



# California Fair Political Practices Commission

November 14, 1991

Linda P. Bunch  
Campaign Disclosure Filing Officer  
County of San Diego  
Registrar of Voters  
5201 Ruffin Road, Suite 1  
San Diego, CA 92123-1693

Re: Your Request for Advice  
Our File No. A-91-492

Dear Ms. Bunch:

This letter is in response to your request for advice regarding the mass mailing provisions of the Political Reform Act (the "Act").<sup>1</sup>

## QUESTION

Does the proposed redistricting announcement postcard prepared by the County of San Diego comply with the mass mailing provisions of the Act?

## CONCLUSION

As drafted, the proposed redistricting announcement postcard prepared by the County of San Diego complies with the mass mailing provisions of the Act.

## FACTS

The Registrar of Voters of the County of San Diego has drafted language to be included in a postcard which will be sent to residents of the county. This postcard will appraise residents of the county of pertinent changes in the boundaries of their respective supervisorial districts.

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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.

You are the campaign disclosure filing officer for the County of San Diego. You have included with your request for advice a copy of the proposed language to be used for this mailing which reads as follows:

N O T I C E

Due to the required realignment of the County Board of Supervisor boundaries following the 1990 census, you are no longer in Supervisorial District \_\_\_ and represented by Supervisor \_\_\_\_\_. Effective November 1, 1991, your residence address is now included in Supervisorial District \_\_\_ and is represented by Supervisor \_\_\_\_\_.

Once Federal and State redistricting plans are implemented, you might also have a change of representation in Congressional, State Senate, and State Assembly Districts. If these changes affect your residence, they will appear in your sample ballot.

If you have questions about your representatives or districts call the Registrar of Voters at 694-3201.

ANALYSIS

As amended by Proposition 73, Section 89001 of the Act provides that no newsletter or other mass mailing shall be sent at public expense. A mass mailing consists of over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. (Section 82041.5.)

A literal reading of this section would lead to the conclusion that all mass mailings involving public funds, irrespective of content or purpose, were prohibited by Section 89001. In response to 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 to clarify which mailings were permissible and which were prohibited under the Act.<sup>2</sup> (Ceniceros Advice Letter, No. A-90-570.)

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<sup>2</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 Commission (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).

You propose to deliver these postcards to the recipients at their residences. Therefore, assuming that the mailing will consist of more than 200 pieces, the prohibitions in Regulation 18901 would apply and the postcard may not feature an elected officer affiliated with the County of San Diego which is producing and sending the mailing.

A public official who is "affiliated with the agency" may not be featured by inclusion of his name within the text of a mass mailing sent at public expense. An elected officer is "affiliated with the agency" if the elected officer is a member, officer, or employee of the agency, or of a subunit thereof such as a

committee, or has supervisory control over the agency, or appoints one or more members of the agency. (Regulation 18901(c)(1).) Members of the board of supervisors are affiliated with the county. (Regulation 18901(c)(1); Riddle Advice Letter, No. A-89-096; Taormina Advice Letter, No. I-90-634.)

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).) Your facts indicate that the card was prepared by the registrar of voters to inform the public. There is no indication that the mass mailing has been prepared in cooperation, consultation, coordination or concert with the members of the board of supervisors. Therefore, this prohibition would not apply.<sup>3</sup>

When a mass 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 affiliated with the agency is "featured" in a mass mailing if the item mailed includes the elected officer's photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color. (Regulation 18901(c)(2).)

The sample postcard you have submitted for our consideration informs the public of changes in the boundaries of supervisorial districts and includes a space where you propose to include the name of the supervisor for the particular district. This mention of the supervisor is not prohibited so long as the name of the supervisor is not "featured" in the postcard. If the type size and typeface used for the supervisor's name is consistent with that of the surrounding text, the name would not be featured and inclusion of the name would not be prohibited.

Accordingly, we conclude that the postcard you have submitted for our consideration is in compliance with the provisions of the Act.


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<sup>3</sup> Our conclusion would be different if there were facts to indicate that the mass mailing has been prepared in cooperation, consultation, coordination or concert with the members of the board of supervisors.

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.<sup>4</sup>

Sincerely,

Scott Hallabrin  
Acting General Counsel



By: Blanca M. Breeze  
Counsel, Legal Division

SH:BMB:bb

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<sup>4</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.