August 19, 1988

Fair Political Practices Commission
ATTENTION: JOHN H. LARSON, CHAIRMAN
428 J Street, Suite 800
Post Office Box 807
Sacramento, CA. 95804-0807

Dear Mr. Larson:

Proposed Permanent Rule Governing
"Mass Mailings"

It is our understanding that at the next Fair Political Practices Commission meeting scheduled for early September the Commission will discuss a permanent regulation interpreting the "mass mailing" provisions of Proposition 73. We have received a "pre-notice" copy of the proposed regulation dated July 19, 1988, that was attached to Commission staff attorney Robert Leidigh's memorandum to the Commission of the same date.

On behalf of the City Attorney of The City of San Diego, we wish to state that our position on the proposed rule is substantially the same as the testimony presented by Deputy City Attorney McGuire before you on July 26 concerning the proposed emergency regulation on the same topic. A copy of that testimony is again attached for your reference. Although it was drafted to address the emergency regulation, we ask that it be considered as part of our comment on the proposed permanent rule.

We also would like to take this opportunity to comment on some specific aspects of the proposed permanent rule. For convenience, we are attaching a copy of that rule to this letter.

(1) Page 1, subsection (b) and page 5 subsection (i)(2): Those sections describing what constitutes "unsolicited specific requests" need to be clarified to cover more situations. For example, assume a councilmember receives a petition signed by 500 persons supporting a city's existing recycling efforts and asking to be kept informed of the councilmember's future efforts to increase recycling efforts. Under the proposed rule as drafted,

this would constitute a specific request but would justify a mass mailing only one time, despite the clear request of petition signers to be kept informed of recycling efforts. The rule should allow councilmembers to respond more than once to this type of request.

As another example, also assume that the president of a prospective community group asks a councilmember to mail a personal letter and invitation announcing the first meeting of

the new community group to hundreds of potential members. May a councilmember send such a letter and invitation over his/her signature? The rule should clarify this issue.

Also, assume the president of a homeowners' association representing hundreds of persons specifically asks that a councilmember mail notice of upcoming special events in the homeowners' area to alert them to expected traffic jams. May the councilmember mail the notice over his/her signature to each person in the homeowners' association?

(2) Page 5, subsection (i)(1): It is our understanding that the term "elected officer" is defined in Government Code section 82020 and includes only elected officials, not employees of an agency or city. As drafted, subsection (i)(1) implies that an "elected official" for purposes of this mass mailing rule also includes "employees." We believe this result was not intended by the legislation since it would prohibit such mass mailings as city employee paychecks signed by the City Treasurer. If this is not the intent of the proposed rule, we believe the language should be clarified to remove the ambiguity.

(3) It is apparent from the proposed rule that the drafters have attempted to create a laundry list of "dos" and "don'ts" to fit every occasion and every possibility. It is not possible to anticipate all hypothetical situations. It is also apparent that the drafters made some attempt to create a "catch-all" provision to take care of those as yet unknown situations. See subsection (f), especially subsection (4).

However, we believe these attempts do not go far enough in providing guidance in those situations. Therefore, we suggest adopting a new subsection that requires elected officials and their attorneys to engage in a balancing test to determine whether something is a prohibited mass mailing or whether it will be allowed. Specifically, we suggest that the Commission adopt a subsection allowing an elected official to send fact-based, as opposed to political, information to his or her constituents. Adopting such a rule would recognize the true need of a local government to keep its citizens informed of its activities, yet

is in keeping with the spirit and intent of Proposition 73.

Thank you for your anticipated attention to these comments.

Sincerely yours,
JOHN W. WITT, City Attorney
By
Cristie C. McGuire
Deputy City Attorney

CCM:mb:930.62

Attachments
cc Ms. Patricia Tennyson,
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