

MEMORANDUM OF LAW

DATE: January 21, 1993

TO: Joe Lozano, Assistant Auditor and Comptroller

FROM: City Attorney

SUBJECT: Legality of Payment of Two Printing Services
Requisitions for Printing of Materials for a
Council Office

By oral request on Thursday, January 7, 1993, you asked whether the City Auditor may lawfully use public moneys to pay for two printing services requisitions for large "post cards" that were printed by the City's Print Shop at the request of a Council office. Your request arises because of the mass mailing law and regulations (Gov't Code Sections 82041.5 and 89001; 2 Cal. Code of Regs. Section 18901).

FACTS

I obtained the following information from examining the copies of the printing requisitions. On November 10, 1992, Council District No. 4 requested the City Print Shop to print 50 impressions of a "Councilmember Stevens Neighborhood Council Card." The work was completed on November 17, 1992, at a cost of twenty three dollars (\$23). A copy of the printed card is attached to this memo. On November 23, 1992, the same Council office requested the City Print Shop to make another 500 impressions of virtually the same "Neighborhood Council Card." The Print Shop completed the work on November 24, 1992, at a cost of twenty-eight dollars forty-nine cents (\$28.49).

I obtained the following information by telephone on January 12, 1993, from Renee Watson, Chief of Staff for Councilmember Stevens. The cards were printed at the Councilmember's request so that the Councilmember's staff could have them on hand to deliver to individual residences or businesses in areas of the district in which public improvements; e.g., sidewalk or pothole repairs, had recently been made. Well under 200 per calendar month are delivered in this manner.

ANALYSIS

Under Gov't Code Section 89001, "No newsletter or other mass mailing shall be sent at public expense." The Fair Political Practices Commission adopted a rule on December 13,

1989, interpreting this statute. 2 Cal. Code of Regs. Section 18901. In lieu of reciting relevant portions of that regulation, I attach a copy to this memo. The question is whether this statute or regulation prohibits the Auditor from paying for these printing expenses.

I found that the "Neighborhood Council Card" requested by the Councilmember clearly "features" his name within the meaning of the regulation, because of the large headline bearing his name on the face of the card. 2 Cal. Code of Regs. Sections 18901(a)(2)(A), and (c)(2). The facts also show that the cards are delivered by City staff to businesses and residences, therefore, the cards are "sent" or "delivered" within the meaning of the regulation. 2 Cal. Code of Regs. Section 18901(a)(1). The facts also show that the cost of printing alone is \$51.49. Critically, however, less than 200 per calendar month is "delivered" to residences, businesses, or p.o. boxes.

The question is whether, under these facts, payment of the printing costs of these cards would be a violation of Gov't Code Section 89001 or 2 Cal. Code of Regs. Section 18901(a). I conclude that payment is lawful, because less than 200 per calendar month are distributed to businesses or residences. 2 Cal. Code of Regs. Section 18901(a)(4). In giving this advice, I must admonish you that reliance on this advice will not confer immunity on you from commission enforcement action. You may obtain such immunity only if it is obtained in writing from the Fair Political Practices Commission.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:011(043.2)

Attachments

cc Renee Watson, Chief of Staff,
Councilmember Stevens

ML-93-12

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