



California Fair Political Practices Commission

SUPERSEDED BY 1998
AMENDMENTS TO
REGULATION 18530

August 11, 1992

Stephen Kent Ehat
Mid Valley Fire Protection District
Christensen, Bacigalupi and Barrus
6067 North Fresno Street, Suite 101
Fresno, CA 93710

Re: Your Request for Informal Assistance
Our File No. I-92-417

Dear Mr. Ehat:

This is in response to your letter requesting advice on behalf of the Mid Valley Fire Protection District concerning the provisions of the Political Reform Act (the "Act").¹ Since your advice request seeks general guidance with respect to the mass mailing in question, we are treating your request as one for informal assistance.²

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Ogelsby (1975) 1 FPPC Ops. 71.) Finally, the jurisdiction of the Commission to provide advice is limited to the provisions of the Political Reform Act (Sections 81000-91015.) With respect to possible applicable state law outside of the Act, you should contact the Attorney General's Office.

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).)

QUESTION

Does the Act prohibit or restrict the mailing of the letter paid for by the Mid Valley Fire Protection District and signed by the district's president which encourages citizens to influence legislation pending before the California State Legislature?

CONCLUSION

The Act does not prohibit or restrict the mailing of the letter paid for by the Mid Valley Fire Protection District and signed by the district's president which encourages citizens to influence legislation pending before the California State Legislature. However, if the Mid Valley Fire Protection District makes payments to influence legislative or administrative action of \$5,000 or more in value in any calendar quarter, the district must file periodic lobbying disclosure reports.

FACTS

The Mid Valley Fire Protection District (the "district") is a public agency governed by an appointed board of directors. The district is currently attempting to galvanize opposition to legislation that will repeal Assembly Bill 8. Assembly Bill 8 was enacted to offset the funding loss incurred by local governmental agencies resulting from the passage of Proposition 13. The district is concerned that the repeal of Assembly Bill 8 will reduce the district's operating budget significantly and affect services.

As part of this effort, the district would like to send a mailing to the residents in the jurisdiction which will encourage citizens to contact the Legislature about the pending legislation. The letter will be paid for with district funds and will be signed by the district's president. The letter does not contain the name of any elected officials or candidates for elected office (with the exception of the Governor) and does not refer to any elections.

ANALYSIS

1. Publicly Funded Mass Mailing

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 to clarify which mailings were permissible and which were prohibited under the Act.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 moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this regulation.

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.

(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).

Since the mailing in question will not include the name of any elected officers, the mass mailing restrictions of Section 89001 and Regulation 18901 would not apply. (Watson v. Fair Political Practices Com., supra.)

2. Section 85300

Section 85300 also sets forth a restriction on the use of public funds. Section 85300 provides:

No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office.

Thus, Section 85300 prohibits the use of public moneys for the purpose of seeking elective office. Section 85300 has been interpreted to prohibit the public financing of election campaigns. Consistent with this intent, where public moneys are spent to advocate or promote a candidate's election to public office, Section 85300 has been violated. However, according to your facts, no candidate's election will be advocated or promoted in the letter.

3. Lobbying

Finally, the Act also regulates the disclosure of lobbying activities. For example, Section 86115 requires that any person⁴ who directly or indirectly makes payments to influence legislative or administrative action of \$5,000 or more in value in any calendar quarter must file periodic reports.⁵

⁴ Section 82047 defines "person" as an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert. This definition includes public agencies. (In Re Witt (1975) 1 FPPC Ops. 1.)

⁵ This analysis assumes that the district is not currently a lobbyist employer. If the district is a lobbyist employer, the district would report the costs as a payment to influence on the lobbyist employer disclosure form.

Regulation 18616 provides:

(a) Payments to be Reported in General. Persons filing periodic reports under Government Code Section 86116 shall report payments in the following categories:

* * *

(4) Other payments to influence legislative or administration action, specifically, payments for or in connection with:

(A) Support or assistance of lobbyists;

(B) Direct communication with a legislative, agency or elective state official for the primary purpose of influencing legislative or administrative action; and

(C) Soliciting or urging persons other than the filer or the filer's employees to enter into direct communication with a legislative, agency or elective state official for the primary purpose of influencing legislative or administrative action.

* * *

(i) Applicability of Government Code Section 86115(b). For the purpose of determining whether Government Code Section 86115(b) is applicable to any person, all payments made during any calendar quarter which are required to be reported by this regulation shall be combined and a report shall be filed if the total is \$5,000 or more. If, however, the only reportable payments made are activity expenses within the meaning of Government Code Section 86111(a), no report shall be required.

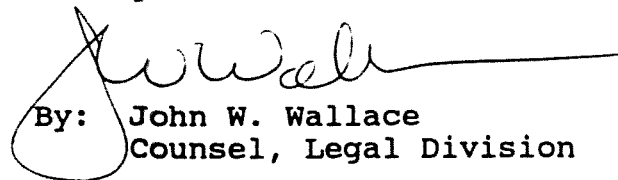
Regulation 18616.

Thus, if the costs of your lobbying efforts (including those associated with the mass mailing in question) equal \$5,000 or more in a calendar quarter, the district will have filing obligations under the Act.⁶

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

Enclosure

⁶ We have enclosed an "Information Manual on Lobbying Disclosure Provisions of the Political Reform Act" and the appropriate disclosure form for your convenience.

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.