



California Fair Political Practices Commission

October 6, 1992

Gerald H. Goldberg
Executive Officer
Franchise Tax Board
9645 Butterfield Way
Sacramento, CA 95827

Re: Your Request for Advice
Our File No. A-92-474

Dear Mr. Goldberg:

This is in response to your request for advice regarding the application of the mass mailing provisions of the Political Reform Act (the "Act")¹ to the members of the Franchise Tax Board.

QUESTIONS

1. May all the names and/or identities of the members of the Franchise Tax Board appear on the cover page or inside cover page of various tax booklets, or elsewhere in these booklets?
2. May all the names and/or identities of the members of the Franchise Tax Board appear on the cover page or inside cover page of various tax booklets, or elsewhere in these booklets, as part of an article, paragraph, or message attributed to the Franchise Tax Board itself?

CONCLUSIONS

1. The inclusion of the names of all the members of the Franchise Tax Board on the letterhead or logotype of the stationery, forms and envelopes of the agency, or in a roster listing of a mass mailing does not violate the mass mailing prohibitions of Section 89001 of the Act. The state tax booklet which you have provided constitutes a form for purposes of Section 89001. The booklet

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.

contains the letterhead or logotype of the agency on the cover page. Therefore, the names of the members of the Franchise Tax Board may appear on the cover page of the various tax booklets which you have described as part of the letterhead or logotype of a form, or in a roster listing.

2. Section 89001 does not permit the names and/or identities of the elected officials of the Franchise Tax Board to appear on the cover page or inside cover page of the tax booklets, or elsewhere in the tax booklets, as part of an article, paragraph, or message attributed to the Franchise Tax Board itself, unless another exception applies. However, since appointed officials are not subject to the mass mailing restrictions of Section 89001, there is no mass mailing restriction applicable to the inclusion of the name and identity of the official appointed to the Franchise Tax Board anywhere in the tax booklets.

FACTS

The Franchise Tax Board is a statutory agency authorized by Government Code Section 15700. The members of the Franchise Tax Board are the State Controller, the Chair of the State Board of Equalization, and the State Director of Finance. The State Controller and the Chair of the State Board of Equalization are elected state officers. The State Director of Finance is an appointed official.

Pursuant to general statutory authority under Revenue and Taxation Code Section 18431, each year the staff of the Franchise Tax Board prepares various income tax booklets. The booklets contain instructions and tax return forms for taxpayers. The booklets are mailed to taxpayers who filed state returns in the prior year, to taxpayers who request the booklets, and to other persons who have not filed prior year tax returns, but as to whom the Franchise Tax Board has obtained information suggesting a possible filing requirement. Most booklets are mailed without being requested by the recipients.

The booklets contain information, instructions, and forms pertinent to the tax year involved. Taxpayers, including individuals and corporate taxpayers, are sent the appropriate booklet. The cover of each tax booklet indicates which booklet it is, and it contains a summary of the items contained in the booklet, the official State Seal, and a reference to the State of California Franchise Tax Board.

ANALYSIS

Government Code Section 89001 provides that no newsletter or other mass mailing shall be sent at public expense. The distribution of tax booklets to taxpayers throughout the state

constitutes a mass mailing.²

Regulation 18901 clarifies that the purpose of Section 89001 is to prevent elected officers from using public funds to send out newsletters and other mass mailings at public expense. The regulation states that a mass mailing may not be sent at public expense if it contains the name, office, photograph, or any other reference to an elected officer affiliated with the agency producing or sending the mailing and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer. (Regulation 18901(a).)

Mass mailings are not restricted with respect to references to appointed officials who are not also elected officers. (Chin Advice Letter, No. I-90-403.) Thus, the name and identity of an appointed official who is a member of the Franchise Tax Board may appear on the cover page, inside cover page, or elsewhere in the tax booklets. Furthermore, the name and identity of this official may appear as part of an article, paragraph, or message attributed to the Franchise Tax Board itself on the cover page, inside cover page, or elsewhere in the tax booklets.

