



California Fair Political Practices Commission

SUPERSEDED IN PART
BY 1998 AMENDMENTS TO
REGULATION 18530

May 20, 1993

Joy A. Warren
Modesto Irrigation District
1231 Eleventh Street
P.O. Box 4060
Modesto, CA 95352

Re: Your Request for Advice
Our File No. A-93-152

Dear Ms. Warren:

This is in response to your letter requesting advice on behalf of the Modesto Irrigation District pursuant to the mass mailing provisions of the Political Reform Act (the "Act").¹

QUESTION

Do the mass mailing provisions of the Act prohibit the distribution of a Modesto Irrigation District report if it is in the form of an insert in a newspaper of general circulation?

CONCLUSION

A district report which is in the form of an insert in a newspaper of general circulation may be distributed consistent with the mass mailing provisions of the Act.

FACTS

The Modesto Irrigation District is considering the distribution, at public expense, of a report regarding its operations, educational services, energy management programs, and elected officials. The information regarding the elected officials will be for the purpose of informing customers about their representatives and would include the name, photograph, and area of representation of each director.

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.

You indicated in a telephone conversation of May 13, 1993, that the proposed report would be in the form of a paid "tabloid insertion" in a newspaper of general circulation. The fee charged by the newspaper will be based on the size of the insert, the layout work, and the number of copies to be distributed. The district will provide the contents of the report.

ANALYSIS

Mass Mailing Prohibition

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." The Commission adopted Regulation 18901 to clarify which mass mailings were permissible and which were prohibited under the Act. 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.

(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), emphasis added.

The Modesto Irrigation District members are local elected officials. Thus, they are public officials subject to the provisions of Section 89001. (Section 82048.)

Unsolicited Requests

Regulation 18901 applies only to a "mass mailing" as defined in the Act. "Mass mailing" means over 200 substantially similar pieces of mail, but does not include mail which is sent in response to an unsolicited request or any items that fall within any other exception set forth in Regulation 18901(b). (Section 82041.5; Regulation 18901(a)(4).) Materials sent in response to an unsolicited request are not subject to the mass mailing prohibitions. (Geioque Advice Letter, No. I-91-084.) Therefore, such materials may include the name, office, or photograph of the elected officer, for example.

Regulation 18901(c)(4) states an unsolicited request is:

(A) A written or oral communication (including a petition) which specifically requests a response and which is not requested or induced by the recipient elected officer or by any third person acting at his or her behest. However, an unsolicited oral or written communication (including a petition) which contains no specific request for a response, will be deemed to constitute an unsolicited request for a single written response.

* * *

(E) A person who subscribes to newspapers or other periodicals published by persons other than elected officers shall be deemed to have made unsolicited requests for materials published in those subscription publications.

We have advised that a paid advertisement is deemed to be an unsolicited request. (Geioque Advice Letter, No. A-91-193.) We have further advised that if a hospital district published a

report as an advertisement or as an insert in a newspaper of general circulation, the exception would apply. (Lipton Advice Letter, No. A-92-476.)

You indicated in a telephone conversation of May 13, 1993, that the proposed report would be in the form of a "tabloid insertion" in a newspaper of general circulation. Normally, the newspaper does the layout work and distributes the insert based on the requested specifications. Therefore, we conclude the exception of Section 89001(c)(4)(E) applies to the district report, which will be distributed in the form of an insert in a newspaper of general circulation.

Public Funds Prohibition

Please 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. This section has been interpreted to prohibit the use of public moneys to advocate or promote a candidate's election to public office. (Gatling Advice Letter, No. I-90-048.)

You state in your letter that the information regarding the elected officials will be for the purpose of informing customers about their representative and would include the name, photograph, and area of representation of each director. We have in the past interpreted Section 85300 as not to prohibit every activity that might indirectly benefit an elected official's chances for reelection. (Lipton Advice Letter, supra and Sluder Advice Letter, No. A-93-89.) However, if the report advocates the reelection of the district board members or refers to their candidacy, the district may be in violation of Section 85300.⁴

⁴ Nothing in this letter should be construed to be an authorization for any specific expenditures made by a state or local government agency. The Commission cannot determine whether an expenditure is a legitimate government expenditure, we can only advise as to whether such expenditures are a violation of the provisions of the Act. Moreover, other provisions of the law may apply to these facts which are outside the jurisdiction of the Commission. For example, Penal Code Section 424 restricts the use of public funds for political activities. (See, e.g. Stanson v. Mott (1976) 17 Cal.3d 206; People v. Sperl (1976) 54 Cal.App.3d 640; and People v. Battin (1978) 77 Cal.App.3d 635.)

I trust this letter addresses your concerns. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.⁵

Sincerely,

Jeff Marschner
General Counsel



By: Luisa Menchaca
Counsel, Legal Division

⁵ 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.