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**SUPERSEDED BY 1998
AMENDMENTS TO
REGULATION 18530**

FAIR POLITICAL PRACTICES COMMISSION

March 25, 1997

Wesley W. Peltzer
Peltzer & Oliva
751 E. Rancheros Drive
Suite 2
San Marcos, CA 92069

**Re: Your Request for Advice
Our File No. A-97-106**

Dear Mr. Peltzer:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Your office is General Counsel for a number of special districts located in San Diego County, California.

QUESTION

May a number of special districts located in San Diego County include the biographies and pictures of their directors on the Internet?

CONCLUSION

Yes, a web page on the Internet is not currently considered a mass mailing. Therefore, Section 89001's prohibition that no newsletter or mass mailing shall be sent at public expense does not apply. Also, the cost of producing and maintaining the web page you described is not considered a public expenditure of public funds for the purpose of seeking public office in violation of Section 85300.

FACTS

There are several special districts located in San Diego County, California. These special districts have inquired whether there are any restrictions governing the use of the Internet for biographies and pictures of directors. Specifically, the districts would like to provide a

¹ Government Code sections 81000 - 91015. Commission regulations appear at title 2, sections 18000 - 18995, of the California Code of Regulations.

biography on each of the directors and also a picture which would be available on the Internet upon request of the user.

ANALYSIS

Mass Mailings

Section 89001 provides that “no newsletter or other mass mailing shall be sent at public expense.” Regulation 18901 interprets this provision. In pertinent part, Regulation 18901 provides:

“(a)(1) Any item 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.” [Emphasis added.]

According to Regulation 18901(a)(1), a publicly-funded mailing is a prohibited mass mailing if it is delivered as a tangible item to the recipient at his or her residence, place of employment or business, or post office box. Consistent with Regulation 18901, the ban is applicable to tangible items only. (*Doyle* Advice Letter, No. I-94-364.) Since distribution over the Internet is not a distribution of a tangible item, Internet pages are not prohibited mass mailings under the Act. Please note, however, that the Internet was not considered when Regulation 18901 was adopted by the Fair Political Practices Commission. We expect that the Internet and other advances in technology may necessitate amendments to the Act and/or its regulations in the near future. (*Hausman* Advice Letter, No. A-97-025.)

Section 85300

Section 85300 sets forth another restriction on the use of public funds. Section 85300 provides:

“No public officer shall expend money and no candidate shall accept any public moneys² for the purpose of seeking elected office.”

² “Public moneys” is defined to include all bonds and evidence of indebtedness, and all moneys belonging to the state, or any city, county, town, district, or public agency therein, and all moneys, bonds, and evidences of indebtedness received or held by state, county, district, city, town, or public agency officers in their official capacity. (Penal Code Section 426.)

Under Section 85300, both the expenditure by the public official, and the acceptance of a contribution of public funds by a candidate are prohibited. The prohibition is absolute. (See, *Gallo* Advice Letter, No. I-90-234 (a candidate's use of a city-owned fax machine to receive campaign literature is prohibited).).

When public funds are expended to advocate or promote a candidate's election to public office, the Act is violated. (*Owen* Advice Letter, No. A-91-571.) However, Section 85300 was not intended to prohibit every activity that might indirectly benefit a candidate for that election. Rather, the section was intended to prohibit public financing of election campaigns. (*Owen* Advice Letter, *supra*; *Calhoun* Advice Letter, No. A-90-047.)

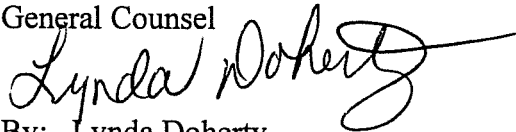
The distinction between the lawful use of public funds which indirectly benefits a candidate for elective office is the determinative factor in the Section 85300 analysis. Prior to the enactment of Section 85300, the California Supreme Court, in *Stanson v. Mott*, 17 Cal. 3d 206 (1976), applied this distinction to determine that public funds may not be used to advocate a position in a ballot measure campaign. While there is no indication that Section 85300 is intended to codify *Stanson v. Mott*, the Commission has found the analysis of that decision useful in determining the scope of Section 85300. (*Krey* Advice Letter, No. A-94-229.)

The Commission has found that the mere identification in a City of Cupertino newsletter of those candidates who agree to abide by a local campaign ethics code without any indication of approval or support for those candidate, would not be an expenditure of public funds to advocate the election of those individuals. (*Krey* Advice Letter, *supra*.) The identification of those candidates was merely an informational service and advances public interest goals. The same is true in this instance. The district's web page is merely providing an informational service by providing a brief biography and the identity of the district directors on the Internet. As long as there is no indication of support, approval, or express advocacy for the candidacy of the directors of the board, there is no violation of Section 85300. (*Hausman* Advice Letter, *supra*.)

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Lynda Doherty
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SGC:ld:ak