State of California

Board of Equalization
Taxpayers' Rights Advocate's Office

Memorandum

To: Honorable Jerome E. Horton, Chairman
Senator George Runner (Ret.), Vice Chair
Honorable Fiona Ma, CPA, Second District
Honorable Diane L. Harkey, Fourth District
Honorable Betty T. Yee, State Controller

Date: November 6, 2015

From: Todd Gilman, Chief
Taxpayers' Rights and Equal Employment Opportunity Office, MIC: 70

Subject: **Customer Service and Administrative Efficiency Committee**
November 17, 2015
Pre-Election Mail Policy

The Customer Service and Administrative Efficiency (CSAE) Committee, chaired by Vice Chair George Runner, requested a discussion regarding establishing policy that restricts mass mailings on behalf of a Board Member, within a specified time period prior to an election.

During the November CSAE Committee Meeting, a discussion will be held on this issue. Attached is a discussion paper that provides background information as well as Memorandum issued by Chairman Jerome E. Horton.

TG:ab

Attachments: Discussion Paper, Pre-Election Mail Policy
Memorandum from Chairman Jerome E. Horton

cc: Ms. Shellie Hughes
Ms. Kari Hammond
Mr. Sean Wallentine
Mr. Jim Kuhl
Mr. Russell Lowery
Ms. Yvette Stowers

Discussion Paper

Pre-Election Mail Policy

Issue

Whether the State Board of Equalization (Board) should adopt a policy that restricts mass mailings on behalf of a Board Member, within a specified time period prior to an election.

Background

The Political Reform Act (Act) generally bars newsletters and mass mailings sent at public expense, (Government Code Section 89001). Under the Act, a mass mailing is defined as "over two hundred substantially similar pieces of mail" not including a "form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry." (Government Code Section 82041.5) Fair Political Practices Commission (FPPC) Regulations, Title 2., Division 6, Sections 18901 and 18901.1 narrow this prohibition to those mailings featuring or including the name, office, photograph, or other reference to an elected official affiliated with the agency producing or sending the mailer. Additionally, the prohibition applies to mailings that are campaign related, sent by governmental agencies and paid for with public moneys.

The California State Assembly and Senate have other policies in place that restrict mass mailings within a certain time period prior to a primary or general election. The Assembly bars any mailing or personal delivery of any document on behalf of any Assembly Member to a person's residence, place of employment, business or P.O. Box during the 60-day period prior to a primary or general election with specified narrow exceptions. The exception for items under the 200-item limit does not apply. Additionally, the mail prohibition applies regardless of whether the Assembly Member's name is on the ballot. The Senate bars any mailings by a member of the Senate whose name appears on the primary or general election ballot within the 90-day period prior to that election. As with the Assembly, the Senate prohibition includes items under the 200-item limit.

Discussion

To consider the following two options:

1.) Board Members will continue to abide by all state laws and regulations regarding mass mailings.
2.) Adopt a policy that restricts mail sent by BOE Members in advance of a primary or general election. This would ban BOE Members and agency staff from mailing, or personally delivering, any document on behalf of any BOE Member to a person's residence, place of employment, business, or post office box within 60 days of an election in which a BOE Member is a candidate for elected office, with exceptions as noted under "60-Day Pre-Election Mail Ban" on page 4 and 5 of the attachment.

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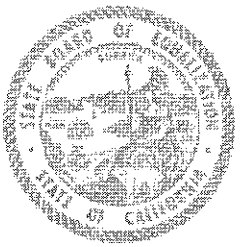

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JEROME E. HORTON
CHAIRMAN
CALIFORNIA STATE BOARD OF EQUALIZATION

MEMORANDUM

To: Senator George Runner (Ret.), Vice Chair
Honorable Ms. Fiona Ma, CPA, Second District
Honorable Diane L. Harkey, Fourth District
Honorable Betty T. Yee, State Controller

Date: October 16, 2015

From: Jerome E. Horton, Chairman

Subject: Mass Mailing Policy

Introduction

Currently, the State Board of Equalization (BOE) does not have an established policy for mail sent by Board Members in advance of a primary or general election. I request that a proposed policy be presented to the Board for consideration. This memorandum provides technical information on the following: (1) the statutory and regulatory guidelines applicable to mass mailings generally; (2) the Board's policy regarding mass mailings; (3) the Assembly and Senate policies regarding pre-election mail; and (4) my suggestion for Board policy related to pre-election Board Member mail.

