enclosed.) Specifically, you wish to know if the exception permitting announcements of constituent meetings (Regulation 18901(b)(9)(A)(1.)) is applicable.

Section 89001 states 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.) Applied literally, this section would prohibit all mass mailing involving public funds, irrespective of content or purpose, including such items as tax notices, college schedules, sample ballots and other mass mailings sent by government agencies. Regulation 18901 clarifies that application of the prohibition is limited to items sent which include references to elected officers affiliated with the agency which produces or sends the mailing.<sup>3</sup>

Subdivision (b) of Regulation 18901 sets forth limited exceptions to the general prohibition of Section 89001. We have consistently provided conservative advice in applying these exceptions on the premise that exceptions should be narrowly construed. (Estate of Banerjee (1978) 21 Cal.3d 527,540.)

One of the exceptions included in Regulation 18901 pertains to the sending of constituent meeting notices. (Regulation 18901(b)(9)(A)(1.)) Under this exception, mass mailing of the following is not prohibited by Section 89001:

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.

Any such announcement may not include the elected officer's photograph or signature and may include only a single mention of the elected officer's name, except as otherwise permitted by the regulation. (Regulation 18901(b)(9)(B).)

The meeting notice exception requires that the following elements be present:

1. The announcement must be sent to the elected officer's constituents;

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<sup>3</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.

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.

"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.

#### QUESTIONS AND CONCLUSIONS

With the foregoing in mind, we now review the meeting descriptions presented. The advice provided is prospective only and is not intended as a comment with respect to any past meetings which may have been noticed by an elected officer.<sup>4</sup>

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<sup>4</sup> We have also been provided with examples of meeting notices that have apparently been sent. We note that many of these notices were sent subsequent to the adoption of Regulation 18901. We decline to comment on any specific notice since this would violate our policy of not advising regarding past conduct. (Regulation 18329(b)(8)(A) and (c)(4)(A).)

For purposes of our review, we assume that the member arranges the time and place of the meeting, invites the participants, arranges the meeting schedule, introduces the speakers, determines the services and information to be provided, obtains insurance and is present to meet with constituents and discuss legislation. We further assume that the member is present for all or substantially all of the meeting; the meeting is open to the public; and the notice is only sent to the elected officer's "constituents" as defined above. Our analysis will focus upon whether the event is held by the elected officer and is directly related to the elected officer's incumbent governmental duties.

1. Census awareness workshops: designed to bring community groups that prepare unemployed people together with census bureau for hiring purposes.

Based upon the assumptions set forth above, so long as the elected officer conducts the workshop, this would appear to be a meeting held by the elected officer. However, it isn't clear from the information provided what connection there is between the elected officer's "incumbent governmental duties" and the workshops. Without more information, we cannot advise whether this meeting would fall within the exception.

2. Measles inoculation centers: designed to provide free measles clinics, vaccine to poor population unable to attend clinics which are not open on weekends and are distant from epidemic population. Member sponsored legislation mandating second measles shot and would attend all clinics.

Based upon the assumptions set forth above, so long as the elected officer conducts the clinics, they would appear to be held by the elected officer. However, in order to constitute a "meeting," there must be either some assembly or other opportunity for individuals or groups to "meet" with the elected officer. Since the elected officer sponsored the legislation mandating the vaccinations, the officer's presence at meetings implementing the program would appear to be directly related to his or her legislative program.

3. Malathion meetings: held by members supporting legislation that would restrict administration's ability to spray without environmental reports. Member provides informational material about malathion, status report on legislation.

Based upon the assumptions set forth above, if the member conducts the meeting, it would be held by the elected officer. Providing information and a status report about a legislative program sponsored by the member would appear to be directly related to the member's incumbent governmental duties.

4. Small business conferences: members sponsor with agencies and groups in the private sector to provide information about

state programs of assistance to small business, tax information, new legislation.

