



FAIR POLITICAL PRACTICES COMMISSION

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September 5, 2000

Tom Huening, Controller
County of San Mateo
555 County Center, 4th Floor
Redwood City, CA 94063

**Re: Your Request for Advice
Our File No. A-00-184**

Dear Mr. Huening:

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

QUESTION

Is a quarterly newsletter issued by the controller's office for the County of San Mateo, and distributed to other government agencies and officials who are the recipients of the tax apportionments produced by a division of the controller's office, exempt from the prohibitions against the sending of mass mailings at public expense?

CONCLUSION

Yes. Items sent in the normal course of business from one governmental entity or officer to another governmental entity or officer, as well as intra-agency communication in the normal course of business to employees and other staff, are exempt from the restrictions of Section 89001, which prohibits mass mailings sent at public expense.

FACTS

You are the Controller for the County of San Mateo. Your office publishes a quarterly newsletter, for the purpose of communicating to county employees, department and division staff, policy makers, the cities, special districts, and the County Office of

¹ Government Code sections 81000 – 91015. Commission regulations appear at title 2, sections 18109-18996, of the California Code of Regulations.

Education, who are the recipients of the tax apportionments that are produced by the Property Tax Division of your office. Your staff does the copywriting and design, while a county vendor does the printing. Postage and printing costs have been borne by public expense and distribution through the inter-county pony mail and the U.S. postal system. Not more than 200 newsletters have been posted through the U.S. mail during a month. A total of 867 newsletters are distributed monthly.

ANALYSIS

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." A literal reading of this section led to the conclusion that all mass mailings involving public funds, irrespective of content or purpose, were prohibited by Section 89001. In response to a variety of questions concerning the distribution of tax notices, tax refund checks, community college schedules, sample ballots, and other mass mailings customarily sent by government agencies, the Commission adopted Regulation 18901 to clarify which mailings were permissible and which were prohibited under the Act.² Under the regulation, a mailing is prohibited if four criteria are met. We analyze each below:

1. Inclusion of a Reference to an Elected Officer

If the item features³ an elected officer, or includes the name, photograph, or any reference 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).) Controller Huening is an elected official, and the proposed newsletter is sent from the office of the San Mateo County Controller. The publication features his name and office prominently across the top of the newsletter. Accordingly, the mailing features an elected officer affiliated with the agency that sends the mailing. (Regulation 18901(a)(2)(A).)

2. Public Moneys

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 moneys or more than \$50.00 in public money is paid for the costs of design or production, and the design or printing is done with the intent of sending the item. Thus, items which are produced and distributed at private expense are not subject to the restrictions of Regulation 18901. The communications in question are being prepared and distributed with public funds.

² The Commission's authority to interpret section 89001 to avoid the absurd results of its literal application was upheld in *Watson v. Fair Political Practices Commission* (1990) 217 Cal.App.3d 1059.

³ 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 name or office in the layout of the document, such as by headlines, caption, type size, typeface, or type color. (Regulation 18901, subd. (c)(2).)

3. Delivery

Regulation 18901(a)(1) restricts items that are mailed or delivered, by any means, to a person's home, office or post office box. (*Anaya* Advice Letter, No. A-91-215.) Thus, this factor is met with respect to the newsletters which are to be delivered, regardless of whether it is delivered by the county pony mail or the U.S. postal system.

4. Mass Mailings

Finally, Regulation 18901 applies only to a "mass mailing" as defined in the Act. "Mass mailing" means over two hundred 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). (Section 82041.5.)

Your letter states that over 800 brochures will be sent to county employees and other city officials. Therefore, this requirement is met.

Because all four criteria are met, the mass mailing prohibition would apply unless an exception applies.

Exceptions

Regulation 18901 also sets forth a series of specific exceptions to the prohibition. Subdivisions (b)(3) and (4) provide that a mass mailing is not prohibited under Section 89001 if the mailing consists of:

"(3) Any item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer.

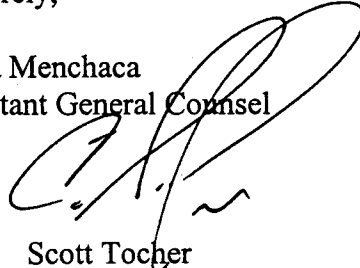
"(4) Any intra-agency communication sent in the normal course of business to employees, officers, deputies and other staff."

Therefore, information sent in the normal course of business to other governmental entities or officers, or to intra-agency members and officials, which features elected officials are not prohibited by the Act. (*Hamby* Advice Letter, No. A-88-476; *Waggoner* Advice Letter, No. 92-247.) Mailings to employees and other governmental entities fall within this exception so long as they are sent in the normal course of business. (*Mott-Smith* Advice Letter, No. I-89-108; *Waggoner* Advice Letter, No. A-92-247.) In light of the fact that the newsletter is distributed to county government officials and staff which bear a reasonable relationship to the functions carried out by your office, this newsletter qualifies under the exceptions listed above.

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

Sincerely,

Luisa Menchaca
Assistant General Counsel

A handwritten signature in black ink, appearing to read 'S. Tocher', is written over the printed name of the signatory.

By: Scott Tocher
Staff Counsel, Legal Division

ST:jg
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