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COUNTY OF ORANGE

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LEON J. PAGE
COUNTY COUNSEL

A-100

MEMORANDUM

Confidential Attorney-Client Privileged Communication

April 1, 2016

TO: Eric H. Woolery, Auditor-Controller

FROM: Leon J. Page, County Counsel

SUBJECT: Distribution of Mailers Under the Mass Mailing Act

This will provide you with general information about the Mass Mailing Act as it pertains to mailers promoting County events where the mailer mentions an elected official.

The provisions of the Mass Mailing Act (the "Act") are found in the Political Reform Act contains. Set forth at Government Code section 89001, the Act provides: "No newsletter or other mass mailing shall be sent at public expense." This succinct statute has been implemented by Fair Political Practices Commission ("FPPC") Regulation 18901 (attached) which prohibits:

- Delivery of more than 200 substantially similar, tangible items in a calendar month;
- to individuals at their residence, place of business, place of employment, or post office box;
- if any cost of distribution is paid with public funds, or more than \$50 of public funds are used for the design, production or printing of the item; and
- the item either features or references an elected officer affiliated with the agency that produces or sends the mailing through the use of his or her name, office, photograph, or signature or other reference. Cal. Code Regs. tit. 2, § 18901 (a) (2), (c) (2).

Under the regulation, there are three exceptions generally applicable to mailers regarding County events—the letterhead/envelope exception, the constituent meeting announcement exception and the official agency event announcement exception. Under these exceptions, mailers that feature or reference an elected official may be distributed in unlimited numbers without violating the Act.

Letterhead/Envelope Exception

The letterhead/envelope exception is for “[a]ny 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 this subdivision (b)(1) or elsewhere in this regulation.*” Cal. Code Regs. tit. 2, § 18901 (b) (1). (Emphasis added.)

In connection with a recent review of a mailer, the FPPC advised our office that, under the letterhead exception, it is permissible to split letterhead information between the top and bottom of a postcard mailer. The letterhead/envelope exception also covers mentions of an elected official in a return address.

Constituent Meeting Announcement Exception

The constituent meeting announcement exception is for “[a]n announcement sent to an elected officer’s constituents concerning a public meeting which is directly related to the elected officer’s incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend.” Such an announcement “shall not include the elected officer’s photograph or signature and may include only a single mention of the elected officer’s name *except as permitted elsewhere in this regulation.*” Cal. Code Regs. tit. 2, sec. 18901 (b) (9). (Emphasis added.)

In order to meet the exception, the following are required:

- The announcement must be sent to the elected officer’s constituents;
- It must concern a public meeting directly related to the elected officer’s incumbent governmental duties;
- The meeting must be held by the elected officer; and
- The elected officer must intend to attend the meeting.

Concerning the “Public meeting . . . directly related to . . . incumbent governmental duties” provision, “[t]here should be some type of assembly providing an encounter between the elected officer and his or her constituents. The announced meeting should be open to the public and must relate to the governmental duties of the elected officer holding the meeting. For example, the meeting may focus on constituent concerns and the need for legislation or other action to remedy them; the elected officer may discuss pending legislation and how it will affect the district; the elected officer may explain the effect of legislation which has been adopted.” “Held by the elected officer” means that “the elected officer exercises direction and control over

Eric H. Woolery, Auditor-Controller
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the agenda, is responsible for making all physical and financial arrangements for the meeting, and conducts the meeting. A meeting is not held by an elected officer if the elected officer merely participates in an event put on by someone else.” *Connelly*, FPPC Advice Letter No. I-90-524 (attached). See also, *Kamp*, FPPC Advice Letter No. A-97-623(a) (attached).

Official Agency Event Announcement Exception

The constituent meeting announcement exception is for “An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support.” Such an announcement “shall not include the elected officer’s photograph or signature and may include only a single mention of the elected officer’s name *except as permitted elsewhere in this regulation.*” Cal. Code Regs. tit. 2, sec. 18901 (b) (9). (Emphasis added.) The event announcement exception applies to official agency events where County employees will be staffing the event or the County is providing the facility or other financial support for the event.

We hope this is helpful. Please contact me or Assistant County Counsel Ann Fletcher at 834-3313 if you have any questions.



AEF:nr
Attachments

FPPC REGULATION 18901

Barclays Official California Code of Regulations Currentness

Title 2. Administration

Division 6. Fair Political Practices Commission

Chapter 9. Incumbency (Refs & Annos)

2 CCR § 18901

§ 18901. Mass Mailings Sent at Public Expense.

(a) Except as provided in subdivision (b), a mailing is prohibited by section 89001 if all of 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. 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.

(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).

(b) Notwithstanding subdivision (a), mass mailing of the following items is not prohibited by section 89001:

(1) 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 this subdivision (b)(1) or elsewhere in this regulation.

(2) A press release sent to members of the media.

(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.

(5) Any item sent in connection with the payment or collection of funds by the agency sending the mailing, including tax bills, checks, and similar documents, in any instance where use of the elected officer's name, office, title, or signature is necessary to the payment or collection of the funds. Such item may not include the elected officer's photograph, signature, or any other reference to the elected officer except as specifically permitted in this subdivision (b)(5) or elsewhere in this regulation.

