



**SUPERSEDED BY 1998
AMENDMENTS TO
REGULATION 18530**

FAIR POLITICAL PRACTICES COMMISSION

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March 6, 1998

John G. Barisone
City Attorney
Atchison & Barisone
333 Church Street
Santa Cruz, California 95060

**Re: Your Request for Advice
Our File No. A-98-033**

Dear Mr. Barisone:

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

QUESTION

May the City of Santa Cruz use public funds to disseminate a candidate brochure?

CONCLUSION

Yes, the city may use public funds to distribute a candidate brochure as described below.

FACTS

The City of Santa Cruz is considering enacting a campaign finance reform ordinance. The primary feature of the proposed ordinance would be the use of public funds to publish a city council brochure featuring only those candidates who agree to voluntary spending limits. In addition to the spending limits, candidates would also have to raise a specified amount of money or obtain a specified number of signatures to be eligible for inclusion in the brochure. The purpose of the fundraising/signature gathering requirement is to assure that only serious city council candidates are included in the brochure and that the brochure does not become a forum for individuals who do not seriously seek a city council seat but who only wish to avail themselves of free publicity for an issue or cause that is important to them.

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

The proposed ordinance will provide that each candidate who: 1) accepts voluntary spending limits at the time of filing; and 2) raises \$250 or provides 100 valid signatures by September 7 will be included in the brochure. The brochure will be a special edition of the city's newsletter which is published on a quarterly basis. It will include a head shot of each candidate. City staff will take the photographs to ensure consistency.

Each candidate will be allowed to prepare a 300 word statement identifying the two most important issues to the candidate. The 300 word statement in the brochure will be in accordance with the candidate statement guidelines in Elections Code section 13307 and staff will provide specific information regarding that criteria to each candidate.² The statement will be printed exactly as submitted, with no editing by staff. These statements will be due by September 8. Candidates included in the brochure will be required to submit his/her statement in a form compatible with the city's computer system (IBM compatible 3 1/2" 1.44 MB diskette with no higher than Word 6.0 or WordPerfect 5.0.) The city will not provide a Spanish translation for the statement in the brochure, but the 300 word statements will not be restricted to English only.

The brochure will include a disclaimer stating that nothing in the brochure shall be deemed to make any statement of the authors thereof free or exempt from any civil or criminal action or penalty because of any false, slanderous or libelous statements offered for printing or contained in the brochure; and that no editing, proofreading or spell checking has been performed.

The front page of the brochure will contain general introductory information, and no candidate will be placed on the front page. The candidates will appear in the brochure in the alphabetical order drawn by the Secretary of State for the ballot. The brochure will be mailed to each mailing address that has a registered voter, including post office boxes, in the City of Santa Cruz. The brochure will be placed on the city's web page on the Internet.

ANALYSIS

Section 89001 provides that no newsletter or other mass mailing may be sent at public expense. Regulation 18901 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

² Please note the Commission does not act as finder of fact when rendering advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) In addition, the Commission does not have the authority to determine whether the proposed candidate brochure follows the guidelines set forth in Elections Code section 13307. (Section 83111 [empowering the Commission to administer the Political Reform Act].) Accordingly, the statement providing that the proposed candidate brochure will follow the guidelines set forth in Elections Code section 13307 is treated as a fact provided by the requestor and not a legal conclusion.

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) Cost 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).)

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 the subdivision (b)(7), inclusion of an elected officer’s name on a ballot as a candidate for elective office, and inclusion on an elected officer’s name and signature on a ballot argument, shall be considered necessary to such a notice or other item.”

The candidate brochure will follow the guidelines of a candidate’s statement of qualifications set forth in Elections Code section 13307. We have advised in the past that the above exception applies to the distribution of candidate statements of qualifications. (*Reynoso* Advice Letter, No. A-90-555.) Thus, the exception would also apply to the candidate brochure. (*Solden* Advice Letter, No. A-97-426.)

However, the main purpose of section 89001 is to eliminate the potential unfair advantage that the use of public funds may provide to an incumbent during the election period. (Section 81002(e).) Thus, the exception would not apply if the city places certain obstacles to a candidate’s inclusion on the brochure that have the effect of favoring incumbents.

The proposed ordinance provides that each candidate who accepts voluntary spending limits and who raises \$250 or collects 100 valid signatures by a specific date will be included in the brochure. In the *Solden* letter, we advised that including only those candidates who agree to voluntary spending limits on the candidate brochure did not have the effect of favoring incumbents since any candidate has the ability to accept the limits. On the other hand, requiring candidates to raise a specific dollar amount or to collect a specified number of signatures may have the effect of favoring incumbents because this criterion is aided by the name recognition that accompanies incumbency. Nevertheless, the requirement is a minimal one that applies to all of the candidates equally. (*Rogers Advice Letters*, No. A-97-330.) Any candidate who is serious about running for office will probably raise at least \$250 in contributions either from his or her personal funds or from supporters; or collect the signatures required. Therefore, section 89001 does not prevent the city from imposing this requirement upon a candidate's inclusion in the brochure. Please note that the brochure must explicitly state the criteria a candidate must satisfy to be included in the brochure. (*Solden Advice Letter*, *supra*.)

As noted above, the main purpose behind the mass mailing provision is to eliminate the potential unfair advantage that the use of public funds may provide to an incumbent during the election period. Therefore, if a candidate brochure only includes an incumbent candidate for a particular office and does not include a challenger for that office, the brochure would not be a permissible mailing under section 89001.

Section 85300

Section 85300 prohibits the use of public moneys for the purpose of seeking elective office. Regulation 18530 exempts from this prohibition "expenditures of public funds for the production and dissemination of candidate statements for all candidates for the same office pursuant to Elections Code section 13307." Thus, section 85300 would not apply to the candidate brochures that follow the guidelines in Elections Code section 13307. (*Solden 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: Julia Butcher
Staff Counsel, Legal Division

SGC:JB:tls