

August 24, 1999

Frances A. Moore
City Clerk
City of Alhambra
111 South First Street
Alhambra, California 91801

**Re: Your Request for Advice
Our File No. A-99-234**

Dear Ms. Moore:

This letter is in response to your request for advice¹ regarding the provisions of the Political Reform Act (the "Act").² Please bear in mind that nothing in this letter should be construed as evaluation of any conduct which may already have taken place. Further, this letter is based on the facts as they have been presented to us. The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

May the Alhambra Chamber of Commerce print a picture of its president presenting an award to a city councilmember in its newsletter?

CONCLUSION

The Alhambra Chamber of Commerce's newsletter, as proposed, would be a prohibited mass mailing under Section 89001.

FACTS

¹ Even though you nominally have requested a "legal opinion," we have assumed you wish this office to respond pursuant to the advice process set forth in Section 83114 and Regulation 18329.

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

The newsletter, *Inside Alhambra*, is published and mailed monthly to all residents in the City of Alhambra (the “city”) by the Alhambra Chamber of Commerce (the “chamber”).³ The funding of the newsletter is shared equally by three entities: the chamber, the Alhambra School District and the city. Each of these entities is allocated a specific section of the newsletter to report on items of interest pertaining to that particular entity.

At its annual installation, the chamber bestowed its “Man of the Year” award on one of the city’s councilmembers. The chamber wants to print a picture of its president presenting the award to the councilmember in the chamber’s section of the newsletter.

You are the city clerk and have requested advice on behalf of the city.

ANALYSIS

Section 89001 states that “no newsletter or other mass mailing shall be sent at public expense.” Regulation 18901 implements section 89001 and provides that a mailing is prohibited if all of the following apply:

“(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).”

³ Pursuant to a telephone conversation occurring on August 12, 1999, with Ms. Frances Moore, we have been advised that the newsletter is published and distributed monthly.

(Regulation 18901(a).)

Section 89001 prohibits a mailing that meets the criteria set forth above.

Definition of Mass Mailing and Unsolicited Requests

Regulation 18901 only applies to a “mass mailing” as defined by the Act. “Mass mailing” means more than 200 substantially similar pieces of mail, but does not include mail that is sent in response to an unsolicited request, letter or other inquiry, or any items that fall within the exceptions set forth in Regulation 18901(b). (Regulation 18901(a)(4).) Thus, materials sent in response to an unsolicited request are not subject to the mass mailing prohibition.

Regulation 18901(c) provides that 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. (Regulation 18901(c)(4)(E).) Pursuant to this provision, we have advised that a notice of a public hearing published in a newspaper of general circulation that is delivered to subscribers is not a mass mailing. (*Valenti* Advice Letter, No. I-91-264.) Similarly, we have advised that the mass mailing prohibition does not apply to advertisements in newspapers that are delivered to subscribers. (*Geiogue* Advice Letter, No. A-91-193.)

The chamber’s monthly newsletter is delivered to all residents in the city. As such, the newsletter does not constitute a subscription publication. Due to the city’s size, we presume that more than 200 newsletters are distributed monthly. Accordingly, the chamber’s newsletter falls within the definition of “mass mailing” for purposes of Regulation 18901.

Delivery

Regulation 18901 only restricts tangible items that are mailed or delivered, by any means, to a person’s home, office, or post office box. The chamber’s monthly newsletter is mailed to every resident in the city presumably to the resident’s home, office, or post office box address. Therefore, the newsletter is “delivered” as that term is used in the regulation.

Public Moneys

Regulation 18901 specifies that a mass mailing is sent at public expense within the meaning of Section 89001 if either of two events occurs: 1) **any** of the costs of distribution are paid for with public moneys; or 2) more than \$50 in public moneys is used to pay for the costs of design, production, and printing, and this activity is done with the intent to send the mailing other than as permitted by the regulation. (Regulation 18901(a)(3).)

We have advised that a mailing sent by a chamber of commerce is not sent at public expense for purposes of section 89001 merely because the chamber receives some public moneys from a public entity, unless the public entity expressly funds the production and distribution of the mailing sent by the chamber. (*Curtis* Advice Letter, No. A-94-053; *Warner* Advice Letter, No. I-88-392.) We have further advised that even if the production and distribution of the newsletter is funded only *in part* with public funds, the mailing must comply with Section 89001. (*Battersby* Advice Letter, No. A-94-303.)⁴ According to your facts, both the city and the school district (a local government agency under the Act, Section 82041) expressly fund the production and distribution of two-thirds of the newsletter. Therefore, the chamber's newsletter meets at least one of the public funding tests of subpart (a)(3) of Regulation 18901.

Inclusion of a Reference to an Elected Officer

If a mailing "features" an elected officer, the mailing is subject to the prohibition of Section 89001. (Regulation 18901(a)(2)(A).) "Featuring" is defined in the regulation to mean "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." (Regulation 18901(c)(2).)

In the chamber's proposed newsletter, a photograph of a city councilmember (an elected officer under Section 82020) will be included. The inclusion of the photograph clearly constitutes "featuring" under Regulation 18901. Because, as we noted previously, the partial funding of the newsletter by public entities brings the newsletter within the public funding prohibition of Section 89001, we conclude that it is not relevant to our analysis that the councilmember's photograph will be featured only within the chamber's "portion" of the newsletter.

Having determined that the newsletter will meet all elements set forth in Section 89001, we advise that the newsletter, as proposed and if sent, would be a mass mailing prohibited by the Act.

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

⁴ The *Battersby* letter has been superseded as it pertains to Section 85300.

Sincerely,

Steven G. Churchwell
General Counsel

By: Lisa L. Ditora
Staff Counsel, Legal Division

SGC:LLD:tls