

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

June 5, 1995

Diane R. Gladwell
City Clerk
City of San Luis Obispo
P.O. Box 8100
San Luis Obispo, CA 93403-8100

Re: Your Request for Advice
Our File No. A-95-162

Dear Ms. Gladwell:

We have received your request for advice under the mass mailing provisions of the Political Reform Act.^{1/}

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. (In re: Oglesby (1975) 1 FPPC Ops. 71.)

QUESTION

Do the Act's mass mailing provisions apply to city-paid advertisements in newspapers which are distributed to public locations without charge?

CONCLUSION

The mass mailing provisions only apply to items that are mailed or delivered, by some means, to a person's home, office or post office box. Items set out for the public to pick up on their own, or placed in a public area, are not subject to the Act's mass mailing provisions.

^{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, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

FACTS

The City of San Luis Obispo places advertisements in several publications on behalf of the City Council. The Mustang Daily and New Times are two publications which the City has used in the past. The Mustang Daily is the University of San Luis Obispo student newspaper which is delivered free of charge to a variety of public locations. The New Times is delivered to public locations in the same manner.

The City is contemplating placing another ad in a similar newspaper but you have withheld payment of City funds pending this advice. You provided a sample of the advertisement published through the Mustang Daily. The ad reads "Welcome to San Luis Obispo" and lists the names and titles of the City's mayor, vice mayor and council members.

ANALYSIS

Section 89001 provides that no newsletter or other mass mailing shall be sent at public expense. In response to a variety of questions concerning the scope of the mass mailing prohibition, the Commission adopted Regulation 18901 to clarify which mailings are permissible and which are prohibited under the Act.^{2/}

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;

^{2/} 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.

(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);

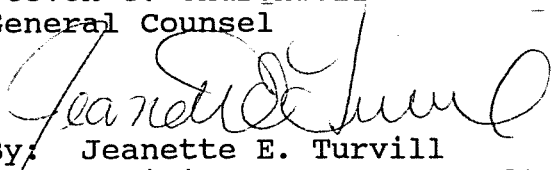
Regulation 18901(a).

You stated in your letter that the publications are delivered free of charge to a variety of public locations. Regulation 18901(a)(1) only restricts items that are mailed or delivered, by some means, to a person's home, office or post office box. If these publications are set out for the public to pickup on their own, or are handed out in a public area, the restrictions of Regulation 18901 do not apply.^{3/}

If you have any questions, or need to discuss this further, please feel free to call the Commission's Legal Division at (916) 322-5901.

Sincerely,

Steven G. Churchwell
General Counsel


By: Jeanette E. Turvill
Political Reform Consultant
Legal Division

JET/jt

^{3/} 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. In other words, the item may not be redistributed to persons at their home, places of employment or post office box. (Lavagetto Advice Letter No. A-90-199.)