(6) Any item sent by an agency responsible for administering a government program, to persons subject to that program, in any instance where the mailing of such item is essential to the functioning of the program, where the item does not include the elected officer's photograph; and where use of the elected officer's name, office, title, or signature is necessary to the functioning of the program.

(7) Any legal notice or other item sent as required by law, court order, or order adopted by an administrative agency pursuant to the Administrative Procedure Act, and in which use of the elected officer's name, office, title, or signature is necessary in the notice or other mailing. For purposes of this subdivision (b)(7), inclusion of an elected officer's name on a ballot as a candidate for elective office, and inclusion of an elected officer's name and signature on a ballot argument, shall be considered necessary to such a notice or other item.

(8) A telephone directory, organization chart, or similar listing or roster which includes the names of elected officers as well as other individuals in the agency sending the mailing, where the name of each elected officer and individual listed appears in the same type size, typeface, and type color. Such item may not include an elected officer's photograph, name, signature, or any other reference to an elected officer, except as specifically permitted in this subdivision (b)(8) or elsewhere in this regulation.

(9)(A) An announcement of any meeting or event of the type listed in paragraphs 1 or 2.

1. An announcement sent to an elected officer's constituents concerning a public meeting which is directly related to the elected officer's incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend.

2. An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support.

(B) Any announcement provided for in this subdivision (b)(9) shall not include the elected officer's photograph or signature and may include only a single mention of the elected officer's name except as permitted elsewhere in this regulation.

(10) An agenda or other writing that is required to be made available pursuant to sections 11125.1 and 54957.5 of the Government Code, or a bill, file, history, journal, committee analysis, floor analysis, agenda of an interim or special hearing of a committee of the Legislature, or index of legislation, published by the Legislature.

(11) A business card which does not contain the elected officer's photograph or more than one mention of the elected officer's name.

(c) The following definitions shall govern the interpretation of this regulation:

(1) "Elected officer affiliated with the agency" means an elected officer who is a member, officer, or employee of the agency, or of a subunit thereof such as a committee, or who has supervisory control over the agency, or who appoints one or more members of the agency.

(2) "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.

(3) "Substantially similar" is defined as follows:

(A) Two items are "substantially similar" if any of the following applies:

1. The items are identical, except for changes necessary to identify the recipient and his or her address.

2. The items are intended to honor, commend, congratulate, or recognize an individual or group, or individuals or groups, for the same event or occasion; are intended to celebrate or recognize the same holiday; or are intended to congratulate an individual or group, or individuals or groups, on the same type of event, such as birthdays or anniversaries.

3. Both of the following apply to the items mailed:
 - a. Most of the bills, legislation, governmental action, activities, events, or issues of public concern mentioned in one item are mentioned in the other.

 - b. Most of the information contained in one item is contained in the other.

(B) Enclosure of the same informational materials in two items mailed, such as copies of the same bill, public document, or report, shall not, by itself, mean that the two items are “substantially similar.” Such informational materials may not include the elected officer’s name, photograph, signature, or any other reference to the elected officer except as permitted elsewhere in this regulation.

(4) “Unsolicited request” is defined as follows:

(A) A written or oral communication (including a petition) which specifically requests a response and which is not requested or induced by the recipient elected officer or by any third person acting at his or her behest. However, an unsolicited oral or written communication (including a petition) which contains no specific request for a response, will be deemed to constitute an unsolicited request for a single written response.

(B) An unsolicited request for continuing information on a subject shall be considered an unsolicited request for multiple responses directly related to that subject for a period of time not to exceed 24 months. An unsolicited request to receive a regularly published agency newsletter shall be deemed an unsolicited request for each issue of that newsletter.

(C) A previously unsolicited request to receive an agency newsletter or mass mailing on an ongoing basis shall not be deemed to have become solicited by the sole fact that the requestor responds to an agency notice indicating that, in the absence of a response, his or her name will be purged from the mailing list for that newsletter or mass mailing. A notice in the following language shall be deemed to meet this standard:

“The law does not permit this office to use public funds to keep you updated on items of interest unless you specifically request that it do so.”

Inclusion of a similar notice in other items shall not constitute a solicitation under this regulation.

(D) A communication sent in response to an elected officer's participation at a public forum or press conference, or to his or her issuance of a press release, shall be considered an unsolicited request.

(E) A person who subscribes to newspapers or other periodicals published by persons other than elected officers shall be deemed to have made unsolicited requests for materials published in those subscription publications.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82041.5 and 89001, Government Code.

HISTORY

1. New section filed 10-18-77; effective thirtieth day thereafter (Register 77, No. 43). For prior history, see Register 77, No. 14.
2. Amendment filed 10-29-81; effective thirtieth day thereafter (Register 81, No. 44).
3. Editorial correction of subsection (d)(5) (Register 82, No. 17).
4. Amendment filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
5. Amendment filed 8-8-88 as an emergency; operative 8-8-88 (Register 88, No. 33). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-6-88.
6. Reinstatement of section as it existed prior to 8-8-88 emergency amendment by operation of Government Code Section 11346.1(f) (Register 88, No. 52).
7. Amendment filed 12-9-88 as an emergency readoption of amendment originally filed 8-8-88; operative 12-9-88 (Register 88, No. 52). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-8-89.
8. Certificate of Compliance including repealer of Section 18901 and new Section 18901 transmitted to OAL 2-9-89 and filed 3-13-89; operative 4-12-89 (Register 89, No. 11).
9. Repealer and new section filed 6-29-90; operative 7-29-90 (Register 90, No. 35).

