



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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(916) 322-5660 • Fax (916) 322-0886

January 15, 2025

Elvia Dominguez
855 W Baseline Rd
Rialto, CA 92376

Re: Your Request for Advice
Our File No. A-24-140

Dear Ms. Dominguez:

This letter responds to your request for advice on behalf of West Valley Water District regarding the mass mailing provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

May the West Valley Water District (“District”) spend public funds on an informational insert sent to all ratepayers that includes a reference/Quick Response (“QR”) code link to the District video “Building for the Future,” if the video includes the District’s Board members?

CONCLUSION

Yes. Because the QR code link is to an electronically disseminated video, it does not violate the mass mailing prohibitions. Additionally, there is no indication that payments for the production or distribution of the video would be reportable contributions or expenditures under the Act.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS AS PRESENTED BY REQUESTER

The District intends to distribute a four-minute video created for the District, “Building for the Future.” The video is “informational [,] referencing a justification for rate increases” and “depicts elected officials, their names and districts.”² The video will be used for “Prop 218 – social media, workshops, and events,”³ and a reference/QR code link to the video will be placed on informational inserts sent to all ratepayers. The video’s intent, as described by District staff, is to be “about the services we provide and have employees and key members of the community advocate for [the District].”

The video shows District employees, including the City Manager and Assistant Manager, explaining the District’s water system services and the District’s need to keep up with growth in the community by securing water resources and having its infrastructure ready as growth expands. Other District employees explain the need to replace older assets strategically, perform water quality testing, and ensure a reliable water supply. The video states that the District is part of the community and provides rebate programs.

The video also currently includes appearances by three elected officials who are not part of the District: Joe Baca, Jr., Jesse Armendarez, San Bernardino County Supervisors, and Israel Fuentes, a Colton Joint Unified Board of Education member. You clarified that each of these three elected officials is not a member, officer, or employee of the agency or of a subunit of the agency. None of these elected officials have supervisory control over the agency, and none appoints one or more members of the agency. The video identifies each (name and elected office) in writing, and each discusses the District’s function or role in the community. The District’s General Manager has been asked to change the video to include District Board members.

ANALYSIS

Mass Mailings

Section 89001 states: “No newsletter or mass mailing shall be sent at public expense.” While the express terms of Section 89001 are exceptionally broad, the Commission and additional legislation have acted to limit the application of the mass mailing prohibition to mailings that feature or include the name, office, photograph, or other reference to an elected officer affiliated with the agency producing or sending the mailer (Section 89002; Former Regulation 18901) and mailings of other campaign-related materials by a governmental agency paid for with public moneys. (Regulation 18901.1).

A mailing is prohibited by Section 89001 if all of the following criteria are met:

³ Proposition 218 was passed in 1996 and is referred to as the “Right to Vote on Taxes Act.” It affected the ability of special districts and local governments to levy and collect existing and future taxes, assessments and property-related fees. It established voter approval requirements for general and special taxes and the initiative power to voters to reduce or repeal any local tax, assessment or fee. (See the California Special Districts Association Guide for Proposition 218, as viewed on December 27, 2024: [csda_guide_proposition_218.pdf](#).)

- (1) the item sent is a tangible item, such as a written document, videotape, record, or button and is delivered, by any means, to the recipient at their residence, place of employment or business, or post office box;
- (2) the item either (A) features an agency-affiliated elected officer or (B) includes the name, office, photograph, or other reference to the elected officer and is prepared or sent by the affiliated agency in cooperation, consultation, coordination, or concert with the elected officer;
- (3) any of the costs of distribution are paid for with public money; and
- (4) more than 200 substantially similar items are sent in a single calendar month, unless it is sent in response to an unsolicited request, letter or other inquiry.

(Section 89002(a).)

An “elected officer affiliated with the agency” is “an elected officer who is a member, officer, or employee of the agency, or of a subunit thereof such as a committee, or who has supervisory control over the agency or appoints one or more members of the agency.” (Section 89002(c).) A mailed item “features an elected officer” if it “includes the elected officer’s photograph or signature or singles out the elected officer by the manner of display of the elected officer’s name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color.” (Section 89002(c).)