We note that the event is cosponsored. However, the fact that the event is cosponsored does not, in and of itself, preclude a determination that the conference is held by the elected officer. Based upon the assumptions set forth above, it is the elected officer, and not the cosponsor, who has direction and control over the agenda and is responsible for making all physical and financial arrangements. So long as the elected officer also conducts the conference, it is held by the elected officer.

The conference would clearly be directly related to the member's incumbent governmental duties if the conference focuses on input for new legislation to be sponsored by the member, legislation currently being carried by the member, legislation carried by the member which was recently passed, or legislation currently before a committee or subcommittee of which the elected officer is a member. However, it is unclear from the information presented how the meeting would directly relate to the member's incumbent governmental duties to the extent that it merely gives private groups an opportunity to conduct seminars of interest to small business. We have previously advised that such conferences do not appear to fall within the exception. (Leslie Advice Letter, No. A-89-521, copy enclosed.)

5. Government day: member sponsors a meeting inviting dozens of government agencies to present their wares to the public. Member also attends, opening a district office booth to accept new ideas for state legislation.

Based upon the assumptions set forth above, so long as the member conducts the meeting, it is held by the member. Providing his or her constituents access to governmental agencies and obtaining ideas for new legislation would appear to be directly related to incumbent governmental duties of the member.

6. Senior fair: member sponsors a meeting inviting agencies that specialize in services to senior citizens to present their wares to seniors. Bills of interest to the senior population are provided and ideas for new bills solicited.

Based upon the assumptions set forth above, so long as the member conducts the meeting, it is held by the member. Assisting his or her constituents to obtain access to governmental agencies, obtaining ideas for new bills to be carried by the member and explaining new or pending legislation to constituents would appear

to be directly related to the member's incumbent governmental duties.<sup>5</sup>

7. Child care: member sponsors a meeting inviting agencies that specialize in child care services to present their wares to young families. Information on child care legislation is provided.

Based upon the assumptions set forth above, so long as the member conducts the meeting, it is held by the member. Providing his or her constituents access to governmental agencies, obtaining ideas for new bills to be carried by the member and explaining new or pending legislation to constituents would appear to be directly related to the officer's incumbent governmental duties.

8. Firearms safety meeting: member calls a meeting of constituents interested in the firearms legislative package.

Based upon the assumptions set forth above, so long as the member conducts the meeting, it is held by the member. Meeting with interested constituents to discuss pending legislation would appear to be directly related to the member's incumbent governmental duties.

9. Mobile home residents: residents are invited to legislative meetings featuring the services of specific interest to them; new legislation is provided; ideas for further legislation are sought.

Based upon the assumptions set forth above, so long as the elected officer conducts the meeting, it is held by the elected officer. Meeting with constituents to discuss new legislation and ideas for future legislation would appear to be directly related to the member's incumbent governmental duties.

Finally, the information from Mr. Cavala indicates that many of the above meetings are similar--on a smaller, localized scale--to legislative hearings held in Sacramento. For example, an interim hearing on common interest subdivisions held by the As-

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<sup>5</sup> We have previously advised that a notice of a senior fair was not within the exception because the fair was an "informational event." (Eaves Advice Letter, No. I-89-189, copy enclosed.) We have subsequently determined that the notice exception is more appropriately analyzed as set forth herein. However, events must be analyzed on a case-by-case basis to determine whether they are the type of event that may be announced using the exception for constituent meetings. Our assessment of the senior fair described, subject to the assumptions set forth, is not intended to be determinative with respect to other senior fairs which may be structured differently and in which the elected officer's involvement may vary.

sembly Housing Committee may be duplicated in various districts that have a high density of residents living in such developments.

The similarity to legislative hearings noted by Mr. Cavala coincides with our general interpretation of the constituent meeting exemption. The elected officer is present and in charge of the meeting. The elected officer exercises direction and control over the agenda and is responsible for making the physical and financial arrangements for the meeting. The meeting relates to the member's incumbent governmental duties.

I trust that the foregoing has adequately responded to your request for advice as to the applicability of the constituent meeting exemption to announcements of the types of events set forth. 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