10. Editorial correction of History 1 (Register 95, No. 21).

11. Editorial correction inserting previously deleted History Notes 1-8 and renumbering remaining History Notes (Register 95, No. 25).

12. Editorial correction of subsection (c)(3)(A)1. (Register 95, No. 30).

Current with amendments included in Barclay's California Code of Regulations, Register 2016, Number 12, dated March 18, 2016.

2 CCR § 18901, 2 CA ADC § 18901

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FPPC ADVICE LETTER NO. I-90-524

CA FPPC Adv. I-90-524 (Cal.Fair.Pol.Prac.Com.), 1990 WL 693059

California Fair Political Practices Commission

BOB CONNELLY, CHIEF ADMINISTRATIVE OFFICER

FPPC File No.

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524

September 14, 1990

*1 Discussion of basic elements of meeting notice exception re announcements of constituent meetings.

18901(b)(9)(I), 89001

Bob Connelly
Chief Administrative Officer
Assembly Rules Committee
State Capitol -- Room 3016
Sacramento, CA 94249-0001

Re: Your Request for Informal Assistance

Dear Mr. Connelly:

This is in response to your request for advice concerning the application of the mass mailing provisions of the Political Reform Act (the "Act").¹ Specifically, we are providing this advice with respect to descriptions of typical meetings held by Assembly members submitted to us by Mr. Bill Cavala. Because this advice is rendered to assist you in advising members of the Assembly, we are treating this request as one for informal assistance pursuant to Regulation 18239(c)(1) (copy enclosed).²

PRELIMINARY DISCUSSION

According to information that you have given us, it is common for legislators to hold meetings centered around a single issue or set of issues. The legislator arranges the time and place, invites participants, arranges the meeting schedule, introduces speakers, determines the services or information to be provided, obtains insurance and is present to meet with constituents and discuss legislation.

Mr. Bill Cavala of the Assembly staff has furnished descriptions of typical meetings held by members of the Assembly. You wish to know if notices announcing these meetings may be sent to a legislator's constituents pursuant to an exception to the prohibition on mass mailings. (Section 89001; Regulation 18901, copy enclosed.) Specifically, you wish to know if the exception permitting announcements of constituent meetings (Regulation 18901(b)(9)(A)(1.)) is applicable.

Section 89001 states that "no newsletter or other mass mailing shall be sent at public expense." A mass mailing is defined as two hundred or more substantially similar pieces of mail. (Section 82041.5.) Applied literally, this section would prohibit all mass mailing involving public funds, irrespective of content or purpose, including such items as tax notices, college schedules, sample ballots and other mass mailings sent by government agencies. Regulation 18901 clarifies that application of the prohibition is limited to items sent which include references to elected officers affiliated with the agency which produces or sends the mailing.³

Subdivision (b) of Regulation 18901 sets forth limited exceptions to the general prohibition of Section 89001. We have

consistently provided conservative advice in applying these exceptions on the premise that exceptions should be narrowly construed. (Estate of Banerjee (1978) 21 Cal.3d 527,540.)

One of the exceptions included in Regulation 18901 pertains to the sending of constituent meeting notices. (Regulation 18901(b)(9)(A)(1.)) Under this exception, mass mailing of the following is not prohibited by Section 89001:

*2 An announcement sent to an elected officer's constituents concerning a public meeting which is directly related to the elected officer's incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend.

Any such announcement may not include the elected officer's photograph or signature and may include only a single mention of the elected officer's name, except as otherwise permitted by the regulation. (Regulation 18901(b)(9)(B).)

The meeting notice exception requires that the following elements be present:

1. The announcement must be sent to the elected officer's constituents;
2. It must concern a public meeting directly related to the elected officer's incumbent governmental duties;
3. The meeting must be held by the elected officer;
4. The elected officer must intend to attend the meeting.

"Constituents": We have given telephone advice that "constituents" means the voters in the elected officer's district. Basically, we would include anyone in the district, whether or not the person is actually registered to vote. For example, we have given telephone advice that an elected officer could send a mailing using district property rolls, even though this might result in mailings to absentee owners living outside the district.

"Public meeting...directly related to...incumbent governmental duties": There should be some type of assembly providing an encounter between the elected officer and his or her constituents. The announced meeting should be open to the public and must relate to the governmental duties of the elected officer holding the meeting. For example, the meeting may focus on constituent concerns and the need for legislation or other action to remedy them; the elected officer may discuss pending legislation and how it will affect the district; the elected officer may explain the effect of legislation which has been adopted.

"Held by the elected officer": A meeting is held by an elected officer when the elected officer exercises direction and control over the agenda, is responsible for making all physical and financial arrangements for the meeting, and conducts the meeting. A meeting is not held by an elected officer if the elected officer merely participates in an event put on by someone else.

"Intend to attend": The elected officer should intend to be present for all or substantially all of the meeting.

