

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

April 21, 1997

Al Vollbrecht
City of Murrieta
26442 Beckman Court
Murrieta, California 92562

**Re: Your Request for Advice
Our File No. A-97-155**

Dear Mr. Vollbrecht:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Finally, the jurisdiction of the Commission to provide advice is limited to the provisions of the Act.

QUESTIONS

1. May the Chamber of Commerce of the City of Murrieta publish and distribute a mailing which "features" an elected official when the City of Murrieta contributes public monies in excess of \$50 for the production and distribution of the mailing?

2. May the chamber include material in its mailing expressing its own position in support of or in opposition to a local ballot initiative, specifically, a tax issue put on the ballot as a result of Proposition 218 when the City of Murrieta helps pay for the production and distribution of the mailing?

CONCLUSIONS

1. No. Assuming the chamber's mailing would feature an elected officer affiliated with the City of Murrieta, the mailing would be prohibited by Section 89001.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

2. The City of Murrieta's payment for inclusion of material in the chamber's mailing does not affect the chamber's ability to support or oppose a ballot measure.

FACTS

The chamber of commerce of the City of Murrieta publishes a monthly tabloid community newspaper that it mails to all Murrieta residents, some 15,000 in total. The city buys three pages each month, at the rate of \$550 per page, to disseminate information about city programs and services. The school district also buys pages in the publication. The remaining pages are used by the chamber. On occasion, city material is used outside its assigned pages. Depending on the importance of the article, city material may appear on the publication's front page.

ANALYSIS

Issue #1 - Section 89001

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 (copy enclosed) to clarify which 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).”

Thus, a mass mailing is prohibited if all of the factors set out in Regulation 18901(a) are met. If the factors are not met, the mailing is not a "mass mailing" for purposes of Section 89001.

1. *Mass Mailings*

Regulation 18901 applies only to a "mass mailing" as defined in the Act. "Mass mailing" means more than 200 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). Your letter states that over 200 mailings will be distributed to businesses and residences. Further, these mailings are unsolicited and no exception applies. Therefore, this requirement is met.

2. *Delivery*

Regulation 18901(a)(1) restricts items that are mailed or delivered, by any means, to a person's home, office, or post office and that are tangible items. Since the chamber's mailing is mailed and is a tangible item, this requirement is met.

3. *Public Monies*

Section 89001 provides that no newsletter or other mass mailing shall be sent at public expense. Regulation 18901(a)(3) specifies that a mass mailing is "sent at public expense" within the meaning of Section 89001 if either the costs of distribution are paid for with public monies, or more than \$50 in public money is used to pay for the costs of design, production, and printing, and the design, production, or printing is done with the intent of sending the item other than as permitted under the regulation.

We have advised that a mailing sent by a chamber of commerce is not "sent at public expense" for purposes of Section 89001 merely because the chamber receives some public monies from a city, unless the public entity expressly funds the production and distribution of the mailing sent by the chamber. (*Duran* Advice Letter, No. A-94-053; *Warner* Advice Letter, No. I-88-392; *Leslie* Advice Letter, No. A-89-521.) Under your facts, the city expressly funds the production and distribution of the mailing sent by the chamber in an amount greater than \$50. Therefore, this requirement is met.

4. *Inclusion of a Reference to an Elected Officer*

If the item features² an elected officer, or includes the name, photograph, or any reference

² 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 office in the layout of the document, such as by headlines, caption, type size, typeface, or type color. (Regulation 18901(c)(2).)

to an elected officer who is affiliated with the agency that produces or distributes the mailing, the item is subject to the restrictions of the regulation. (Regulation 18901(a)(2).)

An elected official is affiliated with an agency if the official is a member, officer or employee of the agency or a subunit (such as a committee) of that agency; has supervisory control over the agency; or appoints any of the members of the agency. (Regulation 18901(c)(1); *Riddle* Advice Letter, No. A-89-096.) The inclusion in the chamber's mailing of an elected official by name or a photo of the official, if the official is affiliated with the City of Murrieta, would meet this requirement.

Since all the requirements of Regulation 18901 are met, assuming that the public official "featured" in the mailing is affiliated with the City of Murrieta, the chamber's mailing would be a mass mailing prohibited by Section 89001.

Issue #2 - The Chamber's Advocacy of a Ballot Measure

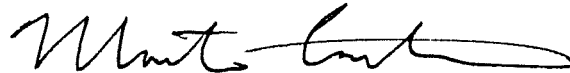
First, nothing in the Act prohibits a public entity, such as the City of Murrieta, from taking advocacy positions regarding a ballot measure.³ Further, the inclusion of the City of Murrieta's pages in the chamber's mailing and the payment by the City of Murrieta to the chamber does not affect the chamber's ability to take advocacy positions. However, both the City of Murrieta and the chamber of commerce are capable of becoming "committees" under the Act. (Section 82013). As such, either would incur reporting obligations under the Act. (Sections 84100-84400.) If you have any questions regarding any reporting obligations under the Act, please call the Technical Division of the Commission at (916) 322-5660.

³ However, other provisions of state law may prohibit this type of activity. Please see *Stanson v. Mott*, 17 Cal. 3d 206 (1976) and Penal Code Section 424.

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

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in black ink, appearing to read "Marte Castaños", with a long horizontal flourish extending to the right.

By: Marte Castaños
Staff Counsel, Legal Division

SGC:MC:ak