



## FAIR POLITICAL PRACTICES COMMISSION

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September 21, 2012

William Spears  
Chief of Police  
City of Willows  
420 El Dorado Street  
Willows CA 95988

Re: Your Request for Informal Assistance  
**Our File No. I-12-132**

Dear Mr. Spears:

This letter is in response to your request for advice regarding the mass mailing provisions of the Political Reform Act (the "Act").<sup>1</sup> Nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions. In addition, 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 your question seeks general guidance, we are treating your request as one for informal assistance.<sup>2</sup>

Please note our advice is limited to the provisions of the Act. We cannot advise you with respect to whether the city-financed newsletter potentially implicates areas of law outside the Act such as Government Code sections 8314 and 54964 or the City of Willows' local policies. However, you may wish to get advice regarding these issues from your county counsel or the Office of the Attorney General.

### QUESTION

Would future production and distribution of a newsletter at the same time you are a candidate violate the mass mailing provisions of the Act?

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<sup>1</sup> 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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3).)

## CONCLUSION

No, email distribution of the newsletter does not violate the mass mailing provision of the Act. We cannot advise you on whether it is permissible to produce the newsletter because it may violate laws outside the Act.

## FACTS

You are currently the Chief of Police for the City of Willows. As Chief of Police you have been involved in redeveloping the Police Department using the COPPS (Community Oriented Policing and Problem Solving) philosophy. To that end every week day over the last two and a half to three years you have sent out a "Log and Stuff" to facilitate communication with the community. The "Log and Stuff" is sent out via an email distribution list as per your email. (August 31, 2012.)

The "Log and Stuff" includes the police activity log, a Community Calendar and discussions regarding new laws, case decisions, and other law enforcement related items, as well as news about local non-profits and their fundraising events. You recently decided to run for City Council office. After you became a bona fide council candidate the City Manager, Steve Holsinger, determined that any additional commentary besides that which is required by law, i.e. the daily activity log, is a misuse of city time, equipment and resources in conjunction with your campaign and a violation of the Act. Mr. Holsinger admits he is challenged to identify any specific "campaign messaging" but found a reference to the City Council vote on the Police Budget to be troublesome. (Holsinger's August 15, 2012 email; July 31, 2012 "Log and Stuff".) Mr. Holsinger directed you to immediately suspend any future "Log and Stuff" beyond what is required by law.

## ANALYSIS

1. *Would producing and distributing the newsletter violate the mass mailing provisions of the Act?*

Section 89001 states that "[n]o newsletter or other mass mailing shall be sent at public expense." Further interpreting this restriction, regulation 18901(a) prohibits mailings under section 89001 if multiple criteria are met, the first being:

"(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 sent must be a tangible item, such as a videotape, record, or button, or a written document.

Additionally regulation 18901.1(a) prohibits mailings under section 89001, but again, this regulation only applies to a "tangible item."

Thus, under regulations 18901(a)(1) and 18901.1(a)(1), section 89001 applies only to *tangible* items. Because electronic mail is not a considered a *tangible* item, the Act's mass mailing restrictions under section 89001 do not apply to these communications. (See *Chernabaeff* Advice Letter, No. I-09-022.)

Notwithstanding our conclusion that the Act's mass mailing provisions do not apply to electronic mail, we cannot advise you on whether it is permissible to produce the newsletter on the City of Willow's time under laws outside the Act, including Government Code sections 8314 and 54964 or City of Willows' local policies.

Under Commission regulations, a payment of public funds by a state or local governmental agency in connection with a campaign related communication is either a contribution or an independent expenditure, which may qualify the agency as a committee subject to the Act's reporting provision. (See regulation 18420.1.) A communication is campaign related if the communication either (1) "expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified ballot measure" or (2) "when taking as a whole and in context, unambiguously urges a particular result in an election. (*Ibid.*) For a communication by a state or local governmental agency, a communication "unambiguously urges a particular result" if the communication "can be reasonably characterized as campaign material or activity" and "is not a fair presentation of facts serving only an informational purpose." (*Ibid.*)

Based upon the newsletter samples and descriptions you have provided, the newsletter appears limited to factual information including the police activity log, a Community Calendar and discussions of new laws, some case decisions, other law enforcement related items as well as news about local non-profits and their fundraising events. The newsletter does not appear to be a campaign communication as described in regulation 18420.

Note that the Commission cannot advise you on the actions taken by the City Manager and Mayor or the allegations of misuse of City time because (1) the action occurred in the past and Commission advice applies only to prospective actions and (2) their advice to you concerns areas of law outside the Act. If you have questions you may wish to get advice regarding these issues from your county counsel or the Office of the Attorney General.

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

Sincerely,

Zackery P. Morazzini  
General Counsel



By: Keisha O. White  
Legal Intern, Legal Division

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