



California Fair Political Practices Commission

October 30, 1990

Anthony J. Taormina
Executive Director
Port of Hueneme
Oxnard Harbor District
P.O. Box 608
105 E. Port Hueneme Road
Port Hueneme, CA 93044-0608

Re: Your Request for Informal Assistance
Our File No. I-90-634

Dear Mr. Taormina:

This is in response to your letter requesting assistance on behalf of the Oxnard Harbor District concerning the mass mailing restrictions of the Political Reform Act (the "Act").^{1/} Since your request does not refer to a specific governmental decision, we can only provide the following informal guidelines.^{2/}

QUESTION

When is it permissible to include names of elected commissioners in newsletters distributed by Oxnard Harbor District?

CONCLUSION

Absent some other specific exception, the names and positions of the commissioners may be included in the district's newsletter only in the letterhead or logotype of the newsletter or, alternatively, in a roster listing printed in the newsletter.

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

FACTS

You are the Executive Director of the Oxnard Harbor District (the "district"). The district is governed by a 5-member board of elected harbor commissioners. The district distributes a newsletter. You have asked what restrictions are placed on the use of the names and titles of the elected commissioners.

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^{3/} to clarify which mailings were permissible and which were prohibited under the Act.^{4/}

Regulation 18901(a) 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 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

^{3/} 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.

^{4/} 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.

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).

Transmission

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.^{5/}

Inclusion of a Reference to an Elected Officer

Moreover, if the item does not include the name, photograph or any 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).) 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.) District newsletters are not restricted

^{5/} 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.)

with respect to references to nonaffiliated elected officers or to persons who are not elected officers.

However, the analysis does not end with a determination of affiliation. It must also be determined whether the mailing is prepared or sent in cooperation, consultation, coordination or concert with the elected officer. If the mailing has been prepared or sent in cooperation, consultation, coordination or concert with the elected officer, any use of the elected officer's name, photograph or office, or any reference to the officer is prohibited. (Regulation 18901(a)(2)(B).)

If the mailing has not been prepared or sent in cooperation, consultation, coordination or concert with the elected officer, use of the elected officer's name is permitted provided the officer is not featured in the mailing. (Regulation 18901(a)(2)(A).) An elected officer is "featured" in a mass mailing if he or she is singled out for attention of the reader by use of his or her signature, inclusion in any photograph, or the manner of display of his or her name or office in the layout of the document such as by headlines, type size, or typeface. (Regulation 18901(c)(2).)^{6/}

Public Moneys

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^{7/} 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.

Mass Mailings

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

^{6/} For example, even if your newsletters are produced completely independent of the affiliated elected officers, and their photographs still could not be included and their names could not be included in headlines or set in bold-fore type.

^{7/} 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.

other inquiry. (Section 82041.5; Regulation 18901(a)(4).) If less than 201 of the same or substantially similar items are sent in a calendar month, the regulation would not restrict the mailing.

Separate mailings may be counted together if the items sent are substantially similar.^{8/} 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. You stated that different district newsletters are targeted at different audiences. So long as the newsletters are not substantially similar, they will not be counted together under the regulation.

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 officer or any other person acting at his or her behest. (Regulation 18901(c)(4)(A); Alquist Advice Letter, No. I-89-109, copy enclosed.)

Exceptions

Regulation 18901(b) sets forth a series of limited exceptions to the prohibition in Section 89001.

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

(1) Any item in which the elected officer's name appears only in the letterhead or logotype of the stationery, forms (including "For Your Information" or "Compliments of" cards), and envelopes of the

^{8/} Two items are "substantially similar" if the items are identical, except for changes necessary to identify the recipient and his or her address; 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; or, most of the bills, legislation, governmental action, activities, events, or issues of public concern mentioned in one item are mentioned in the other and most of the information contained in one item is contained in the other. (Regulation 18901(c)(3).)

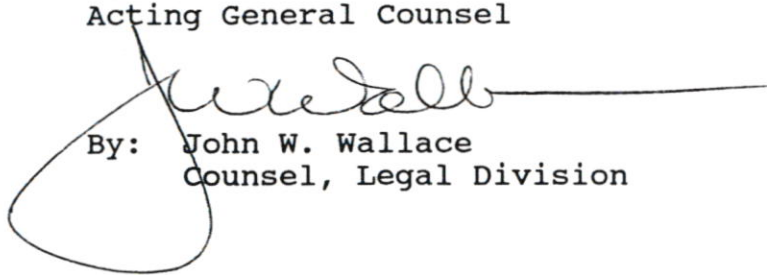
agency sending the mailing, or of a committee of the agency, or of the elected officer, or in a roster listing containing the names of all elected officers of the agency. In any such item, the names of all elected officers must appear in the same type size, typeface, type color, and location. Such item may not include the elected officer's photograph, signature, or any other reference to the elected officer, except as specifically permitted in this subdivision (b)(1) or elsewhere in this regulation.

Thus the exception in Regulation 18901(b)(1) would permit your newsletter to be circulated provided the elected officer's name appears only in the letterhead or logotype of the stationery, forms, and envelopes of the agency sending the mailing, or of a committee of the agency, or of the elected officer, or in a roster listing containing the names of all elected officers of the agency.

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

Sincerely,

Scott Hallabrin
Acting General Counsel



By: John W. Wallace
Counsel, Legal Division

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Enclosures