As to the elected officers who are members of the Franchise Tax Board, Regulation 18901 sets out limited exceptions to the prohibition on mass mailings. An agency may include the name of an elected official in the standard letterhead or logotype of the agency. (Regulation 18901(b)(1).) The regulation permits reference to an elected officer's name, where the name of the elected official appears solely on the standard letterhead or logotype of the stationery, forms, and envelopes of the official's agency, or a roster listing containing the name of all elected officers, provided they appear in the same type size, typeface, type color, and location. Such item may not include an elected officer's photograph, signature, or any other reference to the elected officer, except as specifically permitted by another exception under subsection (b) of the regulation.

The letterhead exception is limited to the inclusion of the official's name in the letterhead of the agency, and does not permit the inclusion of the name in the text itself. (Martin Advice Letter, No. A-91-423; Murphy Advice Letter, No. A-89-088, and Symkowick Advice Letter, No. A-89-492.) Furthermore, the exemption does not extend to permitting reference to the elected officer in mailing instructions. (Miller Advice Letter, No. A-90-433.)

² Section 82041.5 defines a mass mailing as more than two hundred substantially similar pieces of mail sent in a calendar month. This would not include copies sent in response to unsolicited specific requests. (Regulation 18901(b); Regulation 18901(h).)

Please be advised that the exceptions in Regulation 18901 are to be narrowly construed. We conclude, therefore, the names of the elected officials may appear on the cover page, inside cover page, or elsewhere in the booklet, provided the names appear only on the letterhead or logotype of the agency stationery, forms and envelopes. However, please note that the exemption does not extend to each form or schedule included in the tax booklets, unless each form or schedule meets the letterhead or logotype requirement independently.

The Form 540 booklet for 1991 that you have enclosed consists of 48 pages and includes the official State Seal, a reference to the State of California Franchise Tax Board, instructions on the inside cover of the booklet, the Form 540, and various schedules which may be applicable to a taxpayer.

Based on the information you have provided, each tax booklet you have described in your letter, including the 1991 tax booklet which you have provided for our review, constitutes a single "form" for the purposes of this exception. Therefore, the names of the elected officials may only appear once on the basis of this limited exception. Any other reference or inference to the elected official in the body of the tax booklet, including the instructions and other forms or schedules in the booklet, is prohibited unless another exception applies.³

Subsection (b)(5) of Regulation 18901 provides that tax bills and certain related materials may include the name, office, title, or signature of an officeholder in any instance where inclusion of the name is necessary to the payment or collection of the funds. You have not provided any facts which indicate that the names or identities of the elected officers who are members of the Franchise Tax Board are necessary to the payment or collection of taxes. Thus, we conclude this exception does not apply to the circumstances you have described.

Mass mailings are also not restricted in the following circumstances: (1) where an item is sent by an agency responsible for administering a government program to persons subject to that program, in any instance where the mailing of such item is essential to the functioning of the program; (2) where the item does not include the elected officer's photograph; and (3) where use of the elected officer's name, office, title, or signature is necessary to the functioning of the program. (Regulation 18901(b)(6).) Furthermore, a mailing is not

³ We have advised that references to a "board" in the text of a letter are not references to individual board members. (Martin Advice Letter, No. A-91-423.) Thus, a general reference to the Franchise Tax Board is not prohibited, provided there is no reference to individual board members.

restricted if it consists of legal notices and other mailings required by law and any use of the elected officer's name, office, title, or signature is required in the notice or other mailing. (Gallagher Advice Letter, A-89-270 and Regulation 18901(b)(7).) Based on the information you have provided, it also does not appear that these exceptions apply.

Please also note that a mailing disseminated for the purpose of seeking office and paid for with public funds is prohibited under Section 85300 of the Act.

If I can be of any further assistance to you, please feel free to contact me at (916) 322-5901.⁴

Sincerely,

Scott Hallabrin
Acting General Counsel



Luisa Menchaca
Counsel, Legal Division

LM:docs:92474a

⁴ 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.