

RAVI MEHTA  
CHAIRMAN



**SUPERSEDED BY 1998  
AMENDMENTS TO  
REGULATION 18530**

FAIR POLITICAL PRACTICES COMMISSION

July 27, 1995

Juanda K. Lowder  
Assistant City Attorney  
City of Riverside  
3900 Main Street  
Riverside, California 92522

Re: Your Request for Advice  
Our File No. A-95-223

Dear Ms. Lowder:

This is in response to your letter requesting advice regarding the "mass mailing" and other provisions of the Political Reform Act (the "Act").<sup>1</sup>

QUESTION

Does the production of a city directory by the City of Riverside which will include photographs of the mayor and other city elected officials constitute a prohibited mass mailing or result in a contribution to the officials or would it be considered a campaign expenditure?

CONCLUSION

It would not be a violation of Section 89001 to use public funds to pay for the directory provided that no more than 200 directories are sent in a calendar month. However, depending on the circumstances surrounding the distribution of the directory, the payment for them could constitute a reportable contribution or a campaign expenditure.

<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 - 18995. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

### FACTS

The City of Riverside is in the process of compiling and publishing a city directory and map book, presumably with public funds, which will be available for sale to the public for the cost of reproduction. The city is considering including photographs of the current mayor, councilmembers and city manager, as well as a description of each office, in an introductory section of the directory. You provided a sample of a directory which includes photographs of the mayor and the councilmembers. The mayor and councilmembers are elected officials.

The availability of the directory will be announced by utility bill inserts mailed by the city with a designated month's utility bills.

### ANALYSIS

#### Mass Mailings

Section 89001 of the Act provides: "No newsletter or other mass mailing shall be sent at public expense." Regulation 18901 further clarifies which mailings are permissible and which are prohibited under the Act.

Regulation 18901(a) provides that a mailing is prohibited only if all of the following factors set out in Regulation 18901(a) are met.

1. **Inclusion of a Reference to an Elected Officer:** If an item will feature<sup>2</sup> the elected officers affiliated with the agency that sends the mailing, the first factor is met. (Regulation 18901(a)(2).) The mayor and city councilmembers are elected officials of the City of Riverside. The draft of the directory you submitted includes a photograph of all the city elected officials and prominently features the mayor in a second photograph. Therefore, this factor is met.

2. **Sent at Public Expense:** The second factor requires the use of public moneys.<sup>3</sup> Presumably, public funds will be used to produce and distribute the directories. Therefore, the second requirement is also met. (Regulation 18901(a)(3).)

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<sup>2</sup> An elected officer is "featured" when an item mailed includes the elected officer's photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color. (Regulation 18901(c)(2).)

<sup>3</sup> "Public moneys" includes all moneys belonging to any city. (Section 85102(e); Penal Code Section 426.)

3. **Delivery:** Regulation 18901(a)(1) regulates only items that are mailed or delivered, by any means, to a person's home, office, or post office box. (Anaya Advice Letter, No. A-91-215.) Therefore, this factor is met with respect to the copies of the directory which are mailed or delivered through the city offices to a person's home, office, or post office box.

You indicate that the directories will be available for sale to the public for the cost of reproduction. Their availability will be announced by inserts mailed with utility bills.<sup>4</sup> If more than 200 directories are mailed to the requestors in a calendar month, this requirement is met.

4. **Mass Mailings:** Finally "mass mailing" means over two hundred substantially similar pieces of mail, but does not include mail which is sent in response to an unsolicited request, letter or other inquiry, or any items that fall within the exceptions set forth in Regulation 18901(b). (Section 82041.4.)

An "unsolicited" request is defined, in part, as follows:

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.

Regulation 18901(c)(4)(A).  
(Emphasis added.)

Thus, copies of the directory distributed to persons who have submitted unsolicited requests to receive the directory through the mail will not fall under the restrictions of Section 89001. According to your facts, the directories themselves will be sold or distributed at the inducement of the City of Riverside.<sup>5</sup> Thus, the directories do not come within the unsolicited specific request exception, and you should not mail or deliver, as

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<sup>4</sup> You have not indicated that the insert announcing the availability of the directory in the utility bills will refer to any elected officials. Thus, we have not discussed the application of the mass mailing restrictions to the insert.

<sup>5</sup> We advised that where videotapes which featured elected officials were distributed solely at the request and inducement of the officials' agency, the videotapes did not come within the unsolicited specific request exception. (Appling Advice Letter, No. A-92-179.)

specified in the regulation, more than 200 directories in a calendar month.

Political Advertisement

You also ask if the distribution would constitute a paid political advertisement. We have advised that the use of the directory by a public official seeking reelection may be deemed a contribution from his or her agency. (Section 82015; Knight Advice Letter, No. I-93-466.) If this is the case, the contribution may qualify the public agency that pays for the directories as a committee and could require the filing of campaign reports. (Regulation 18420.)

Regulation 18420 generally addresses the question of whether payments by a government agency might be contributions or campaign expenditures. (Sections 82015 and 82025; Regulations 18215<sup>6</sup> and 18225.) If a payment is determined to be a campaign expenditure or a contribution, the Act requires the disclosure of the payment by the beneficiary of the payment or by the local government agency that made the payment. Regulation 18420 provides in pertinent part:

(a) Any candidate or committee that receives contributions from a state or local government agency shall report receipt of those contributions.

(b) The payment by a state or local government agency of the salary or expenses of its employees or agents is an expenditure or contribution only if the salary or expenses are for campaign activities and meet the requirements of 2 Cal. Adm. Code Section 18423. For purposes of this subsection, "campaign activities" shall include, but are not limited to, the following:

\* \* \* \*

(4) Developing, writing or distributing campaign literature or making arrangements for campaign literature;

(5) Arranging for the development, production or distribution of campaign literature;

(6) Preparing television, radio or newspaper campaign advertisements;

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<sup>6</sup> Please note that the Commission is currently considering amendments to this regulation.

(7) Arranging for the development,  
production, publishing or broadcast of  
campaign advertisements;

\* \* \* \*

However, not every activity that might indirectly benefit an elected official's chances for reelection is a contribution or expenditure. We have considered "campaign activities" as defined in Regulation 18420 as being among the types of activities for which Section 85300 prohibits the expenditure of public moneys. (Calhoun Advice Letter, No. A-90-047.)

Section 85300 provides that no public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office. Therefore, where public moneys are spent to advocate or promote a candidate's election to public office, we have advised that Section 85300 has been violated. However, as a general rule, Section 85300 would not be applicable where there is no "express advocacy" for an elected official's reelection.

In viewing the draft you have submitted, we do not believe that the directories fall within the prohibition of Section 85300. We note no references to the mayor's or other elected officials' reelection or status as candidates. Thus, absent circumstances indicating that the use of the directories is connected to a campaign of any of the city's elected officials, the use of public funds in the production of the directories would not constitute a contribution or expenditure, nor would it constitute a violation of Section 85300. However, as noted above, the "mass mailing" provisions of Section 89001 would apply.<sup>7</sup>

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<sup>7</sup> There may be the additional question of whether such an expenditure would be considered a legal expenditure under Penal Code Section 424. (See, e.g. Penal Code Section 424; 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.) Penal Code Section 424 which deals with the misuse of public moneys, is outside the jurisdiction of the Commission. Penal Code Section 424 is interpreted and enforced by the district attorney and the Attorney General.

If you have any further questions regarding this matter,  
please feel free to contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in cursive script that reads "Luisa Menchaca".

By: Luisa Menchaca  
Counsel, Legal Division