QUESTIONS AND CONCLUSIONS

With the foregoing in mind, we now review the meeting descriptions presented. The advice provided is prospective only and is not intended as a comment with respect to any past meetings which may have been noticed by an elected officer.⁴

For purposes of our review, we assume that the member arranges the time and place of the meeting, invites the participants, arranges the meeting schedule, introduces the speakers, determines the services and information to be provided, obtains insurance and is present to meet with constituents and discuss legislation. We further assume that the member is present for all or substantially all of the meeting; the meeting is open to the public; and the notice is only sent to the elected officer's "constituents" as defined above. Our analysis will focus upon whether the event is held by the elected officer and is directly related to the elected officer's incumbent governmental duties.

*3 1. Census awareness workshops: designed to bring community groups that prepare unemployed people together with census bureau for hiring purposes.

Based upon the assumptions set forth above, so long as the elected officer conducts the workshop, this would appear to be a meeting held by the elected officer. However, it isn't clear from the information provided what connection there is between the elected officer's "incumbent governmental duties" and the workshops. Without more information, we cannot advise whether this meeting would fall within the exception.

2. Measles inoculation centers: designed to provide free measles clinics, vaccine to poor population unable to attend clinics which are not open on weekends and are distant from epidemic population. Member sponsored legislation mandating second measles shot and would attend all clinics.

Based upon the assumptions set forth above, so long as the elected officer conducts the clinics, they would appear to be held by the elected officer. However, in order to constitute a "meeting," there must be either some assembly or other opportunity for individuals or groups to "meet" with the elected officer. Since the elected officer sponsored the legislation mandating the vaccinations, the officer's presence at meetings implementing the program would appear to be directly related to his or her legislative program.

3. Malathion meetings: held by members supporting legislation that would restrict administration's ability to spray without environmental reports. Member provides informational material about malathion, status report on legislation.

Based upon the assumptions set forth above, if the member conducts the meeting, it would be held by the elected officer. Providing information and a status report about a legislative program sponsored by the member would appear to be directly related to the member's incumbent governmental duties.

4. Small business conferences: members sponsor with agencies and groups in the private sector to provide information about state programs of assistance to small business, tax information, new legislation.

We note that the event is cosponsored. However, the fact that the event is cosponsored does not, in and of itself, preclude a determination that the conference is held by the elected officer. Based upon the assumptions set forth above, it is the elected officer, and not the cosponsor, who has direction and control over the agenda and is responsible for making all physical and financial arrangements. So long as the elected officer also conducts the conference, it is held by the elected officer.

The conference would clearly be directly related to the member's incumbent governmental duties if the conference focuses on input for new legislation to be sponsored by the member, legislation currently being carried by the member, legislation carried by the member which was recently passed, or legislation currently before a committee or subcommittee of which the elected officer is a member. However, it is unclear from the information presented how the meeting would directly relate to the member's incumbent governmental duties to the extent that it merely gives private groups an opportunity to conduct seminars of interest to small business. We have previously advised that such conferences do not appear to fall within the exception. (Leslie Advice Letter, No. A-89-521, copy enclosed.)

*4 5. Government day: member sponsors a meeting inviting dozens of government agencies to present their wares to the public. Member also attends, opening a district office booth to accept new ideas for state legislation.

Based upon the assumptions set forth above, so long as the member conducts the meeting, it is held by the member. Providing his or her constituents access to governmental agencies and obtaining ideas for new legislation would appear to be directly related to incumbent governmental duties of the member.

6. Senior fair: member sponsors a meeting inviting agencies that specialize in services to senior citizens to present their wares to seniors. Bills of interest to the senior population are provided and ideas for new bills solicited.

Based upon the assumptions set forth above, so long as the member conducts the meeting, it is held by the member. Assisting his or her constituents to obtain access to governmental agencies, obtaining ideas for new bills to be carried by the member and explaining new or pending legislation to constituents would appear to be directly related to the member's incumbent governmental duties.⁵

7. Child care: member sponsors a meeting inviting agencies that specialize in child care services to present their wares to

young families. Information on child care legislation is provided.

Based upon the assumptions set forth above, so long as the member conducts the meeting, it is held by the member. Providing his or her constituents access to governmental agencies, obtaining ideas for new bills to be carried by the member and explaining new or pending legislation to constituents would appear to be directly related to the officer's incumbent governmental duties.

8. Firearms safety meeting: member calls a meeting of constituents interested in the firearms legislative package.

Based upon the assumptions set forth above, so long as the member conducts the meeting, it is held by the member. Meeting with interested constituents to discuss pending legislation would appear to be directly related to the member's incumbent governmental duties.

9. Mobile home residents: residents are invited to legislative meetings featuring the services of specific interest to them; new legislation is provided; ideas for further legislation are sought.

Based upon the assumptions set forth above, so long as the elected officer conducts the meeting, it is held by the elected officer. Meeting with constituents to discuss new legislation and ideas for future legislation would appear to be directly related to the member's incumbent governmental duties.

Finally, the information from Mr. Cavala indicates that many of the above meetings are similar--on a smaller, localized scale--to legislative hearings held in Sacramento. For example, an interim hearing on common interest subdivisions held by the Assembly Housing Committee may be duplicated in various districts that have a high density of residents living in such developments.

*5 The similarity to legislative hearings noted by Mr. Cavala coincides with our general interpretation of the constituent meeting exemption. The elected officer is present and in charge of the meeting. The elected officer exercises direction and control over the agenda and is responsible for making the physical and financial arrangements for the meeting. The meeting relates to the member's incumbent governmental duties.

