



# California Fair Political Practices Commission

December 12, 1990

Robert Owen  
Rutan and Tucker  
611 Anton Boulevard  
P.O. Box 1950  
Costa Mesa, California 92628-9990

Re: Your Request for Confirmation of  
Telephone Advice  
Our File No. I-90-704

Dear Mr. Owen:

This is in response to your request for confirmation of telephone advice provided to you concerning the mass mailing restrictions of the Political Reform Act (the "Act").<sup>1</sup> Because your request is a general inquiry, we consider your request to be one for informal assistance.<sup>2</sup>

## QUESTION

Is it permissible to mention a city council as a body when the members of the city council give editorial input into the contents of a city newsletter?

## CONCLUSION

A city newsletter which includes "city council" in the body of the newsletter does not violate the mass mailing restrictions of the Act. A reference to the "city council" is not a reference to individual councilmembers.

## FACTS

Members of a city council have given editorial input into the contents of a city newsletter. The names of the council members

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<sup>1</sup> Government Code Section 81000-91015. All statutory references are to the Government Code unless otherwise indicated. 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 18239(c).)

do not appear in the newsletter, but the city council as a body is referenced.

ANALYSIS

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 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 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

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<sup>3</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.

<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.

(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).

If an 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); Taormina Advice Letter, No. I-90-634, copy enclosed.) 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, however. (Regulation 18901(a)(2)(B) emphasis added.)

On the basis of the facts you provided, a city newsletter is not restricted with respect to references to "city council" as a body even though city council members give editorial input into the contents of a city newsletter. A general reference to "city council" is not a reference to individual councilmembers.

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: Luisa Menchaca  
Counsel, Legal Division

SH:LM:aa  
Enclosures