

RAVI MEHTA
CHAIRMAN



**SUPERSEDED BY 1998
AMENDMENTS TO
REGULATION 18530**

FAIR POLITICAL PRACTICES COMMISSION

May 7, 1997

Jim Rogers
Supervisor, First District
Board of Supervisors
Contra Costa County
100 - 37th Street, Room 270
Richmond, California 94805-2136

**Re: Your Request for Advice
Our File No. A-97-205**

Dear Mr. Rogers:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

Does your proposal to have the Contra Costa County prepare and deliver candidate issue statements to the residents of the county as described below violate Section 85300 or Section 89001 of the Act?

CONCLUSION

The issue statements to be distributed by mail to the residents of Contra Costa County would not violate the mass mailing provisions of Section 89001 and Regulation 18901. Also, the proposal would not violate Section 85300.

FACTS

The Contra Costa County Board of Supervisors ("Board") is considering a proposal to prepare and deliver candidate issue statements to the residents of the county. The Board is considering appointing a committee of people with expertise concerning political issues from outside the Board (e.g., League of Women Voters, academics, press, etc.). The committee would

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

develop five or so specific questions on certain issues affecting the county. All candidates for county supervisor would submit responses to the questions to the county.

The responses would be limited to explaining the candidates' views on the issues. No express advocacy, i.e., requests for votes etc., would be permitted. Also, candidates could not mention their opponents or comment on character issues, their background or experience, or state what endorsements they have received. In short, the proposal would educate the voters as to a candidate's stand on specific issues only. The questions and responses would be mailed out to all households in the county with at least one registered voter. The mailing would be paid for by the county, and offset by a filing fee of approximately \$500. There would be only one mailing.

ANALYSIS

1. Mass Mailing

Section 89001 states:

“No newsletter or other mass mailing shall be sent at public expense.”

Regulation 18901 (copy enclosed) interprets Section 89001:

- “(a) Except as provided in subdivision (b), a mailing is prohibited by section 89001 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).

(b) [provides exceptions to the general rule.]”

The mailing would be a tangible item sent to people’s residences. The item would feature an elected officer affiliated with the agency that produces or sends the mailing. Presumably, at least one incumbent would be featured. Some of the costs would be paid for with public funds. Also, more than 200 copies of the proposed mailing would be sent. Therefore, the proposed mailing would result in a violation of Section 89001 unless an exception under subdivision (b) of Regulation 18901 is applicable to your facts.

Regulation 18901(b)(7) provides a relevant exception to the mass mailing prohibition:

“Any legal notice or other item sent as required by law, court order, or order adopted by an administrative agency pursuant to the Administrative Procedure Act, and in which use of the elected officer’s name, office, title or signature is necessary in the notice or other mailing. For purposes of this subdivision (b)(7), inclusion of an elected officer’s name on a ballot as a candidate for elective office, and inclusion of an elected officer’s name and signature on a ballot argument, shall be considered necessary to such a notice or other item.”

This section has been narrowly read to prevent circumvention of the regulation. Yet the plain language of the exception applies to ballot arguments. Unlike other sections of the Act, namely Regulation 18530, the language of this exception does not limit its applicability only to those ballot pamphlets filed pursuant to Elections Code Section 13307. Also, the main purpose of Section 89001 is to eliminate the potential unfair advantage which such use of public funds might provide to an incumbent during the election period. (Section 81002(e).) The proposed mailing does not provide incumbents with an unfair advantage, but treats all candidates equally. Therefore, Regulation 18901 does not apply to the proposed mailing.²

2. Section 85300

Section 85300 provides:

“No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office.”

Section 85300 became law as a result of the passage of Proposition 73. The language in

² This is the same conclusion we reached in our prior advice to you on this issue. (*Rogers Advice Letter*, No. A-97-023.)

the ballot arguments of Proposition 73 and Proposition 68 indicates that the provision appears as a rebuttal to the public financing of election campaigns proposed in Proposition 68. Therefore, where public moneys are spent to advocate or promote a particular candidate's election to public office, Section 85300 is violated. Unlike the "Debate by Mail" proposal in your previous request for advice, which was found to violate Section 85300, this proposal would not "arguably allow a candidate to make a competitive bid for office almost entirely on public funds." (*Rogers* Advice Letter, A-97-023.) In the "Debate by Mail" proposal there would have been three separate mailings and no restrictions on express advocacy by the individual candidates. The proposal in the instant case is consistent with the Commission's previous advice that public moneys may be used consistent with Section 85300, if the money is spent to give a balanced information presentation of issues surrounding an election campaign and all candidates are given equal access, and would not allow a candidate to run a campaign almost entirely on public funds. (*Laruccia* Advice Letter, No. A-89-137; *Lowell* Advice Letter, No. A-93-300; *Owen* Advice Letter, No. A-91-571.)

3. Conclusion

The above proposal does not violate Section 89001 or Section 85300 provided that the mailing gives a balanced presentation of the candidates as discussed above and that there is only one mailing. This advice is limited to the facts of this letter. (*Reynoso* Advice Letter, No. A-90-555.)

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Marte Castaños
Legal Counsel, Legal Division

SGC:MC:ak