



California Fair Political Practices Commission

October 27, 1992

Pete S. Pierson, Esq.
Franchise Tax Board
Legal Division
P.O. Box 1468
Sacramento, CA 95812-1468

Re: Your Request for Advice
Our File No. A-92-539

Dear Mr. Pierson:

You have requested confirmation of telephone advice provided to you on October 15, 1992, and October 16, 1992, on behalf of the Franchise Tax Board (the "Board") concerning the application of Government Code Section 89001¹ to the members of the Board. This letter confirms my advice.

Specifically, you asked on October 15, 1992, whether it is permissible to include within the various tax booklets published by the Franchise Tax Board a letter to taxpayers signed by the "Franchise Tax Board," which does not contain the names or any other reference to individual board members.

We previously advised in the Goldberg Advice Letter, No. A-92-474, that an agency may include the name of an elected official in the standard letterhead or logotype of the agency. (Regulation 18901(b)(1).)² Such item may not include an elected officer's photograph, signature, or any other reference to the

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 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.

elected officer, except as specifically permitted by another exception under subsection (b) of the regulation. We also advised, however, that a general reference to the Franchise Tax Board is not a reference to an individual board member. Therefore, a letter sent to taxpayers at public expense signed by the "Franchise Tax Board" would not violate Section 89001.

In the Goldberg advice letter (supra), we further advised that the "letterhead" exception does not permit the inclusion of the name of the official in the text of the tax booklet, which includes the instructions and other forms or schedules in the tax booklet, unless another exception applies. Consequently, the page you provided for our review which includes a letter from the Franchise Tax Board to taxpayers within the text of the tax booklet does not meet the requirements of Regulation 18901(b)(1). The inclusion of the names of the officials within the text constitutes a reference or inference to the elected official.

You subsequently asked whether the same letter could be printed as a separate page in the tax booklet, which includes as part of the standard letterhead or logotype, the names and titles of the elected officials. As also advised in the Goldberg advice letter (supra), the names of the officials may appear on the cover page, inside cover page, or elsewhere in the booklet, provided the names appear only once and on the standard letterhead or logotype of the agency stationery, forms and envelopes. Therefore, all of the following must apply:

1. The names of the elected officers appear in the standard letterhead or logotype of the agency;
2. The standard letterhead or logotype of the agency appears on the standard stationery, forms and envelopes of the agency; and
3. The mass mailing is not otherwise prohibited because of additional references to the elected officers.

Provided all these requirements are met, inclusion of the names and titles of the officials, which identify the Franchise Tax Board members as the chairman or a member, in the letter you provided for our review is permitted. (Miller Advice Letter, No. I-90-138 and Pointkowski Advice Letter, No. A-89-652.) Please note that in order to be consistent with the scope of Section 89001 and with our prior practice of narrowly construing

exceptions to Regulation 18901, any further determination of inclusion of exempted items must be determined on a case-by-case basis.

If I can be of any further assistance to you, please feel free to contact me at (916) 322-5901.³

Sincerely,

Scott Hallabrin
Acting General Counsel



Luisa Menchaca
Counsel, Legal Division

³ 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.