



California Fair Political Practices Commission

SUPERSEDED BY 1998
AMENDMENTS TO
REGULATION 18530

September 21, 1992

Trische Robertson
Community College League
2017 O Street
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. I-92-443

Dear Ms. Robertson:

This is in response to your letter requesting advice on behalf of the Community College League of California pursuant to the mass mailing and other provisions of the Political Reform Act (the "Act").¹ Your request is general in nature and seeks general guidance with respect to various provisions of the Act. Accordingly, we provide you with informal assistance pursuant to the provisions of Regulation 18239.²

QUESTIONS

1. Do the provisions of the Act apply to voluntary, statewide, public benefit nonprofit associations which receive dues revenues from local government entities?
2. May a local community college district prepare and distribute, at public expense, literature on behalf of a local governing board member running for the board of directors of the statewide community college association?

CONCLUSION

1. The provisions of the Act are applicable to nonprofit associations which are public agencies. We do not have enough facts to reach a definitive conclusion in your case.

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).)

2. Section 89001 provides that no mass mailing may be sent at public expense. However, inter and intra-agency mailings sent in the normal course of business are exempt from the restrictions on mass mailings. Therefore, a local district may send a mass mailing featuring a community college trustee provided the mailing is sent in the normal course of business to other governmental entities or officials, or to intra-agency members and officials.

FACTS

The Community College League of California (the "League") is a nonprofit, public benefit association supported by voluntary dues from local community college districts in the state. The League members include the California Association of Community Colleges, the California Community College Trustees (CCCT), and the Chief Executive Officers of the California Community Colleges.

According to the facts presented in your letter and our telephone conversation of September 9, 1992, the CCCT, one of the League members, is holding elections to fill vacancies on its board of directors. This board is made up of 21 college trustees who are elected by the 71 local community college boards to represent their interests in state issues. One vote is cast for each candidate for the CCCT board by each of the local community college districts. Half of the membership stands for election each year.

Normally, each candidate running for college trustee pays for campaign literature in connection with the CCCT election at his or her own expense.

ANALYSIS

Local Government Agencies

First, you ask whether the Act applies to voluntary, statewide, public benefit, nonprofit associations which receive revenues from local government entities. In order to answer this question, we must determine whether the League is a public agency subject to the provisions of the Act.

Section 82003 defines "agency" to include any state or local government agency. Section 82041 defines "local government agency" to mean a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing. In 1977, the Commission considered the definition of "local government agency" in In re Siegel (3 FPPC Ops. 62). The Siegel Opinion involved a

nonprofit water development corporation formed by the City of Pico Vera. The Commission applied the following four-part test:

1. Whether the impetus for formation of the entity originated with a government agency.
2. Whether the entity is substantially funded by, or its primary source of funds, is a government agency.
3. Whether one of the principal purposes for which it is formed is to provide services or undertake obligations which public agencies are legally authorized to perform and which, in fact, they traditionally have performed; and
4. Whether the entity is treated as a public entity by other statutory provisions.

In Siegel, the Commission concluded that the corporation was a local government agency and the members of the corporation's board of directors were subject to the disclosure and disqualification requirements of the Act.

The Siegel factors are not a definitive litmus test for determining whether an entity is public for purposes of the Act. However, by applying the factors to a specific set of facts, they will assist you in drawing some conclusions with respect to the status of the application of the Act to a voluntary, statewide, public benefit nonprofit association which receives dues revenues from local government entities.

Ultimately, however, the test must still be a factual analysis on a case-by-case basis. (In re Vonk (1981) 6 FPPC Ops. 1.) The Commission does not act as the finder of fact in providing advice. (In re Ogelsby (1975) 1 FPPC Ops. 71.) I have enclosed the Sheeks Advice Letter, No. A-90-026, to guide you in making a determination as to the "agency" status of the League. If the League is a local government agency, it is subject to the provisions of the Act.