I trust that the foregoing has adequately responded to your request for advice as to the applicability of the constituent meeting exemption to announcements of the types of events set forth. If you have any questions, please contact me at (916) 322-5901. Sincerely,

Scott Hallabrin
Acting General Counsel
By: Margaret W. Ellison
Counsel
Legal Division

Footnotes

- ¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.
- ² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. 18329(c)(3).)
- ³ 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 Com.* (1990) 217 Cal.App.3d 1059.
- ⁴ We have also been provided with examples of meeting notices that have apparently been sent. We note that many of these notices were sent subsequent to the adoption of Regulation 18901. We decline to comment on any specific notice since this would violate our policy of not advising regarding past conduct. (Regulation 18329(b)(8)(A) and (c)(4)(A).)

⁵ We have previously advised that a notice of a senior fair was not within the exception because the fair was an “informational event.” (Eaves Advice Letter, No. I-89-189, copy enclosed.) We have subsequently determined that the notice exception is more appropriately analyzed as set forth herein. However, events must be analyzed on a case-by-case basis to determine whether they are the type of event that may be announced using the exception for constituent meetings. Our assessment of the senior fair described, subject to the assumptions set forth, is not intended to be determinative with respect to other senior fairs which may be structured differently and in which the elected officer’s involvement may vary.

CA FPPC Adv. I-90-524 (Cal.Fair.Pol.Prac.Com.), 1990 WL 693059

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FPPC ADVICE LETTER NO. A-97-623(a)

CA FPPC Adv. A-97-623(A) (Cal.Fair.Pol.Prac.Com.), 1998 WL 113596

California Fair Political Practices Commission

STEVEN KAMP, TAX COUNSEL

FPPC File No. A-97-623(a)

March 9, 1998

*1 MASS MAIL This letter is a follow up formal advice letter to the *Chiang* Advice Letter, No. I-97-623. Five different co-sponsored events are discussed. Main topics include the new definition of "contribution" and the mass mailing prohibitions.

Steven Kamp
Tax Counsel
15350 Sherman Way, Suite 110
Van Nuys, California 91406

Re: Your Request for Advice

Dear Mr. Kamp:

On January 29, 1998, we wrote Mr. Chiang an informal advice letter *Chiang* Advice Letter, No. I-97-623, which provided general advice regarding the same mass mailings and co-sponsorship events discussed below. You write on behalf of Mr. Chiang, this time providing all facts material to the consideration of five different mailings and co-sponsored events, to secure a formal advice letter regarding the provisions of the Political Reform Act (the "Act").¹ (Regulation 18329.)

QUESTIONS

1. Do the mass mailings described below comply with the Act?
2. Will a contribution to Mr. Chiang result from the payments described below?
3. Must Mr. Chiang report any payments that he has behested from private co-sponsors?
4. If a public official receives food and beverages at one of the events described below, does a gift result in the amount of the food and beverages received?

CONCLUSIONS

1. Yes. The mass mailings described below comply with the Act.
2. No. The payments he has behested are principally for a legislative, governmental or charitable purpose and therefore are not contributions pursuant to Section 82015.
3. No. Since the amount behested from a single source is not more than \$5,000, no reportable payment as contemplated by Section 82015 occurs.
4. Yes. A gift results in the amount of the food and beverages received.

FACTS

Mr. Chiang is a candidate for reelection to the Board of Equalization. You have sent copies of the individual mailings referred to below. Also, you have included letters from the private co-sponsors detailing their participation.

Event #1 - The Small Business Tax Seminar.

Mr. Chiang, in his capacity as Acting Member of the Board of Equalization for the Fourth District, intends to conduct a small business tax seminar that will be co-sponsored by Mr. Chiang, the Pasadena Chamber of Commerce, Assemblymember Jack Scott, and the following tax agencies: federal Internal Revenue Service, Franchise Tax Board, Board of Equalization, Employment Development Department, and the Los Angeles County Assessor's Office.

The Pasadena Chamber of Commerce will contribute radio public service announcements, news releases, and food and beverages to the seminar. The total amount of these payments is less than \$5,000. These payments are made "at the behest" of Mr. Chiang as the term is used in Regulation 18225.7. The Pasadena Chamber of Commerce is a 501(c)(6) organization. The news releases and public announcements will not make reference to any candidacy for elective office, any election campaign, nor any candidate's qualifications for office. Also, neither will contain any express advocacy or solicit funds for any candidate. The Pasadena Chamber of Commerce's co-sponsorship activities will be confined to the above activities.

*2 Mr. Chiang will send two different announcements of this event to his constituents.² Both announcements will be on Mr. Chiang's standard letterhead, where his name will appear once. There will be only one further reference to Mr. Chiang in the announcement. The announcement does not include Mr. Chiang's photograph or his signature. The mailing announces a public constituent meeting directly related to Mr. Chiang's duties as an elected officer. Mr. Chiang will attend the meeting. The announcements also will contain references to Assemblymember Jack Scott and the Pasadena Chamber of Commerce.

Event #2 - The Underground Economy Seminar.

Mr. Chiang, in his capacity as Acting Member of the Board of Equalization for the Fourth District, intends to conduct an underground economy seminar that will be co-sponsored by Mr. Chiang and two nonprofit organizations that support construction contract compliance among management and labor, the Center for Contract Compliance and the Laborers Employers Cooperation and Education Trust.

