



# California Fair Political Practices Commission

January 29, 1992

John R. Calhoun  
City Attorney  
333 West Ocean Boulevard  
Long Beach, CA 90802

Re: Your Request for Advice  
Our file No. A-92-043

Dear Mr. Calhoun:

This letter is in response to your request for advice and confirms the telephone advice provided to you on or about January 3, 1992, on behalf of Councilmember Tom Clark regarding the mass mailing provisions of the Political Reform Act (the "Act").<sup>1</sup>

This letter confirms that your letter of January 14, 1992, accurately summarizes the advice provided to you with respect to the mass mailing of a series of documents to the councilmember's constituents.

### QUESTIONS

1. Under the provisions of the Act, may a mass mailing contain an elected official's name and address in the return address on the outside "envelope" portion of a fold-over document?
2. Under the provisions of the Act, may a mass mailing include an elected official's name and address on a detachable postcard type request for additional information?
3. Does reference to the "fourth district" in a mass mailing violate the provisions of the Act.

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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.

### CONCLUSIONS

1. The use of an elected official's name and address in the return address on the outside "envelope" portion of a fold-over document does not violate the provisions of the Act.
2. The mass mailing provisions of the Act do not prohibit the use of an elected official's name and address on a detachable postcard type request for additional information.
3. Reference to the "fourth district" is not a reference to an elected official and is permissible under the mass mailing provisions of the Act.

### FACTS

City of Long Beach Councilmember Tom Clark, who represents the city's fourth district, proposes to send to his constituents a mass mailing consisting of several items of informational materials regarding city activities, including an announcement of a "clean sweep" program for the fourth district which involves the pick up of unusual and oversized items of rubbish which are normally not collected as part of the regular city household refuse service. On January 22, 1992, you advised me that Councilmember Clark has taken out nomination papers and expects to run for reelection to his council seat.

You are the city attorney for the City of Long Beach. In that capacity, you seek our advice to determine whether Councilmember Clark's name and return address may be included on the outside fold-over portion of the document which serves as the "envelope" part of the document as well as on a detachable postcard type section of the document which the recipients would fill out and mail back to the councilmember's office at their own expense if they wish to request information on any of the subjects indicated in that detachable portion of the document.

### ANALYSIS

Section 89001 prohibits mass mailings at public expense. "Mass mailing" means more than 200 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.)

Regulation 18901(a) interprets Section 89001 to prohibit a mass mailing only if all of the following criteria are met:<sup>2</sup>

(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<sup>3</sup> 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.

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<sup>2</sup> The Commission's authority to interpret Section 89001 to avoid absurd results was upheld in Watson v. Fair Political Practices Comm. (1990) 217 Cal.App.3d 1059.

<sup>3</sup> A public official is "featured" within the meaning of Regulation 18901 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).

(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).

Regulation 18901 also provides exceptions to the prohibition, applicable even where the mailing satisfies all the factors in subdivision (a). Subdivision (b)(1) provides that a mass mailing is not prohibited by Section 89001 if the elected officer's name appears only in the logotype of the stationery, forms, and envelopes of the agency sending the mailing. (Murphy Advice letter, No. A-89-088; Wilcox Advice Letter, No. A-89-141; Eaves Advice Letter, No. I-89-189.) "Logotype" is interpreted, for the purposes of the mass mailing provisions of the Act, to be essentially synonymous with "letterhead" and also to include a trademark or nameplate such as a city or state seal. (Symkowick Advice Letter, No. A-89-492.) However, a mass mailing may not include an elected officer's photograph, signature, or any other reference to the elected officer unless a particular exception applies. (Regulation 18901(b)(1).)

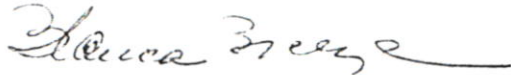
The documents you have submitted for our consideration show that one of the pages will serve as an envelope for purposes of mailing the documents. This "envelope" will bear the name and return address of Councilmember Clark. The documents will also contain a detachable postcard which the recipient may use to request additional information. This postcard will also contain the councilmember's name and return address. Pursuant to the provisions of Regulation 18901(b)(1), the use of the councilmember's name and address in the "envelope" portion of the proposed mass mailing and on the detachable postcard falls within an exception to the mass mailing provisions of the Act and is not prohibited.

In addition, the documents will contain references to the "fourth district." Reference to the fourth district is not prohibited by the provisions of Regulation 18901 because it does not constitute a reference by name to the elected official representing the district. Accordingly, reference to the "fourth district" is permissible and does not constitute a violation of the mass mailing provisions of the Act. The fact that Councilmember Clark will seek reelection to his council seat does not alter our conclusion.

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.

Sincerely,

Scott Hallabrin  
Acting General Counsel



By: Blanca M. Breeze  
Counsel, Legal Division

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