



FAIR POLITICAL PRACTICES COMMISSION

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August 5, 2014

Jean B. Savaree
1001 Laurel Street, Suite A
San Carlos, California 94070

Re: Your Request for Informal Assistance
Our File No. I-14-117

Dear Ms. Savaree:

This letter responds to your request for advice, on behalf of Councilmember Herb Perez, regarding the mass mailing provisions of the Political Reform Act (the "Act").¹ This letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because you have sought general guidance not limited to a specific mailing, we are treating your request as one for informal assistance.² Please note that our advice is based solely on the provisions of the Act, and nothing in this letter should be construed to evaluate any conduct that may have already taken place.

QUESTION

Does the Act's mass mailing prohibition apply to advertisements placed by a councilmember's business or his spouse's business in a city guide prepared by a chamber of commerce or to materials prepared for chamber of commerce or city events that are sponsored by the councilmember's business?

CONCLUSION

The mass mailing prohibition does not apply to advertisements or materials that identify the councilmember's business or his spouse's business as long as the advertisements or materials

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 of 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).)

do not contain any references to the councilmember such as use of the councilmember's name or a photograph.

FACTS

Foster City Councilmember Herb Perez is the owner of Gold Medal Martial Arts, which is located in Foster City, and is also a member of the Foster City Chamber of Commerce (the "Chamber"). As a business owner in Foster City, Councilmember Perez is one of a number of sponsors for both Chamber and City events. Materials for these events, including press releases and informational flyers, list sponsors by the names of their businesses. In addition to sponsoring Chamber and City events, Councilmember Perez places advertisements for his business in Chamber publications. In all of this material, the only information shown regarding Councilmember Perez and his business is the name of his business, Gold Medal Martial Arts. Neither Councilmember Perez's name nor photograph appear in any of the advertisements, and the advertisements do not contain any references to either Councilmember Perez or his position as a member of the city council.

At this time, the Chamber is in the process of preparing the "Foster City Living! LOCAL City Guide" (the "Guide"). In March of 2014, the city council considered whether or not to enter into a contract with the Chamber under which the Chamber would have provided specific services to the City. The Chamber's proposal contained a request that the City fund costs associated with preparing the Guide. The City Council deferred action on the Chamber's proposal, but will consider it again later this year.

Councilmember Perez has historically placed an advertisement in Chamber publications and had intended to place an advertisement in the Guide this year. Prior to doing so, and in light of the Chamber's request for funding of the Guide, he is seeking advice from the FPPC regarding whether or not an advertisement in the Guide would constitute a violation of the mass mailing prohibition found in Section 89001. More specifically, Councilmember Perez asks:

- Would he be precluded from advertising in the Guide if the City funds the Guide at a cost in excess of \$50 and 200 or more copies are distributed in a single calendar month?
- Would his spouse, who owns a separate but similar business, be precluded from advertising her business in the Guide if it were funded by the City?
- Would he or his spouse be precluded from advertising in the Guide if it was distributed electronically rather than physically?
- Would Councilmember Perez or his spouse be precluded from advertising in the Guide if it was not distributed but instead placed at a number of locations in the City and on the Chamber's website where individuals and businesses could obtain a copy?

Additionally, Councilmember Perez asks whether or not his sponsorship of Chamber and City events is prohibited if materials for the events identify the name of his business, Gold Medal Martial Arts, as an event sponsor.

ANALYSIS

Section 89001 states that “no newsletter or other mass mailing shall be sent at public expense.” Regulation 18901(a) states that “except as provided in subdivision (b), a mailing is prohibited by section 89001 if the following criteria are met:

“(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 ...

“(2) The item sent either:

“(A) Features an elected officer affiliated with the agency which produces or sends the mailing, or

“(B) 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.

“(3)(A) Any of the costs of distribution is paid for with public moneys; or

“(B) Costs of design, production, and printing exceeding \$50.00 are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this regulation.

“(4) More than two hundred substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b).”

In order for an item to be a prohibited mass mailing, all four enumerated criteria listed above must be met. In this instance, you have stated that the City is considering contracting with the Chamber for services and, as part of this contract, the Chamber has asked the City to fund the costs of preparing the Guide. Previously, we have advised that a newsletter that is circulated and produced in part with public funds must comply with Section 89001. (*Battersby* Advice Letter, No. A-94-303; *Moore* Advice Letter, No. A-99-234.) We have also advised that “a mailing sent by a chamber of commerce is not ‘sent at the public expense’ for the purposes of Section 89001 merely because the chamber receives some public moneys from a city, unless the public entity expressly funds the production and distribution of the mailing sent by the chamber.” (See *Curtis* Advice Letter, No. A-94-053; *Leslie* Advice Letter, No. A-89-521; and *Warner* Advice Letter, No. I-88-392.) Because the Chamber has asked the City to specifically fund the preparation of

the Guide, the costs of the Guide will be paid for with public moneys and potentially subject to the mass mailing restrictions if the City enters into the contract with the Chamber.

However, even assuming that all other elements of the mass mailing prohibition have been met, you have stated the Councilmember Perez will only advertise the name of his business and that there will be no references to Councilmember Perez or his office. To the extent that the Guide does not reference Councilmember Perez, the production and delivery of the Guide mailing is not subject to the mass mailing prohibition in Section 89001.³ Similarly, any advertisement for his spouse's business that does not reference Councilmember Perez would not be prohibited.⁴

In regard to materials for Chamber and City events, it is unclear whether materials prepared for Chamber events will be paid for with public moneys based upon the facts provided, while presumably materials for City events will be paid for with public moneys. Nonetheless, even assuming that all other elements of the mass mailing prohibition have been met, the materials are not subject to the mass mailing prohibition in Section 89001 as long as the materials only reference Councilmember Perez's business, Gold Medal Martial Arts, and do not contain any references to Councilmember Perez such as his name or photograph.⁵

³ We note that it is significant that Councilmember Perez's name is not contained within the name of his business. In instances where the official's name is contained within the name of the business, we have determined that including the name of the official within the name of the business is a reference for purposes of the Section 89001 potentially triggering the mass mailing prohibition. (See *Kohn* Advice Letter, No. A-99-228; *Houston* Advice Letter, No. A-04-026; and *Houston* Advice Letter, No. I-05-183.)

⁴ You have also asked about electronic advertisements and handing out the Guide at City locations. While we have concluded that the mass mailing provisions do not apply for the reasons stated above, we note that mass mailing restrictions apply only to "tangible" items and therefore do not apply to electronic advertisements. (*Goulet* Advice Letter, No. I-12-152.) Moreover, mass mailing restrictions only apply to items delivered to a residence, place of employment or business, or post office box. (Regulation 18901(a)(1)). The restrictions do not apply to items made available for members of the public to take or handed out in a public area. (*Anaya* Advice Letter, No. A-91-215.)

⁵ The facts provided do not implicate any other provisions of the Act. To the extent that Chamber or City events are charitable events, donations made in response to materials that merely identify the name of Councilmember Perez's business and do not reference the councilmember are not considered payments made at the councilmember's behest and not subject to reporting under Section 82015(h)(2)(B)(iii). (Regulation 18215.3(h).) Moreover, there are no indications that Councilmember Perez has been offered free or discounted advertisement rates, which would implicate the Act's gift restrictions. (See Section 82028; Regulation 18940.)

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

Sincerely,

Zackery P. Morazzini
General Counsel

A handwritten signature in black ink, appearing to read 'B. Lau', with a long horizontal flourish extending to the right.

By: Brian G. Lau
Counsel, Legal Division

BGL:jgl