



FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

January 2, 2019

John Lollis
City of Porterville
291 North Main Street
Porterville, CA 93257
Via email: mgr-office@ci.porterville.ca.us

RE: Warning Letter: City of Porterville; FPPC No. 18/1206

Dear Mr. Lollis:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act (the "Act").¹ This letter is in response to an anonymous complaint alleging that the City of Porterville (the "City") sent a campaign related mailing regarding Measure I at public expense, in violation of Section 89001 and Regulation section 18901.1. The Enforcement Division completed its investigation and found that the City sent prohibited campaign related mailings at public expense.

The Act prohibits sending newsletter or other mass mailing at public expense if the mailings are campaign materials.² Specifically, a newsletter and other mass mailing are prohibited if (1) the item is a tangible item; (2) the item expressly advocates the qualification, passage, or defeat of a clearly identified measure, or unambiguously urges a particular result in an election; (3) public moneys are paid to distribute the item, or to prepare the item, for more than \$50, with the intent of sending the item; and (4) more than 200 substantially similar items are sent during the course of an election.³ This prohibition limits the public subsidy of political campaigns, which would grant an unfair advantage to governmental bodies that desire to use their vast resources in pursuit of favorable election results.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of Title 2 of the California Code of Regulations.

² Section 89001.

³ Regulation 18901.1, subd. (a).

A mailing unambiguously urges a particular result in two ways: (1) when it clearly is campaign material or campaign activity, such as bumper stickers, billboards, door-to-door canvassing, posters, advertising “floats,” or mass media advertising;⁴ or (2) when the style, tenor, and timing of the communication can be reasonably characterized as campaign material and not a fair presentation of facts serving only an informational purpose.⁵ Some factors to consider when assessing style, tenor, and timing include, but are not limited to whether the communication is (1) funded from a special appropriation related to the measure as opposed to a general appropriation; (2) consistent with the normal communication pattern for the agency; (3) consistent with the style of other communications issued by the agency; and (4) using inflammatory or argumentative language.⁶

Our investigation found that the City’s mailing concerning Measure I did not contain express advocacy, but it did contain language that could be characterized as the City unambiguously urging a vote for Measure I. Most concerning is the paragraph citing the American Heart Association:

Almost 60% of all 911 calls to the Porterville Fire Department require emergency medical attention. The American Heart Association © says brain deterioration starts between 4-6 minutes after a person stops breathing. If enacted, Measure I will provide funding to maintain rapid response times from our City’s firefighters and emergency medical workers, who are the first to respond and save lives.

This paragraph is argumentative. Although 60 percent of 911 calls to the fire department require medical attention, the mailing fails to state how many of those calls concerned individuals who stopped or will stop breathing due to their medical emergency. As a result, the City invites the public to speculate that 60 percent of 911 calls to the fire department are made for people who may suffer from brain damage due to asphyxiation.

While the City may maintain that it intended only to educate its voters, we believe the primary purpose of the mailings was to advocate for the passage of Measure I, especially since the City distributed this mailing within weeks of the election. The California Supreme Court stated that even when a public entity’s communication conveys useful information and does not expressly advocate a vote for or against a specific candidate or ballot measure, the use of public funds to prepare or distribute the communication is improper when the style, tenor, and timing of the communication shows that it constitutes traditional campaign activity.⁷ The Enforcement Division has determined that the City’s mailing fits the type of campaign activity condemned by the California Supreme Court. However, we are issuing a warning letter instead of a penalty because the majority of the mailer was informational and the cost to produce and disseminate was minimal.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered

⁴ *Stanson v. Mott* (1976) 17 Cal.3d 206, 221.

⁵ *Stanson* at p. 222; *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 27.

⁶ Regulation 18901.1, subd. (e).

⁷ *Keller v. State Bar* (1989) 47 Cal.3d 1152, 1172.

information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an Enforcement Division case resolution without administrative prosecution. This resolution does not provide the City with the opportunity for a probable cause hearing or administrative hearing. If the City wishes to avail itself of these proceedings by requesting that the case proceed with prosecution rather than a warning, please notify us within ten days from the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Commission's website.

Should you have any questions regarding this letter, please feel free to contact me at (916) 322-7771 or ryang@fppc.ca.gov.

Sincerely,

Ruth Yang

Ruth Yang
Commission Counsel
Enforcement Division