



FAIR POLITICAL PRACTICES COMMISSION

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July 13, 2004

Mark van de Kamp
City Manager
City of Santa Maria
110 East Cook Street, Room #1
Santa Maria, CA 93454-5190

Re: Your Request for Advice
Our File No. A-04-130

Dear Mr. van de Kamp:

This letter is in response to your request on behalf of City of Santa Maria Mayor Larry Lavagnino for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

Is the City of Santa Maria (the "city") permitted under the Act to post on its website a message welcoming visitors ("welcome message") to the city from Mayor Lavagnino?

CONCLUSION

Because the Act's mass mailing prohibition does not apply to electronic mail or websites, the city may post Mayor Lavagnino's welcome message on its website without violating the prohibition. Furthermore, so long as the welcome message does not contain express advocacy, does not make reference either to the mayor's candidacy for elective

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

office or to that of his opponents, and does not solicit contributions, no contribution to the mayor will result from the city's posting of the message.

FACTS

In your request for advice, you include the text of the proposed welcome message from the mayor which the city intends to post on their website. As you note in your letter, the message does not appear to contain any political statements, but instead, lists the city's attractions and ends with an invitation to the reader to visit the city and explore the website. The only reference to the mayor is his name at the end of the message indicating that he is the author, and his city office address. Your concern about the welcome message is prompted by the fact that the mayor will be campaigning for reelection in the November 2004 election.

ANALYSIS

Your question implicates two aspects of the Act's requirements which we will discuss below.

Is the Welcome Message a Prohibited Mass Mailing?

Section 89001 provides: "[n]o newsletter or other mass mailing shall be sent at public expense." The purpose of this statute is to ensure that incumbents do not receive an unfair advantage over challengers in the next election. (Section 81002(e).) Regulation 18901 interprets this provision, in pertinent part, by providing:

"(a)(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." [Emphasis added.]

According to regulation 18901, a publicly funded² mailing is a prohibited mass mailing if, among other things, it is delivered as a tangible item to the recipient at his or her residence, place of employment or business, or post office box. (Regulation 18901(a)(1).) Consistent with subdivision (a)(1), web pages are not considered tangible items and therefore are not subject to either regulation 18901 or section 89001. (*Smith* Advice Letter, No. A-03-177; *Peterson* Advice Letter, No. A-99-013; *Footte* Advice Letter, No. A-98-114.)

² Although section 85300 restricts the use of public funds ("No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office"), regulation 18530 interprets section 85300 to prohibit only "the payment of public moneys, in the form of matching funds or cash subsidies, for the public financing of elections."

Is the "Welcome Message" a Contribution from the City to the Mayor?

Section 82015 provides that an expenditure, a term defined in section 82025 as any payment made for a political purpose, made at the behest³ of a candidate is a contribution to the candidate unless full and adequate consideration is received for making the expenditure. A payment is "made for political purposes" when it is made "[f]or the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate" (Regulation 18225(a)(1).) However, regulation 18215 excludes from the definition of "contribution" certain communications made at the behest of a candidate. Specifically, regulation 18215 excludes from the definition of "contribution" a communication by the candidate or any other person, if the communication:

- "(i) Does not contain express advocacy;⁴
- (ii) Does not make reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for office; and
- (iii) Does not solicit contributions to the candidate or to third persons for use in support of the candidate or in opposition to the candidate's opponent."
(Regulation 18215(c)(4).) (Footnote added.)

Consequently, so long as the welcome message does not urge readers to either vote for Mayor Lavagnino or against his opponents, does not refer to his election campaign, and does not solicit contributions, the city's installation of the mayor's welcome message on the city's website will not be considered a contribution to Mayor Lavagnino.

³ "Made at the behest of" means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of." (Regulation 18225.7(a).)

⁴ "A communication 'expressly advocates' the nomination, election or defeat of a candidate...if it contains express words of advocacy such as 'vote for,' 'elect,' 'support,' 'cast your ballot,' 'vote against,' 'defeat,' 'reject,' 'sign petitions for' or otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election." (Regulation 18225(b)(1)(D)(2).)

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

Sincerely,

Luisa Menchaca
General Counsel



By: By: Adrienne Korchmaros
Political Reform Consultant

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