Past advice letters have interpreted the Section 89001(a)(1) requirement that the mailing be a “tangible item such as a written document” to not apply to a distribution by electronic means. (See for example, *Footo* Advice Letter, No. A-98-114 [the prohibition in Section 89001 did not apply where a committee sought to link the school district's web site to a web page that advocated for the passage of a bond measure because a distribution over the Internet is not a distribution of a tangible item.] and *Burns* Advice Letter, No. I-19-145 [city staff tagging city council members on posts displayed on the city’s Facebook page would not be considered a mass mailing].) Therefore, a tangible item that includes a link to an electronically distributed video does not violate the mass mailing prohibitions so long as the mailing does not otherwise feature or reference elected officers within the four corners of the mailing.

Reportable Contributions and Expenditures

In some instances, the electronic distribution of materials could constitute the misuse of public funds for campaign purposes. (See Government Code Sections 8314 and 54964 and Penal Code Section 424. See also *Vargas v. City of Salinas* (2009) 46 Cal.4th 1 and *Stanson v. Mott* (1976) 17 Cal.3d 206.) While the Commission can express no opinion on these bodies of law outside of the Act, we note that contributions or expenditures of public funds for campaign purposes may be reportable under the Act if a governmental agency qualifies as a campaign committee subject to the Act's reporting requirements. Interpreting this requirement, Regulation 18420.1 provides that a governmental agency making a payment of public moneys for a communication that (1) expressly advocates or (2) unambiguously urges the particular result in an election has made either a reportable contribution -- if the payment was made at the behest of the

affected candidate or committee -- or an independent expenditure. Regulation 18420.1(b) states that a communication by a governmental agency paid for with public moneys “unambiguously urges a particular result in an election” if it is clearly campaign material or activity or if the communication (1) can be reasonably characterized as campaign material or activity and (2) is not a fair presentation of facts serving only an informational purpose when taking into account the style, tenor, and timing of the communication.

In reviewing the video provided, there is no indication that the electronic video would require reporting under the Act. While the video identifies elected officials, there is no mention of an election for any office or any proposed ballot measure, much less express advocacy. Additionally, the video does not discuss the qualifications or lack of qualifications for any candidate for elected office. Accordingly, barring any future changes to the video, payments for the production and distribution of the electronic video would not constitute reportable contributions or expenditures under the Act.

If you have other questions on this matter, please contact me at KHarrison@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

KH:aja

ADVICE LETTER ASSIGNMENT SHEET

Advice Letter No.:	24-140	Requestor:	Elvia Dominguez
Received by FPPC on:	12/10/24	Due Date:	1/8/24
Assigned to:	Karen	Date to Assignee:	12/13/34
Date Sent to AG/DA (1090):		Date AG/DA Response (If Any):	

REVIEWERS	Date to Review	1st Approval & Date	Date to Review	Final Approval & Date
Proofed				
First Review				
Assistant GC				
General Counsel				
Executive Director (Discretion of GC)				
Chair (Discretion of GC)				

LETTER TYPE (Select One)

C/I		C/I Code		Honoraria		Behested Payments		1090	
Campaign		Lobbying		84308		Personal Use		Misc.	
SEI		Rev. Door		Gifts		Mass Mailing	x		

Advice Letter Summary	<p>A ratepayer insert with a reference/QR code linking to a video that includes an agency’s elected board members is not a prohibited mass mailing because the QR code link is to an electronically disseminated video. Additionally, there is no indication that payments for the production or distribution of the video would be reportable contributions or expenditures under the Act because while the video identifies elected officials, there is no mention of an election for office or any proposed ballot measure, much less express advocacy, and the video does not discuss the qualifications or lack of qualifications for any candidate for elected office.</p>
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Superseded Letters/Notes	
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