



FAIR POLITICAL PRACTICES COMMISSION

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February 6, 2009

Jed Chernabaeff
Board Representative
Tulare County Board of Supervisors
2800 W. Burrel Ave.
Visalia, CA 93291

**Re: Your Request for Informal Assistance
Our File No. I-09-022**

Dear Mr. Chernabaeff:

This letter is in response to your request for advice regarding the mass mailing provisions of the Political Reform Act (the "Act").¹ Because your question is general in nature, we are treating your request as one for informal assistance.²

Please note, our advice is limited to the provisions of the Act, and we cannot advise you with respect to whether the city-financed newsletter potentially implicates Government Code Sections 8314 and 54964, and Penal Code Section 424 -- areas of law outside the Act. We can only advise you regarding the reporting provisions of the Act. However, you may wish to get advice regarding this issue from your county counsel or the Office of the Attorney General.

QUESTIONS AND DISCUSSION

The Tulare County Board of Supervisors is exploring the idea of distributing a newsletter by electronic mail. The purpose of the newsletter would be to highlight Board of Supervisor activities, such as notable meeting decisions, updates on special projects and committees, employee recognition events, profiles and updates on each Supervisor, and updates on important county deadlines. You ask:

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3), copy enclosed.)

1. May the Board of Supervisors properly issue and send an electronic newsletter?

Section 89001 provides that "no newsletter or other mass mailing shall be sent at public expense." Regulation 18901 clarifies that the prohibition only applies to items sent, meaning 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. (Regulation 18901(a)(1).) Because distribution over the Internet is not distribution of a tangible item, it is not a prohibited mass mailing under the Act.

2. Are there any legal restrictions on the content of the electronic newsletter?

As noted above, the Act would not restrict the distribution of a newsletter on the Internet. While mailings that are subject to Section 89001 and Regulation 18901 are prohibited when they either: (A) feature an elected officer affiliated with the agency which produces or sends the mailing, or (B) include 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," that provision does not apply to electronic mailings (Regulation 18901(a)(2).)

However, you should be mindful that we cannot advise you with respect to possible application of Government Code Sections 8314 and 54964, and Penal Code Section 424, areas of law outside the Act, which govern the appropriate use of public funds.

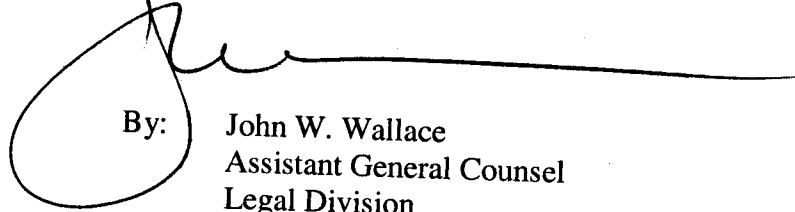
3. If yes, how can the Board ensure that hard copies of the newsletter do not become an improper mass mailing?

We have advised that distribution of a publically funded item with the intent that it be redistributed to a total of more than 200 additional persons at their residences, businesses, post office boxes, or places of employment could result in a violation of the mass mailing prohibition. (Symkowitz Advice Letter, No. A-97-178.) In the Lavagetto Advice Letter, No. A-90-199, we observed that an agency that sent its brochures to public locations for pick up must take reasonable precautions to prevent redistribution of the brochures by a third party to the homes or workplaces of more than 200 persons per month. In this case, the city may wish to expressly limit redistribution of the newsletter in tangible form.

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

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in black ink, appearing to read "John W. Wallace", is written over a horizontal line. The signature is stylized and somewhat cursive.

By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl

Enclosure