The Center for Contract Compliance and the Laborers Employers Cooperation and Education Trust will both publicize the event in mailings and news releases. They will provide a hotel meeting room for the event as well as provide food and beverages. The total amount of these payments will be less than \$5,000. The payments are "made at the behest of" Mr. Chiang as the term is used in Regulation 18225.7. Both organizations are 501(c)(6) organizations. The news releases and public announcements will not make reference to any candidacy for elective office, any election campaign, or any candidate's qualifications for office. Also, neither will contain any express advocacy nor solicit funds for any candidate. Finally, co-sponsorship activities will be confined to the activities described above.

Mr. Chiang will send an announcement of this event to his constituents. The announcement will be on Mr. Chiang's standard letterhead where his name will appear once. There will be only one further reference to Mr. Chiang in the announcement. The announcement does not include Mr. Chiang's photograph or his signature. The mailing does announce a public constituent meeting directly related to Mr. Chiang's duties as an elected officer. Mr. Chiang will attend the meeting. The announcements also will contain references to the Center for Contract Compliance and the Laborers Employers Cooperation and Education Trust.

Event #3 - Free Tax Seminar Co-sponsored with Assemblymember Havice.

Mr. Chiang, in his capacity as Acting Member of the Board of Equalization for the Fourth District, intends to conduct a nonprofit tax seminar that will be co-sponsored by Mr. Chiang, Assemblymember Sally Havice, and the following tax agencies: BOE, Franchise Tax Board, Employment Development Department, federal Internal Revenue Service, and the Office of Los Angeles County Assessor. There are no private sector co-sponsors for this seminar.

*3 Mr. Chiang will send an announcement of this event to his constituents. The announcement will be on Mr. Chiang's standard letterhead where his name will appear once. There will be only one further reference to Mr. Chiang in the announcement. The announcement does not include Mr. Chiang's photograph or his signature. The mailing does announce a public constituent meeting directly related to Mr. Chiang's duties as an elected officer. Mr. Chiang will attend the meeting.

The announcements also will contain a reference to Assemblymember Sally Havice.

Event #4 - Free Tax Seminar Co-sponsored with Assemblymembers Cardenas and Hertzberg.

Mr. Chiang, in his capacity as Acting Member of the Board of Equalization for the Fourth District, intends to conduct a nonprofit tax seminar that will be co-sponsored by Mr. Chiang, Assemblymembers Tony Cardenas and Robert Hertzberg, and the following tax agencies: BOE, Franchise Tax Board, Employment Development Department, federal Internal Revenue Service, and the Office of Los Angeles County Assessor. There are no private sector co-sponsors for this seminar.

Mr. Chiang will send an announcement of this event to his constituents. The announcement will be on Mr. Chiang's standard letterhead where his name will appear once. There will be only one further reference to Mr. Chiang in the announcement. The announcement does not include Mr. Chiang's photograph or his signature. The mailing does announce a public constituent meeting directly related to Mr. Chiang's duties as an elected officer. Mr. Chiang will attend the meeting. The announcements also will contain references to Assemblymembers Cardenas and Hertzberg.

Event #5 - Small Business Fair in Whittier.

Mr. Chiang, in his capacity as Acting Member of the Board of Equalization for the Fourth District, intends to conduct a small business fair in Whittier which will be co-sponsored by

Mr. Chiang, Assemblymember Grace Napolitano, and the following tax agencies: BOE, Franchise Tax Board, Employment Development Department, federal Internal Revenue Service, and the Office of Los Angeles County Assessor. There are no private sector co-sponsors for this seminar.

Mr. Chiang will send an announcement of this event to his constituents. The announcement is not on Mr. Chiang's standard letterhead. However, there is only one reference to Mr. Chiang. The announcement does not include Mr. Chiang's photograph or his signature. The mailing does announce a public constituent meeting directly related to Mr. Chiang's duties as an elected officer. Mr. Chiang will attend the meeting. The announcement does not contain a reference to Assemblymember Napolitano.

I. Mass Mailings

A. Introduction

Section 89001 states:

“No newsletter or other mass mailing shall be sent at public expense.”

Regulation 18901 (copy enclosed) interprets Section 89001:

“(a) Except as provided in subdivision (b), a mailing is prohibited by section 89001 if all of the following criteria are met:

*4 (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.

(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).

(b) [provides exceptions to the general rule].”

B. Announcements

Any announcement sent out by the State Board of Equalization that includes

Mr. Chiang’s name, office, photograph, or other reference to him could potentially meet all of the criteria found in Regulation 18901(a) and, thus, be prohibited. If sent to constituents’ homes, the announcements for events #1 - #4 would be tangible items sent to people’s residences. The items would include a reference to an elected officer affiliated with the agency that prepared the mailing or cooperated, coordinated, etc., with the sending of the mailing, namely Mr. Chiang³ and his agency, the Board of Equalization. The cost of the mailing would be paid for with public funds. Also, more than 200 unsolicited copies of the proposed mailing would be sent in a calendar month.⁴ Therefore, the proposed mailing would result in a violation of Section 89001, unless an exception under subdivision (b) of Regulation 18901 is applicable.

