

MEMORANDUM OF LAW

DATE: February 3, 1988

TO: Christopher J. Crotty, Rules Committee
Consultant
FROM: City Attorney
SUBJECT: Mass Mailing Legislation

Your memorandum of January 13, 1988, to Curtis Fitzpatrick, Assistant City Attorney, containing questions regarding recent state legislation on mass mailings by elected officials has been referred to me for response.

QUESTIONS PRESENTED

1. Does the new state legislation apply to the legislators of the City of San Diego, including the Mayor?
2. If so, what impact will the new legislation have on mailings described in your memorandum of January 13?

RESPONSES

1. Yes.
2. The answer to this question is unclear until the Fair Political Practices Commission (FPPC) adopts regulation(s) refining the statute. Until the FPPC adopts regulation(s), we recommend that City legislators, including the Mayor, follow the strict letter of the legislation.

BACKGROUND FACTS

You provided us with the following facts in your memorandum of January 13.

The office of the Mayor regularly informs citizens regarding issues of concern to the community. One of the methods by which she attempts to relay information is by mail. Because San Diego has over one million citizens, the number of letters often exceeds 200 pieces, and such pieces are identical or nearly identical. Sometimes letters are sent to individuals regarding items to be heard at the City Council or to inform the public of the date, time and location of special meetings of the Council. These letters are often sent to citizens who are not legally required to be noticed of such meetings and who would otherwise have no way of knowing that an action affecting them may be taken.

LEGAL ANALYSIS

The recent legislation (Chap. 654, Stats. 1986, and Chap. 230, Stats. 1987) to which you refer amended Government Code Section 89001 and repealed Elections Code Sections 11800-11802.

The legislation became effective January 1, 1988.

New Government Code Section 89001 reads in pertinent part as follows:

No newsletter or other mass mailing shall be sent at public expense by or on behalf of any elected officer to any person residing within the jurisdiction from which the elected officer was elected, or to which he or she seeks election, after the elected officer has filed either of the following:

(a) The nomination documents, as defined in Section 6489 of the Elections Code, for any local, state or federal office to be voted upon at an election governed by Chapter 5 (commencing with Section 6400) of Division 6 of the Elections Code.

(b) The last document necessary to be listed on the ballot as a candidate for any local, state, or federal office to be voted upon at an election not governed by Chapter 5 (commencing with Section 6400) of Division 6 of the Elections Code.

You query first whether this new legislation applies to legislators of the City of San Diego, including the Mayor.

The legislation in part amends the Political Reform Act of 1974 ("PRA") in which Government Code Section 89001 is located. The amended Government Code Section is very similar to prior Elections Code Section 11800 which the new legislation repealed. Since the City of San Diego had adopted the state Elections Code by reference (SDMC Section 27.2001), until Elections Code Sections 11800-11802 were repealed in 1987, those sections had governed mass mailings made by San Diego elected officers.

Although amended Government Code Section 89001 does not, on its face, state that it governs elected officers of charter cities, the definitions of "city," "elected officer" and "elective office" in the PRA clearly show it applies to charter cities. (See Government Code Sections 82008, 82020 and 82023.) Therefore, the "mass mailing" statute, Government Code Section 89001, applies to legislators of the City of San Diego, including the Mayor.

You query next what impact amended Government Code Section 89001 will have on anticipated mass mailings of the Mayor as outlined in your memorandum. Outside the language of amended Government Code Section 89001, there is no statute or regulation presently in effect that provides clear guidelines as to what will constitute prohibited sending of newsletters or "mass mailings" under the statute after the elected officer has filed nomination documents.

The PRA's definition of "mass mailings" reads: "Mass mailing' means two hundred or more identical or nearly identical pieces of mail, but does not include a form letter or other mail which is sent in response to a request, letter or other inquiry." The present FPPC regulation governing mass mailings, 2 California Administrative Code Section 18901, by its own terms does not apply to elected local officers, but only to state officers.

We understand from a telephone call placed to the FPPC on January 26, 1988, that three proposed alternative regulations providing guidance to local elected officers under amended Government Code Section 89001 will be presented to the FPPC for discussion on Tuesday, February 2, 1988. The FPPC staff member to whom we spoke, Bob Leidigh, informs us that the FPPC will not adopt a final regulation on this subject until at least April, 1988. The public, including this City and its officers, will have an opportunity to comment on the regulation prior to its adoption. The proposed action will be published in the California Administrative Notice Register (commonly known as the "Z" Register).

Until the FPPC adopts a regulation containing guidelines for construing amended Government Code Section 89001, it is not possible to tell you what impact the legislation will have on the Mayor's anticipated mass mailings. As a cautious approach we recommend that the Mayor refrain from making mass mailings or sending newsletters amounting to more than two hundred (200) pieces of mail after she files nomination documents.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:ps:012(x043.2)

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