

COMMUNICATION WITH THE PUBLIC - CODE REGULATIONS

California Code of Regulations, Title 2
18901. Mass Mailings Sent At Public Expense

(a) Except as provided in subdivision (b), a mailing is prohibited by Section 89001 if all of the following criteria are met:

(1) Any item sent is delivered, by any means, to the recipient at his/her residence, place of employment or business, or post office box. For purposes of this subdivision (a)(1), the item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.

(2) The item sent either:

(A) Features an elected officer affiliated with the agency which produces or sends the mailing, or

(B) Includes the name, office, photograph or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concern with the elected officer;

(3) (A) Any of the costs of distribution is paid for with public moneys; or

(B) Costs of design, production and printing exceeding \$50 are paid with public moneys, and the design, production or printing is done with the intent of sending the item other than as permitted by this regulation.

(4) More than 200 substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b);

(b) Notwithstanding subdivision (a), mass mailing of the following items is not prohibited by Section 89001:

(1) Any item in which the elected officer's name appears only in the letterhead or logotype of the stationery, forms (including "For Your Information" or "Compliments of" cards), and envelopes of the agency sending the mailing, or a committee of the agency, or of the elected officer, or in a roster listing containing the names of all elected officers of the agency. In any such item, the names of all elected officers must appear in the same type size, typeface, type color, and location. Such item may not include the elected officer's photograph, signature or any other reference to the elected officer, except as specifically permitted in this subdivision (b)(1) or elsewhere in this regulation.

(2) A press release sent to members of the media;

- (3) Any item sent in the normal course of business from one governmental entity or officer to another governmental entity or officer;
- (4) Any intra-agency communication sent in the normal course of business to employees, officers, deputies and other staff;
- (5) Any item sent in connection with the payment or collection of funds by the agency sending the mailing, including tax bills, checks and similar documents, in any instance where use of the elected officer's name, office, title or signature is necessary to the payment or collection of the funds. Such item may not include the elected officer's photograph, signature or any other reference to the elected officer except as specifically permitted in this subdivision (b)(5) or elsewhere in this regulation.
- (6) Any item sent by an agency responsible for administering a government program, to persons subject to that program, in any instance where the mailing of such item is essential to the functioning of the program where the item does not include the elected officer's photograph; and where use of the elected officer's name, office, title or signature is necessary to the functioning of the program.
- (7) Any legal notice or other item sent as required by law, court order, or order adopted by an administrative agency pursuant to the Administrative Procedure Act, and in which use of the elected officer's name, office, title or signature is necessary in the notice or other mailing. For purposes of this subdivision (b)(7), inclusion of an elected officer's name on a ballot as a candidate for elective office, and inclusion of an elected officer's name and signature on a ballot argument, shall be considered necessary to such a notice or other item.
- (8) A telephone directory, organization chart, or similar listing or roster which includes the names of elected officers as well as other individuals in the agency sending the mailing, where the name of each elected officer and individual listed appears in the same type size, typeface, and type color. Such item may not include an elected officer's photograph, name, signature, or any other reference to an elected officer, except as specifically permitted in this subdivision (b)(8) or elsewhere in this regulation.
- (9) (A) An announcement of any meeting or event of the type listed in paragraphs (i) or (ii).
- (i) An announcement sent to an elected officer's constituents concerning a public meeting which is directly related to the elected officer's incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend.
- (ii) An announcement of any official agency event or events for which the agency is providing the use of its facilities or staff or other financial support.

(B) Any announcement provided for in this subdivision (9) shall not include the elected officer's photograph or signature and may include only a single mention of the elected officer's name except as permitted elsewhere in this regulation.

(10) An agenda or other writing that is required to be made available pursuant to Sections 11125.1 and 54957.5 of the Government Code, or a bill, file, history, journal, committee analysis, floor analysis, agenda of an interim or special hearing of a committee of the Legislature, or index of legislation, published by the Legislature.

(11) A business card which does not contain the elected officer's photograph or more than one mention of the elected officer's name.

(c) The following definitions shall govern the interpretation of this regulation:

(1) "Elected officer affiliated with an agency" means 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 who appoints one or more members of the agency.

(2) "Features an elected officer" means that the item mailed includes the elected officer's photograph or signature, or singles out the elected officer by the manner of display of his/her name or office in the layout of the document, such as by headlines, captions, type size, typeface or type color.

(3) "Substantially similar" is defined as follows:

(A) Two items are "substantially similar" if any of the following applies:

(i) The items are identical, except for changes necessary to identify the recipient and his/her address.

(ii) The items are intended to honor, commend, congratulate or recognize an individual or group, or individuals or groups, for the same event or occasion; are intended to celebrate or recognize the same holiday; or are intended to congratulate an individual or group, or individuals or groups, on the same type of event, such as birthdays or anniversaries.

(iii) Both of the following apply to the items mailed:

a. Most of the bills, legislation, governmental action, activities, events, or issues of public concern mentioned in one item are mentioned in the other.

b. Most of the information contained in one item is contained in the other.

(B) Enclosure of the same informational materials in two items mailed, such as copies of the same bill, public document, or report, shall not, by itself, mean that the two items are "substantially similar." Such informational materials may not include the elected officer's name, photograph, signature or any other reference to the elected officer except as permitted elsewhere in this regulation.

(4) "Unsolicited request" is defined as follows:

(A) A written or oral communication (including a petition) which specifically requests a response and which is not requested or induced by the recipient elected officer or by any third person acting at his/her behest. However, an unsolicited oral or written communication (including a petition) which contains no specific request for a response, will be deemed to constitute an unsolicited request for a single written response.

(B) An unsolicited request for continuing information on a subject shall be considered an unsolicited request for multiple responses directly related to that subject for a period of time not to exceed 24 months. An unsolicited request to receive a regularly published agency newsletter shall be deemed an unsolicited request for each issue of that newsletter.

(C) A previously unsolicited request to receive an agency newsletter or mass mailing on an ongoing basis shall not be deemed to have become solicited by the sole fact that the requestor responds to an agency notice indicating that, in the absence of a response, his/her name will be purged from the mailing list for that newsletter or mass mailing. A notice in the following language shall be deemed to meet this standard:

"The law does not permit this office to use public funds to keep you updated on items of interest unless you specifically request that it do so."

Inclusion of a similar notice in other items shall not constitute a solicitation under this regulation.

(D) A communication sent in response to an elected officer's participation at a public forum or press conference, or to his/her issuance of a press release, shall be considered an unsolicited request.

(E) A person who subscribes to newspapers or other periodicals published by persons other than elected officers shall be deemed to have made unsolicited requests for materials published in those subscription publications.

Adopted: March 14, 2007