



# California Fair Political Practices Commission

March 27, 1995

Ms. Debra A. Greenfield  
General Counsel  
San Diego Association of Governments  
Suite 800, First Interstate Plaza  
401 B Street  
San Diego, California 92101

Re: Your Request for Advice  
Our File No. A-95-079

Dear Ms. Greenfield:

You have asked for confirmation of telephone advice on behalf of the San Diego Association of Governments under the mass mailing provisions of the Political Reform Act (the "Act").<sup>1</sup>

#### QUESTION

May the Chairman of the San Diego Association of Governments ("SANDAG"), who is an elected official, sign a letter to approximately 2,000 residents of the region asking them to participate in a travel behavior study?

#### CONCLUSION

The Chairman of SANDAG, who is also the Mayor of Imperial Beach, may sign a letter requesting 2,000 residents of the region to participate in a travel survey since SANDAG is required to maintain an up-to-date travel model for the area, conducting the survey is essential to maintaining an up-to-date model, and the agency determined that the Chairman's signature was necessary to obtain residents' participation in the time-consuming survey.

#### FACTS

SANDAG is a joint powers agency established pursuant to Section 6500 et seq. of the Government Code, whose membership consists of all the cities within the county and the entire County

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<sup>1</sup> 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, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

of San Diego. All of the members of the Board of Directors are either mayors, councilmembers or supervisors. SANDAG is primarily funded by federal, state, and local government sources.

SANDAG serves as the Metropolitan Planning Organization and the Regional Transportation Planning Agency for purposes of carrying out the required federal and state mandates in order for the region to receive federal and state transportation funds. Conducting the transportation survey is necessary to the planning program to carry out those mandates.

The purpose of the survey is to collect travel behavior characteristics of residents to update the transportation models. The use of up-to-date models is required for planning projects. About 2,000 surveys will be mailed. The survey is being conducted for SANDAG and Caltrans by a survey research firm. The funding source for the work related to this survey, and the survey itself, is federal and state transportation funds.

#### ANALYSIS

Section 89001 of the Act provides that "[n]o newsletter or other mass mailing shall be sent at public expense." A "mass mailing" means "over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry." (Section 82041.5.) Commission regulations provide that a mass mailing at public expense is prohibited if all of the following criteria are met:

(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).)

The cover letter to the transportation survey, signed by SANDAG's chairman, the Mayor of Imperial Beach, falls within the above definition of a mass mailing. However, an exception to the prohibition on mass mailings at public expense exists for essential agency communications. Regulation 18901(b)(6) states:

Any item 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, where the item does not include the elected officer's photograph; and where use of the elected officer's name, office, title, or signature is necessary to the functioning of the program.

As a joint powers agency established under Government Code Section 6500 et seq., SANDAG is a local government agency. 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. A joint powers agency is considered a local government agency under the Act. (See Alperin Advice Letter, No. I-94-177 and Siegel Advice Letter, No. A-81-015.)

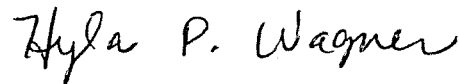
SANDAG acts as the Metropolitan Planning Organization and the Regional Transportation Planning Agency for San Diego. It carries out the federal and state mandates necessary for the region to receive federal and state transportation funds. To carry out these functions, SANDAG is required to have an up-to-date travel model. Conducting the transportation survey is essential to the agency's maintaining an up-to-date travel model and carrying out its overall planning functions. The cover letter to the survey does not have a picture of an elected official. The letter is signed by the Mayor of Imperial Beach, in his capacity as Chairman of SANDAG. Completing the travel survey is somewhat burdensome since it requires residents to track and report on their

transportation use over a period of time. The agency determined that the Chairman's signature was necessary to encourage residents to participate in and complete the survey. Therefore, the above exception for essential agency communications would apply.

I trust this answers your question. If you have any further questions regarding this matter, please contact me at 916/322-5901.

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in cursive script that reads "Hyla P. Wagner".

By: Hyla P. Wagner  
Counsel, Legal Division