



FAIR POLITICAL PRACTICES COMMISSION

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November 10, 1999

The Honorable Cruz M. Bustamante
Lieutenant Governor
State of California
State Capitol, Room 1114
Sacramento, California 95814

**Re: Your Request for Advice
Our File No. A-99-265**

Dear Lieutenant Governor Bustamante:

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

QUESTIONS

You meet with a variety of groups each month. After each meeting, you would like to send a "nice to see you/meet you" letter to those who attended the meetings.

1. How many "nice to see you/meet you" letters may you send after one meeting in a single calendar month?
2. How many "nice to see you/meet you" letters may you send after more than one meeting in a single calendar month?

CONCLUSIONS

1. You may not send more than 200 of these letters in a single calendar month since they are identical, and therefore substantially similar to each other, and no exception to the mass mailing prohibition applies.

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

2. You may not send more than 200 of these letters in a single calendar month if they are substantially similar. Whether a letter is substantially similar to another letter must be decided on a case-by-case basis.

FACTS

You have submitted examples of letters that you wish to distribute at public expense, which we have labeled as Samples 1-6:

SAMPLE 1: This letter begins, "I enjoyed participating in *Hispanic Magazine's* recent Hispanic Achievement Awards." The purpose of the event was to recognize certain Hispanic American individuals.

SAMPLE 2: This letter begins, "I enjoyed participating in the Silicon Valley Manufacturing Group's recent barbecue event at Mr. Singh's lovely home in Los Gatos." The purpose of the event was to discuss issues of concern to business leaders in Silicon Valley.

SAMPLE 3: This letter begins, "I enjoyed seeing you at the International Trade luncheon earlier this month at the Ritz-Carlton." The purpose of the event was to promote international trade relations with Mexico.

SAMPLE 4: This letter begins, "Thank you so much for the great dinner and discussion recently in Gold River." The purpose of the event was to discuss issues of concern to Gold River business leaders.

SAMPLE 5: This letter begins, "I enjoyed seeing you at the recent luncheon in Coronado." The purpose of the event was to discuss health, education, community revitalization, and Proposition 187.

SAMPLE 6: This letter begins, "It was a pleasure to see you at the recent breakfast in Washington, D.C." The purpose of the event was to meet with industry leaders and discuss issues that impact California.

You would like to send up to 200 of each sample letter in a single calendar month. According to your request, each of the events mentioned in the sample letters took place at different times, dealt with different topics, and involved different groups. Each letter will be sent on your letterhead and will include your signature. In addition, these letters make references to you with the use of the words "I," "me," and "my."

ANALYSIS

Section 89001 - Mass Mailing Prohibition.

Section 89001 of the Act provides: "No newsletter or other mass mailing shall be sent at public expense." (Section 89001.) The purpose of this law is to ensure that incumbents do not receive an unfair advantage over challengers in the next election. (Section 81002(e).) Regulation 18901 interprets this broad prohibition. Subdivision (a) of the regulation prohibits a mailing if all of the following four criteria are met, and an exception in subdivision (b) does not apply:

1. The item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box; and the item is a tangible item, such as a videotape, record, or button, or a written document.
2. The item sent either: (1) 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, or (2) features an elected officer affiliated with the agency which produces or sends the mailing.
3. Any of the costs of distribution are paid for with public moneys; or the costs of design, production, and printing exceeding \$50 are paid for with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted.
4. More than 200 substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request. (Regulation 18901(a).)

Regulation 18901, Subdivision (a).

The letters you describe in your request meet the first three criteria in subdivision (a). Presumably, the letters will be mailed to the recipient at his or her residence, place of employment or business, or post office box. In addition, the letters include references to you, and were prepared and will be sent at your direction. Finally, you intend to send these letters at public expense.

Your question concerns the fourth criterion listed in subdivision (a). The Act defines a "mass mailing" as "over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry." (Section 82041.5.) The fourth criterion in Regulation 18901(a) incorporates that definition. Thus, the only mailings subject to the mass mailing prohibition are those that include more than 200 substantially similar pieces of mail sent in a single calendar month. Two items are "substantially similar" if any of the following apply:

- “1. The items are identical, except for changes necessary to identify the recipient and his or her address.
2. The items are intended to honor, commend, congratulate, or recognize an individual or group, or individuals or groups, for the same event or occasion
3. Most of the ... activities, events, or issues of public concern mentioned in one item are mentioned in the other[, and] [m]ost of the information contained in one item is contained in the other.”
(Regulation 18901(c)(3)(A).)

Whether two pieces of mail are “substantially similar” is a fact-specific question. With your request, you submitted six letters, which we have labeled as Samples 1-6. You would like to send 200 copies of each of the six sample letters in a single calendar month.

We begin by addressing how many copies of one sample letter, such as Sample 1, you may send in one month. Since copies of one sample letter are identical, except for the identity of the recipient and his or her address, the copies are considered to be “substantially similar.” (Regulation 18901(c)(3)(A)(1).) As such, you may not send more than 200 copies of one particular sample letter in a single calendar month unless an exception in subdivision (b) of the regulation applies.

We next address whether you may send out 200 copies of each of the six sample letters (i.e., 1200 letters) in a single calendar month. According to your request, each of the six events mentioned in the six sample letters took place at different times, dealt with different topics, and involved different groups. Under these facts, no one of the six sample letters is “substantially similar” to another sample letter. (Regulation 18901(c)(3)(A)(2), (3).) Therefore, you may send up to 200 copies of each of the six sample letters during the same calendar month.

Regulation 18901, Subdivision (b) - Exceptions.

Regulation 18901(b) describes 11 exceptions to the mass mailing prohibition. Only one of these exceptions pertains to your facts. A mass mailing sent at public expense is not prohibited if the elected officer’s name (or any other reference to the elected officer) only appears in the letterhead of the stationery used in the mailing. (Regulation 18901(b)(1).) This is known as the “letterhead exception.” This exception does not apply if the mailing makes any other reference to the elected officer.

Each of the six sample letters submitted with your request will be sent on your letterhead. These letters, however, will also include your signature and other references to you with the use of the words “I,” “me,” and “my.” (*Lofgren* Advice Letter, No. A-99-087.) Since these letters make references to you in addition to the reference in the letterhead, the letterhead exception does not apply to your facts. Therefore, you may not send more than 200 of each of the six sample letters in a single calendar month.

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

Sincerely,

Luisa Menchaca
Acting Chief, Legal Division

A handwritten signature in cursive script that reads "Julia Bilaver".

By: Julia Bilaver
Staff Counsel, Legal Division

LM:JB:tls