



California Fair Political Practices Commission

February 4, 1992

Barbara Milman
Chief Counsel
Assembly Rules Committee
State Capitol, Room 3016
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Your Request for Informal Assistance
Our File No. I-91-567

Dear Ms. Milman:

This is in response to your letter requesting advice concerning the campaign provisions of the Political Reform Act (the "Act").¹ Since your questions are general in nature and you have not named a specific elected official on whose behalf you have requested this advice, we can only provide the following informal responses to your questions.²

QUESTION

In light of reapportionment who are assemblymembers' constituents for purposes of the mass mailing restrictions of the Act?

CONCLUSION

Persons residing or doing business in the elected officer's existing district continue to be the officer's constituents for purposes of the exception in Regulation 18901(b)(9)(A)(1) until the next election. In addition, during the interim period after

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).)

reapportionment and before the November elections, any residents in geographic territory which has been shifted to the district for which the assemblymember qualifies as an incumbent under Elections Code Section 10212 are also the assemblymember's constituents.

DISCUSSION

Section 89001 states that "no newsletter or other mass mailing shall be sent at public expense." A mass mailing is defined as two hundred or more substantially similar pieces of mail. (Section 82041.5.) Applied literally, this section would prohibit all mass mailing involving public funds, irrespective of content or purpose, including such items as tax notices, college schedules, sample ballots and other mass mailings sent by government agencies.

Regulation 18901 was adopted to clarify that application of the prohibition is limited to specific types of mailings.³ 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

³ 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.

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, Regulation 18901 provides a series of limited exceptions to the prohibition. For example, Regulation 18901(b)(9)(A)(1) provides that a mass mailing of the following is not prohibited by Section 89001:

An announcement sent to an elected officer's constituents concerning a public meeting which is directly related to the elected officer's incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend.^[4]

(Emphasis added.)

The purpose of the prohibition in Section 89001 was to eliminate the potential unfair advantage which mass mailings featuring an incumbent might provide to an incumbent during the election period. (Section 81002(e).) The basis for the exceptions in Regulation 18901(b) was to ensure that officials would be able to carry out the duties associated with their offices. The "public meeting" exception permits the use of public funds to notify the official's constituents of meetings in the community directly related to the officer's incumbent governmental duties.

You have asked who will be considered the "constituents" of an assemblymember for purposes of this exception during the period between the adoption of a reapportionment plan and the November 1992 elections.⁵ The term "constituents" was not defined in Regulation 18901. We have advised in the past that "constituents"

⁴ Any such announcement may not include the elected officer's photograph or signature and may include only a single mention of the elected officer's name, except as otherwise permitted by the regulation. (Regulation 18901(b)(9)(B).)

⁵ As you correctly point out in your letter requesting assistance, the other exceptions to the mass mailing restrictions of the Act are not contingent on the audience being limited to the officer's constituents.

means the persons residing or doing business in the elected officer's district. (Connelly Advice Letter, No. I-90-524.)

Additionally, Webster's New World Dictionary (1988) defines "constituent" as "a person who appoints another to act as agent or representative." Black's Law Dictionary (1979) defines "constituent" as one "who gives authority to another to act for him...It is also used in the language of politics as a correlative to 'representative,' the constituents of a legislator being those whom he represents and whose interests he is to care for in public affairs; usually the electors of his district."

Review of the pertinent law seems to suggest alternate interpretations. For example, in situations where a legislator's district has been redistricted but the legislator leaves office prior to the next election, the voters that initially elected the legislator would vote to fill the legislator's seat in the special election. The new district would be applicable only after the next general election. (Sloan v. Donoghue (1942) 20 C.2d 607; Legislature v. Reinecke (1973) 10 C.3d 396.)

Conversely, in our telephone conversation of January 30, 1992, you pointed out that Elections Code Section 10212, which provides rules for determining who will be able to claim the title "incumbent" on the election ballot, may provide guidance with respect to the interpretation of Section 89001. In Friends of Assemblywoman La Follette v. Superior Court (1982) 134 Cal.App.3d 832, the court interpreted the section as follows:

The construction we place on the statute means that each resident in California will continue to be serviced, until the voters make a choice in the 1982 General Election, by the representative in the State Assembly who was selected at the 1980 General Election by voters in the district as it was defined. In addition, residents in geographic territory which has been shifted to a new and different assembly district may be serviced by the representative who qualifies as an incumbent under Elections Code section 10212.^[6]

Election Code Section 10212 and interpretive case law does not control the interpretation of the provisions of the Act.

⁶ The court stated that "servicing" referred to "responding to the needs of residents, being of service to residents in connection with problems with State government, providing residents with copies of bills and background on legislation of interest, coordinating school tours of Sacramento and the capitol and providing residents with information on consumer issues, landlord-tenant information, womens' rights, auto repair and contractors."

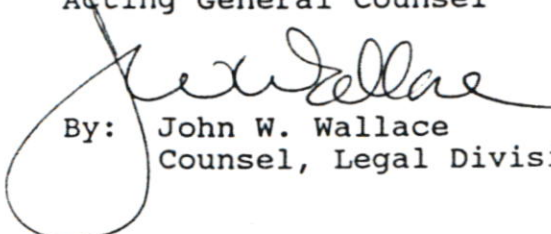
Section 81003 states that "this title should be liberally construed to accomplish its purposes." (In re Barnhart (1980) 105 Cal.App.3d 264.) Section 81013 provides: "Nothing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title. If any act of the Legislature conflicts with the provisions of this title, this title shall prevail."

However, since the purpose of the exception in Regulation 18901(b)(9)(A)(1) is to permit an elected officer to send meeting notices to persons that the officer represents, we believe that the case is analogous to the question presented here. Consequently, we conclude that the persons residing or doing business in the elected officer's existing district continue to be the officer's constituents for purposes of the exception in Regulation 18901(b)(9)(A)(1) until the next election. In addition, to avoid uncertainty in the service of the population of California during the interim period after reapportionment and before the November elections, any residents in geographic territory which has been shifted to the district for whom the assemblymember qualifies as an incumbent under Elections Code Section 10212 are also the assemblymember's constituents.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.⁷

Sincerely,

Scott Hallabrin
Acting General Counsel


By: John W. Wallace
Counsel, Legal Division

SH:JWW:aa

⁷ 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.