



## FAIR POLITICAL PRACTICES COMMISSION

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September 7, 2000

Mr. Steven G. Standerfer  
Antelope Valley College  
3041 W. Ave. K  
Lancaster, CA 93536-5426

**Re: Your Request for Informal Assistance  
Our File No. I-00-193**

Dear Mr. Standerfer:

This letter is in response to your request for advice regarding the mass mailing prohibition in the Political Reform Act (the "Act").<sup>1</sup> Your letter does not indicate whether you have been authorized by the Lancaster City Council to request advice on their behalf, thus, we decline to advise you with respect to the city's newsletter. (Reg. 18329(b)(8)(B) and (c)(4)(C).) Moreover, your other questions appear to be general in nature, thus we are treating these questions as requests for informal assistance. (Reg. 18329(b)(8)(C) and (c).) Informal assistance does not provide the requestor with the immunity provided by formal written advice. (Section 83114; Reg. 18329(c)(3).)

### QUESTIONS

1. "If an elected official within the agency merely asks for the names of all elected agency officials to be included in all mass mailings, is this acceptable or is this considered acting in concert with the official? For instance, if I work for an agency where elected officials want to have their names added to all brochures – brochures that are frequently mass mailed to people – can the names of the elected officials appear, even though no other representatives of the agency are included?"

2. "[I]s there anything that would bar the use of elected officials' names prominently on the front cover of a publication, so long as the headlines, type size, color, etc. are in keeping with the rest of the publication that is mass mailed?"

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

## DISCUSSION

Section 89001 of the Act provides: "No newsletter or other mass mailing shall be sent at public expense." (Section 89001.) Regulation 18901 interprets and implements the prohibition in section 89001. Regulation 18901(a) prohibits a mailing if all of the following four criteria are met (absent an express exception in subdivision (b) of the regulation).

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:

(a) 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

(b) 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. (Reg. 18901(a).)

However, even when these four criteria are met, the mass mailing may still be permissible if an exception in regulation 18901(b) applies. For example, subdivision (b)(1) of the regulation provides that: "Any item in which the elected officer's name appears only in the letterhead or logotype of the stationery, forms (including "For Your Information" or "Compliments of" cards), and envelopes of the agency sending the mailing, or of a committee of the agency, or of the elected officer, or in a roster listing containing the names of all elected officers of the agency. In any such item, the names of all elected officers must appear in the same type size, typeface, type color, and location. Such item may not include the elected officer's photograph, signature, or any other reference to the elected officer, except as specifically permitted..." in some other exception in regulation (b). (See, Reg. 18901, enclosed, for a complete list of exceptions.)

In response to your specific questions:

1. "If an elected official within the agency merely asks for the names of all elected agency officials to be included in all mass mailings, is this acceptable or is this considered acting in concert with the official? For instance, if I work for an agency where elected officials want to have their names added to all brochures – brochures that are frequently mass mailed to people – can the names of the elected officials appear, even though no other representatives of the agency are included?"

The regulation prohibits reference to the name, office, or any other reference to an elected officer (or the inclusion of a photograph), who is affiliated with the agency which produces or sends the mailing under two circumstances: (a) If the mailing is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer, (b) or where the mailing *features* the elected officer affiliated with the agency, irrespective if the mailing was prepared or sent in cooperation, consultation, coordination, or concert with the elected officer or not. In either of these circumstances, the prohibition will apply absent an exception.

Where the elected officer requests the inclusion of his or her name, the mailing is sent in cooperation, consultation, coordination, or concert with the elected officer and the elected officer's name may not be included in a mass mailing, absent an express exception. (*Stone* Advice Letter, No. I-89-670.)

2. "[I]s there anything that would bar the use of elected officials' names prominently on the front cover of a publication, so long as the headlines, type size, color, etc. are in keeping with the rest of the publication that is mass mailed?"

You have not provided sufficient facts for us to adequately answer this question. However, we can make the following general statements with respect to the characteristics of the appearance of an official's name in a mailing.

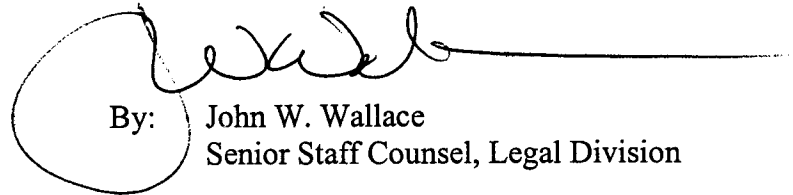
- If the mailing in question is not a mass mailing because it does not meet the criteria set forth in regulation 18901(a), then the Act would not restrict the characteristics of the printed name of the elected official (such as type size and color).
- If the mailing is a mass mailing pursuant to regulation 18901(a) and the mailing is sent in cooperation, consultation, coordination, or concert with the elected officer, the name may not appear at all, absent an exception.
- If the mailing is a mass mailing pursuant to regulation 18901(a) and the mailing is not sent in cooperation, consultation, coordination, or concert with the elected officer, the name may appear so long as it is not featured. Regulation 18901(c)(2) provides: " 'Features an elected officer' means that the 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, captions, type size, typeface, or type color.*" [Emphasis added]. Thus, if the 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, captions, type size, typeface, or type color, the mailing would be prohibited.

I hope this general discussion of the law is helpful. We have enclosed a copy of regulation 18901 for your information. If you have any other questions, please feel free to contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
Assistant General Counsel

A handwritten signature in black ink, appearing to read "J. Wallace", with a long horizontal line extending to the right. The signature is written over a circular stamp.

By: John W. Wallace  
Senior Staff Counsel, Legal Division

Enc. 18901.