Public Expense

You also ask on behalf of potential candidates for the board of directors of the CCCT whether they may request a district to send campaign literature on their behalf. Section 85300 creates some limitations on the expenditure of public money.

Section 85300 provides:

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

This section has been interpreted to prohibit the use of public moneys to advocate or promote a candidate's election to public office.³ (Gatling Advice Letter, No. I-90-048.) Consequently, local government agencies are prohibited from using public funds for the purpose of advocating or supporting the election of a candidate to office.

A candidate is a person running for an office in an election. (Section 82007.) An "election" is defined as a primary, general, special, or recall election. (Section 82022 and White Advice Letter, No. GC-83-262.) Consequently, an election for the board of directors of the CCCT is not an election within the meaning of the Act.

Based on your facts, provided public funds are not otherwise used by a district in violation of Section 85300, the prohibitions of Section 85300 are not applicable to the CCCT election.

Mass Mailings

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.⁴

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

³ Please note that other provisions of law also restrict the use of public funds for other political activities. (See, Penal Code Section 424.) However, these provisions are outside the jurisdiction of the Commission.

⁴ 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.

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).

1. Transmission

Regulation 18901(a)(1) only restricts items that 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.

You stated during our telephone conversation that the only audience for the communications will be other community college trustees. However, you have not provided sufficient facts to determine how the communications in question will be distributed. If the communications are delivered, by any means, to any person's

home, office, or post office box, the communication will be transmitted as set forth in Regulation 18901(a)(1).⁵

2. Inclusion of a Reference to an Elected Officer

According to your facts, the CCCT candidates are locally elected community college trustees. Thus, they are public officials. (Section 82048.)

If the item does not feature or 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).) 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); Riddle Advice Letter, No. A-89-096.)

Furthermore, if a 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).) Since you ask whether a community college district may send campaign literature on behalf of a community college trustee, this requirement is met.

3. Public Moneys

Section 89001 provides that no newsletter or other mass mailing shall be sent at public expense. Regulation 18901(a)(3) specifies that a mass mailing is "sent at public expense" within the meaning of Section 89001 if either the costs of distribution are paid for with public moneys⁶ or more than \$50.00 in public

⁵ Please note however, that where an item falls within the restrictions of Regulation 18901, you should be cautious that the item is not redistributed by one of the prohibited means. We would suggest a cover letter be included with any bulk delivery to make clear that the items are not to be redistributed to persons at their home, places of employment or post office box. (Lavagetto Advice Letter No. A-90-199.)

⁶ Section 85102(e) defines "public moneys" to include 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.

money is paid for the costs of design or production, and the design or printing is done with the intent of sending the item. The communications in question would be prepared and distributed with public funds.

4. Application to Mass Mailings and Exceptions

Regulation 18901 applies only to a "mass mailing" as defined in the Act. "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 and any items that fall within the exceptions set forth in Regulation 18901(b). (Section 82041.5; Regulation 18901(a)(4).)

Regulation 18901(b) further provides that a mass mailing is not prohibited under Section 89001 if the mailing consists of:

* * *

(3) Any item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer.

(4) Any intra-agency communication sent in the normal course of business to employees, officers, deputies and other staff.

* * *

Regulation 18901(b)(3) and (4).

We conclude, therefore, that information sent in the normal course of business⁷ to other governmental entities or to intra-agency members and officials, which features elected officials such as community collegē trustees, are not prohibited by the Act. (Hamby Advice Letter, No. A-88-476.) Please note that this exception is limited to mailings to another governmental entity or officer. (Mott-Smith Advice Letter, No. I-89-108.)

⁷ Information regarding a personal interest is not sent in the normal course of business, however. (Gallo Advice Letter, No. I-88-296.)

I trust this letter addresses your concerns. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.⁸

Sincerely,

Scott Hallabrin
Acting General Counsel



By: Luisa Menchaca
Counsel, Legal Division

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Enclosures

⁸ 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.