Subsections (b)(1) and (b)(9) of Regulation 18901 provide relevant exceptions to the mass mailing prohibition:

“(1) 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 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 this subdivision (b)(1) or elsewhere in this regulation.

* * *

*5 (9)(A) An announcement of any meeting or event of the type listed in paragraphs 1 or 2.

1. An announcement sent to an elected officer’s constituents concerning a public meeting which is directly related to the elected officer’s incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend.

2. An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support.

(B) Any announcement provided for in this subdivision (b)(9) shall not include the elected officer’s photograph or signature and may include only a single mention of the elected officer’s name except as permitted elsewhere in this regulation.”

According to Regulation 18901(b)(1), Mr. Chiang may use his agency’s letterhead to make an announcement to his constituents of a meeting if he otherwise complies with Regulation 18901(b)(1), i.e., the letterhead is not signed by him, no photographs are included, the same font is used, etc. (See above.) Mailings for events #1 - #4 meet this exception.

According to Regulation 18901(b)(9)(A), Mr. Chiang may make one additional mention of himself, if *either* Regulation 18901(b)(9)(A)(1) or Regulation 18901(b)(9)(A)(2) applies, and he complies with Regulation 18901(b)(9)(B), i.e., the announcement does not include his photograph or signature.

The first meeting announcement exception found in Regulation 18901(b)(9)(A)(1) requires that the following elements be

present:

1. The announcements must be sent to the elected officer's constituents;
2. It must concern a public meeting directly related *to* the elected officer's incumbent governmental duties;
3. The meeting must be held by the elected officer;
4. The elected officer must intend to attend the meeting. (See *Connelly* Advice Letter, No. I-90-524, for an explanation of the factors of this exception (copy enclosed).)

The second type of meeting announcement exception is found in Regulation 18901(b)(9)(A)(2). This subsection allows the use of an elected official's name in an announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support. We have construed this exception narrowly to apply to announcements sent by the agency rather than by individual elected officials and to apply to specific events rather than to ongoing programs. (*Chin* Advice Letter, No. I-90-403.) Nonetheless, we conclude that the Fourth Equalization District does qualify as an agency for purposes of this exception and that the events that will be sponsored are not ongoing programs. (Sections 82003 and 82049.)

Section 89001 and Regulation 18901 do not prohibit the mention of co-sponsors of the event not affiliated with the State Board of Equalization, including state legislators, in a mailing by Mr. Chiang's office.

Under your facts, state legislators are not "affiliated" with the State Board of Equalization. (Regulation 18901(c)(1); Sections 82003 and 82049.) In addition, it does not appear that the legislators would be sending or producing the mailings. (Regulation 18901(b)(2)(A).) Therefore, the mention of state legislators in a mailing sent out solely by the State Board of Equalization would not be restricted by the mass mailing prohibition of the Act. However, the mention of a state legislator in a mailing sent out by another state legislator could be restricted by the mass mailing prohibitions of the Act, if it is sent in cooperation, consultation, coordination, or concert with the elected officers. (Regulation 18901(a)(2)(B).) A state legislator could mention Mr. Chiang without restriction if the mailing was sent out solely by the state legislator.

*6 All five of the mailings submitted to us comply with the mass mailing provisions of the Act. Therefore, Mr. Chiang may send an unlimited amount of these mailings *to his constituents*.⁵ The announcements associated with events #1 - #4 that make two references to Mr. Chiang comply with the mass mailing prohibition since each announcement meets both the letterhead exception and the announcement exceptions in Regulation 18901(b)(9)(A).⁶ The announcement sent in conjunction with event #5 that makes one reference to Mr. Chiang complies with the mass mailing prohibition since the announcement exceptions are met.

C. A Press Release

Subsection (b)(2) of Regulation 18901 provides a relevant exception:

"A press release sent to members of the media."

Accordingly, you may send press releases to the media announcing the seminars without restriction.

II. Co-sponsorship Issues

A. Applicable Law

Section 82015(a), in pertinent part, defines a contribution as a payment,⁷ except to the extent that full and adequate consideration is received, unless it is clear from the circumstances that it is not made for political purposes. As recently amended, Section 82015(b)(2) states that a payment is made for political purposes if it is received by or made at the behest of a candidate unless the criteria in either subparagraph (A) or (B) of Section 82015 is satisfied:

"(A) Full and adequate consideration is received from the candidate.

(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:

(i) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.

(ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution. However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the elected officer with the elected officer's agency and shall be a public record subject to inspection and copying pursuant to the provisions of subdivision (a) of Section 81008. The report shall contain the following information: name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made. Once the five thousand dollars (\$5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements."⁸

⁸ Even if a payment is a contribution to Mr. Chiang as discussed above, the payment may fall within a regulatory exemption to the definition of contribution.⁹ Regulation 18215(c)(4) provides a pertinent exception:

"(4) A payment made at the behest of a candidate, which is for a communication by the candidate or any other person, that meets all of the following:

(i) Does not contain express advocacy:

(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."

