



# California Fair Political Practices Commission

SUPERSEDED IN PART  
BY 1998 AMENDMENTS TO  
REGULATION 18530

September 19, 1990

Sarah Reynoso  
City of Berkeley  
Office of City Attorney  
Civic Center Building  
2180 Milvia Street  
Berkeley, CA 94704

Re: Your Request for Advice  
Our File No. A-90-555

Dear Ms. Reynoso:

This letter confirms the telephone advice provided to your office on August 30, 1990, regarding the mass mailing restrictions of the Political Reform Act (the "Act").<sup>1/</sup>

You stated in your letter that the Berkeley city charter requires that the city clerk publish all the materials submitted by a candidate for the candidate's statement in the ballot pamphlet. This includes a photograph of the candidate. The charter does not distinguish incumbents from challengers with respect to candidate's statements.

Section 89001 of the Act provides: "No newsletter or other mass mailing shall be sent at public expense." Regulation 18901,<sup>2/</sup> which was adopted to clarify the scope of the prohibition, provides that a mailing is prohibited only if all of the following apply:

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

<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> A revised version of Regulation 18901 was adopted by the Commission in December 1989. Effective January 18, 1990, the Commission began advising on the basis of the language of the new regulation. A copy of the revised regulation has been enclosed.

purposes of this subdivision (a)(1), the item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.

(2) The item sent either:

(A) Features an elected officer affiliated with the agency which produces or sends the mailing, or

(B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer;

(3)(A) Any of the costs of distribution is paid for with public moneys; or

(B) Costs of design, production, and printing exceeding \$50.00 are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this regulation.

(4) More than two hundred substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b);

Regulation 18901(a).

In addition, Section 85300 provides an additional restriction on the use of public funds:<sup>3/</sup>

No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office.

---

<sup>3/</sup> "Public moneys" is defined 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. (Section 85102(e); Penal Code Section 426.)

The purpose of these restrictions is to eliminate the potential unfair advantage which such use of public funds might provide to an incumbent during the election period. (Section 81002(e).)

However, the Commission has provided an express exception for legal notices or other items sent as required by law. (Regulation 18901(b)(7).) In addition, the Commission has expressly recognized the special status of candidate statements in sample ballots in the context of Section 85300.

Regulation 18530 (copy enclosed) provides:

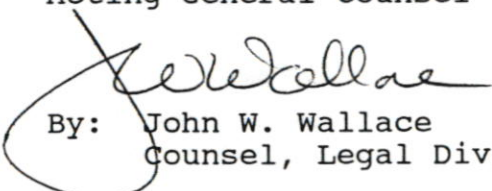
For purposes of Government Code Section 85300, the phrase "for the purpose of seeking elective office" shall not include expenditure of public funds for the production and dissemination of candidate statements for all candidates for the same office pursuant to Elections Code Section 10012.

In light of Regulation 18530, we conclude that the production and dissemination of the Berkeley Ballot Pamphlets with candidate statements and photographs is permissible under the Act. Please note, however, that this conclusion is limited to the facts of your letter. Thus, other similar mailings must be reviewed on a case-by-case basis.

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,

Scott Hallabrin  
Acting General Counsel

  
By: John W. Wallace  
Counsel, Legal Division

SH:JWW:dg

Enclosures