

August 3, 1988

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL  
EMERGENCY REGULATION ON NEWSLETTERS AND "MASS MAILINGS" UNDER  
PROPOSITION 73

On June 7, 1988, the voters of the State of California adopted Proposition 73. Two of its provisions went into effect immediately on June 8, 1988. These provisions amend existing portions of the Political Reform Act, which is codified at Government Code section 81000 et seq.

Proposition 73 amended Government Code section 82041.5 to read: "'Mass mailing' means two hundred or more substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry." The proposition also amended Government Code section 89002 to read: "No newsletter or other mass mailing shall be sent at public expense."

On July 26, 1988, the Fair Political Practices Commission (FPPC) held a public hearing in Sacramento to hear testimony on its proposed emergency regulation interpreting this new legislation. Deputy City Attorney Cristie C. McGuire testified on behalf of the City Attorney of The City of San Diego to urge the Commission to adopt a rule allowing fact-based, as opposed to political, newsletters to be mailed or distributed at public expense. A copy of Ms. McGuire's testimony was distributed to you as an attachment to the Intergovernmental Relations Department Director Tennyson's Information Report of July 13, 1988.

At the close of the hearing, the FPPC adopted an emergency regulation which was basically a modification of a previously existing regulation governing newsletters and mass mailings adopted under law existing prior to the passage of Proposition 73. A copy of the adopted regulation and the "strike-out version" showing the changes from the previous version are attached for your reference. The regulation takes effect as soon as it is processed by the Office of Administrative Law, which is expected to take place in the next ten (10) days, and may be in effect for a period of up to 120 days. Meanwhile, the FPPC anticipates adopting a permanent regulation before the expiration of the emergency regulation.

Although the regulation is fairly clear in what it allows and prohibits, it may be helpful to highlight a few areas of concern:

the regulation is designed to prohibit the advancement of the image of elected officials at public expense. It prohibits sending unsolicited newsletters or mass mailings of 200 or more substantially similar pieces of mail during a calendar month. The regulation applies all of the time, not just after a person files nominating papers for a city-elected office. Names of individual elected officials may appear in a mass mailing if the name appears in standard letterhead, forms or stationery. However, photographs and signatures of elected officials are prohibited. Specifically, this regulation prohibits the practice of sending invitations to various events over a councilmember's signature or name. It also prohibits the mayor or councilmembers from signing articles appearing in citywide newsletters or brochures.

Although not clear on its face, the regulation prohibits all manner of distribution of newsletters or mass mailings, not just distribution by mail. This has been the FPPC's interpretation of the prior law and rule, according to comments made at the July 26 hearing and prior private advice letters.

Because of the breadth of the law in Proposition 73 and the uncertainty of the regulation in many areas, you will almost certainly have questions about specific publications and mailings. Please feel free to give our office a call to inquire about specific matters.

Respectfully submitted,  
JOHN W. WITT  
City Attorney

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Attachments

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