B. Public Service Announcements and News Releases by Private Co-sponsors

The Pasadena Chamber of Commerce (Event #1), the Center for Contract Compliance (Event #2), and the Laborers Employers Cooperation and Education Trust (Event #3) will publicize their respective co-sponsored events through radio, mass mailings, news releases and other mediums. All these communications were made at the behest of Mr. Chiang. However, according to you, the communications will not contain express advocacy, will not make reference to any candidate's candidacy for elective office, any candidate's election campaign, or any candidate's qualifications for office. Finally, you state that the communication will not solicit contributions. Therefore, because none of the factors listed in Regulation 18215(c)(4) are present, these communications are not contributions.

C. Payments for a Hotel Meeting Room and all Food and Beverages

According to Section 82015(b)(2)(B)(ii), if the nonprofit organization with whom Mr. Chiang's office will co-sponsor a seminar with is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or a governmental agency, then any payments made at Mr. Chiang's behest will not be considered a contribution to him.¹⁰ The Pasadena Chamber of Commerce, the Center for Contract Compliance, and the Laborers Employers Cooperation and Education Trust are nonprofit organizations established pursuant to Section 501(c)(6) of the Internal Revenue Code. Therefore, Section 82015(b)(2)(B)(ii) does not apply.

However, Section 82015(b)(2)(B)(iii) states that a payment by *any* entity, not just 501(c)(3) nonprofits and governmental entities, behested by Mr. Chiang which are made principally for legislative, governmental, or charitable purposes will not be considered a contribution or a gift as long as Section 82015(b)(2)(B)(i) does not apply. We conclude, except as discussed below in Section C, that the payments Mr. Chiang has behested will not be contributions (or gifts) to Mr. Chiang because they are principally for a legislative, governmental, or charitable purpose.

If such payments equal or exceed \$5,000 in the aggregate in a calendar year, then reporting obligations will occur. (See Section 82015(b)(2)(B)(iii).) However, since you state that the \$5,000 threshold will not be met by any co-sponsor, this reporting obligation will not occur.

***8 D. Gifts to Public Official Attendees**

You have stated that the Pasadena Chamber of Commerce, the Center for Contract Compliance, and the Laborers Employers Cooperation and Education Trust will provide food and beverages to a co-sponsored event. The overall payment for the meeting room, food and beverages do not confer a personal benefit to Mr. Chiang in the amount of the full payment. However, Section 82028 defines a gift as any payment that confers a personal benefit on the recipient to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value, unless the rebate or discount is made in the regular course of business without regard to official status.

Section 89503 and Regulation 18940.2 limit the amount of gifts an elected official may receive from any single source during any calendar year. In addition, gifts to a public official are reportable if more than \$50 in twelve months is received from a single source. (Section 87207.) The value of food and beverages received by officials attending these co-sponsored events, including Mr. Chiang, will be considered a gift by the private co-sponsor(s) of the event. (Regulation 18941.1; *Chiang* Advice Letter, No. I-97-623, *Lucas* Advice Letter, No. A-97-534; *Frommer* Advice Letter, No. A-97-148.)¹¹

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

Sincerely,

Steven G. Churchwell
General Counsel
By: Marte Castanos
Staff Counsel, Legal Division

Footnotes

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

² During a telephone conversation on February 25, 1998, you stated that no more than 200 of any of the mailings would be sent to persons other than Mr. Chiang's constituents in a single calendar month.

³ Mr. Chiang is an elected official since a person who is appointed to fill a vacant elective office is an elected officer. (Section 82021.)

⁴ An "unsolicited request" is defined in Regulation 18901(c)(4). Also, a newsletter or announcement that is disseminated to third parties with the intention that the third parties will further distribute the newsletter or announcement counts toward the 201 mark of Regulation 18901(a)(4). (*Leidigh* Advice Letter, No. A-95-350.)

5 The mailings may be sent only to Mr. Chiang's constituents since the exception in Regulation 18901(b)(9)(A)(1) is otherwise not satisfied, unless no more than 200 are sent in a single calendar month.

6 Only one additional reference to Mr. Chiang may be made even if both subdivisions (b)(9)(A)(1) and (b)(9)(A)(2) of Regulation 18901 are met.

7 "Payment means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible." (Section 82044.)

8 Also, please be aware of Section 82015(b)(2)(C) and (D):

"(C) For purposes of subparagraph (B), a payment is made for purposes related to a candidate's candidacy for elective office if all or a portion of the payment is used for election-related activities. For purposes of this subparagraph, "election-related activities" shall include, but are not limited to, the following:

(i) communications that contain express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(ii) Communications that contain 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 elective office.

(iii) Solicitation of contributions to the candidate or to third persons for use in support of the candidate or in opposition to his or her opponent.

(iv) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in clauses (i), (ii), or (iii), above.

(v) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.

(vi) Preparing campaign finance disclosure statements.

(vii) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote if the communication contains express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(D) A contribution made at the behest of a candidate for a different candidate or to a committee not controlled by the behesting candidate is not a contribution to the behesting candidate."

9 I have enclosed Regulation 18215 for your information.

10 Nonetheless, if such payments are made principally for legislative, governmental, or charitable purposes and exceed \$5,000 in the aggregate in a calendar year, then reporting obligations will occur. (See Section 82015(b)(2)(B).)

11 While a payment may be exempt from the definition of a gift pursuant to Section 82015(b)(2)(B)(iii), a payment for food and beverages for personal consumption would always confer a principally personal benefit pursuant to Section 82015(b)(2)(B)(i) and therefore would not fall within Section 82015(b)(2)(B)(iii).