



# California Fair Political Practices Commission

October 28, 1991

Paul R. Curry, Sergeant  
Legislative Liaison  
San Bernardino County  
Sheriff's Department  
655 East Third Street  
San Bernardino, CA 92415-0061

Re: Your Request for Informal Assistance  
Our File No. I-91-475

Dear Sergeant Curry:

This is in response to your request for confirmation of telephone advice provided to you on behalf of the San Bernardino County Sheriff's Department regarding the mass mailing restrictions of the Political Reform Act (the "Act").<sup>1</sup> Since you are requesting general guidance with respect to the San Bernardino County Sheriff's Department mailing policies, we are treating your request as one for informal assistance.<sup>2</sup>

This letter confirms that your letter dated October 10, 1991, accurately summarizes our discussions of September 30, 1991. As I advised on that date, Section 89001 provides that no newsletter or other mass mailing shall be sent at public expense. However, Section 89001, as interpreted by Regulation 18901, has not been interpreted to preclude all publicly funded mailings.<sup>3</sup>

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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).)

<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.

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

(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).

Thus, Section 89001 only restricts items that have the following characteristics:

1. The items 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.

2. The item either features an elected official affiliated with the agency, or contains the name, office or title of an

elected official who has acted in cooperation, consultation, coordination or concert with the agency in producing or distributing the item. (Regulation 18901(a)(2)(A) and (B).) 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).) 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).)

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).)

3. The costs of the item's distribution are paid for with public moneys,<sup>4</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. (Regulation 18901(a)(3).)

4. The item is distributed as a "mass mailing." "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 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.

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).) 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.)<sup>5</sup>

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<sup>4</sup> "Public money" includes 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. (See, Section 85102(e).)

<sup>5</sup> A person who subscribes to newspapers or other periodicals published by persons other than elected officers shall be deemed to have made unsolicited requests for materials published in those subscription publications. (Regulation 18901(c)(4)(E).)

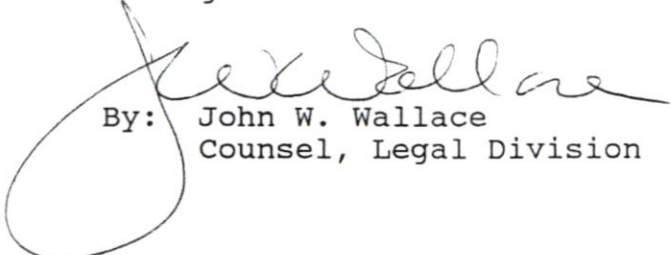
Regulation 18901 also sets forth a series of limited exceptions to the prohibition. For example, items in which the elected officer's name appears only in the letterhead or logotype of the stationery, forms, and envelopes of the agency sending the mailing, or of a committee of the agency, or of the elected officer, or in a roster listing containing the names of all elected officers of the agency, provided the names of all elected officers appear in the same type size, typeface, type color, and location. (Regulation 18901(b)(1).)

Moreover, intra-agency communications sent in the normal course of business to employees, officers, deputies, and other staff are also exempted from the restrictions of the regulation. (Regulation 18901(b)(4).) You have asked whether intra-agency communications sent in the normal course of business to employees, officers, deputies, and other staff may also be sent to unpaid staff members. You indicated in our conversation that your reserve police officers, citizen patrol officers, and others working with salaried law enforcement officers require the same level of training and information dissemination as salaried employees. You stated that the unpaid staff use agency equipment and vehicles and perform general law enforcement duties, many times independent of salaried officers. In light of these facts, we conclude that intra-agency communications sent in the normal course of business to employees, officers, deputies, and other staff may also be sent to unpaid staff and will still be exempted from the restrictions of the Regulation 18901.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.<sup>6</sup>

Sincerely,

Scott Hallabrin  
Acting General Counsel

  
By: John W. Wallace  
Counsel, Legal Division

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Enclosure

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<sup>6</sup> Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.