



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street, Suite 3000 • Sacramento, CA 95811

July 6, 2018

Mr. Leon Page
County Counsel, County of Orange
o/b/o Andrew Do
Sent via email at: leon.page@coco.ocgov.com

Warning Letter Re: FPPC No. 16/390; Andrew Do

Dear Mr. Page:

The Enforcement Division of the Fair Political Practices Commission received a sworn complaint alleging Orange County Supervisor Andrew Do violated the Political Reform Act (the “Act”)¹ by sending mass mailings at public expense.

The Act prohibits mass mailings sent at public expense if (1) the mailing includes the name or office of an elected officer affiliated with the agency producing the mailing; (2) the agency pays any costs for distribution, or more than \$50 toward the design, production, or printing costs; and (3) more than 200 substantially similar mailings are sent in a calendar month.² If all of the enumerated criteria listed above are met, the mass mailing is prohibited excluding the application of any exceptions. (See former Regulation 18901(b)(1) - (b)(11).) For instance, a mailing may include the name of an elected officer in letterhead.³ Further, a mailing that is an announcement of a meeting or event may include one mention of an elected officer’s name, in addition to any other permissible listings of the officer’s name (e.g. in mailing letterhead).⁴ The Commission’s Legal Division previously advised that a letterhead may be split so that a portion appears at the top of a page and another portion at the bottom and remain exempt from the prohibition against including the name or office of an elected officer. Also, the Legal Division previously advised that an officer’s email address may be included in the letterhead of a mass mailing even if the email address contains the officer’s name.

The Enforcement Division’s investigation of this matter found that 15 sets of mailings were sent at public expense in 2016 that included the name of Mr. Do. In all but two instances where Mr. Do’s name appeared on a mass mailing, it was either part of the letterhead, or in conjunction with an announcement of a meeting or event, and therefore was permissible. One mass mailing, printed in Vietnamese and English which offered free help filing taxes, included “Orange County Board of Supervisors District 1” in the bulk rate stamp on one side of the mailing.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of Title 2 of the California Code of Regulations.

² §89001 and former Reg. §18901. (Repealer filed 3-20-2018; operative 4-19-2018; See §89002.)

³ Former Reg. §18901, subd. (b)(1). (Repealer filed 3-20-2018; operative 4-19-2018; See §89002.)

⁴ Former Reg. §18901, subd. (b)(9). (Repealer filed 3-20-2018; operative 4-19-2018; See §89002.)

By identifying Do's office in the stamp, the mass mailings violated the Act. But the listing of the office in the stamp was inconspicuous and not likely to be noticed by most people reading the mailings. Further, the other mass mailings including Do did comply with Act, and Orange County Counsel consulted with Commission staff in an effort to ensure compliance with the Act's limitations on mass mailings. Additionally, during the time of the investigation, the law governing mass mailings sent at public expense was subject to change with the effective date of January 1, 2018. For these reasons, we are issuing this warning letter rather than pursuing an administrative fine in this matter.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation. A warning letter is an Enforcement Division case resolution without administrative prosecution or fine. The warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Commission's website ten (10) days from the date of this letter.

Please be aware that as a result of legislation in 2017, Regulation §18901 regarding mass mailings at public expense has been codified into Government Code section 89002. Also, certain otherwise permissible mass mailings are now prohibited from being sent within 60 days of an election by or on behalf of an elected official whose name is on that election ballot.⁵

If you have questions regarding this matter, please contact me at gwest@fppc.ca.gov.

Sincerely,



Galena West, Chief
Enforcement Division

cc: Phat Bui

⁵ §89003