Background

General Mass Mailings

The Political Reform Act (Act) generally bars newsletters and mass mailings sent at public expense, (Government Code Section 89001). Under the Act, a mass mailing is defined as "over two hundred substantially similar pieces of mail" not including a "form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry." (Government Code Section 82041.5) Fair Political Practices Commission (FPPC) Regulations, Title 2., Division 6, Sections 18901 and 18901.1 narrow this prohibition to those mailings featuring or including the name, office, photograph, or other reference to an elected official affiliated with the agency producing or sending the mailer. Additionally, the prohibition applies to mailings that are campaign related, sent by governmental agencies and paid for with public moneys.

Regulation 18901 prohibits mailings under the Act, with specified exceptions, if each of the following applies:

- **Tangible Item.** The communication consists of a tangible item, such as a newsletter or brochure that is delivered by any means, including by facsimile transmission, to a person's residence, place of employment or business, or post office box. This does not include electronic transmission.

- **Features Elected Officer.** The communication features an elected officer affiliated with the agency (photo or signature, or display singling out the elected officer) or the communication references an elected officer affiliated with the agency and is prepared or sent in cooperation with the elected officer.

- **Public Moneys.** Any costs are paid with public moneys for distribution of the communication, or if funds are not used for distribution of the communications, any public moneys in excess of $50 are used to design, produce, or print the communication and the design, production or printing is done with the intent to send the communication in a manner that is not specifically permitted by Regulation 18901.

- **Mass Mailing.** More than 200 substantially similar communications are sent in a calendar month, unless the communication is sent in response to an unsolicited request.

  Exceptions to the prohibition described above include the following:

- **Letterhead.** The elected officer's name appears only in the letterhead or logo of the agency stationery, forms, and envelopes or in a roster listing all of the agency's elected officers. The names of all elected officers must appear in the same size, font, type, color and location, and may not contain an elected officer's photo, signature, or any other reference to the officer.

- **Meeting Announcement.** A public meeting announcement may be sent to the elected officer's constituents if the meeting is directly related to the elected officer's governmental duties and the officer plans to attend. The item may not contain the elected officer's photo or signature and may only mention the officer's name once.

- **Event Announcement.** 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. The item may not contain the elected officer's photo or signature and may only mention the officer's name once.

- **Normal Agency Business Practices.** The Act permits all of the following:

  - Press releases sent to media.

- Items sent in the normal course of business from one governmental entity or officer to another.
- Intra-agency communication sent in the normal course of business to employees, officers, deputies and other staff.
- Tax bills, checks, and similar documents where use of the elected officer's name, office, title or signature is necessary to the payment or collection of funds.
- A telephone directory, organization chart, or similar listing or roster that includes the names of elected officers and agency officials sending the mailing.
- Business cards that do not contain an elected officer's photo or mention the elected officer's name more than once.

- **Constituent Requests.** Responses to unsolicited requests, defined as a written or oral communication that specifically requests a response and that is not induced by the elected officer or person acting at the officer's behest.

Generally, promotional materials associated with Board Members' outreach events do not violate the "mass mailing" rule, provided the dissemination of promotional materials meets one of the above listed exceptions to the mass mailing prohibition or does not exceed the 200 item limit for items sent by any means, by an officeholder, candidate, or committee, to any person's home, office or post office box in a calendar month. (Government Code Section 82041.5)

Mass Mailings in Advance of an Election

The California State Assembly and Senate have other policies in place that restrict mass mailings within a certain time period prior to a primary or general election. The Assembly bars **any** mailing or personal delivery of any document on behalf of any Assembly Member to a person's residence, place of employment, business or P.O. Box during the **60-day period** prior to a primary or general election with specified narrow exceptions. The exception for items under the 200-item limit does not apply. Additionally, the mail prohibition applies regardless of whether the Assembly Member's name is on the ballot. The Senate bars any mailings by a member of the Senate whose name appears on the primary or general election ballot within the **90-day period** prior to that election. As with the Assembly, the Senate prohibition includes items under the 200-item limit.

The Senate provides fewer exceptions to the pre-election mail ban than does the Assembly. The Senate exempts:

- First time responses – mailers sent in response to an unsolicited request for information, either written or oral
- Official agency event notices if they are noticed in the Daily File, and
- Press releases to bona fide members of the media.

The Assembly provides the above exceptions and additional exceptions for:

- Mail to a constituent concerning casework for that constituent.
- Mailings and deliveries made in the ordinary course of Assembly business to state or federal government officials.
- Mailings or deliveries in the ordinary course of Assembly business to any local government official whose government agency has jurisdiction in all or part of an Assembly Member's district.
- Mailings or deliveries of certificates to school officials for the purpose of recognizing student achievement if not intended for distribution to student's homes
- Personal delivery or distribution of up to 200 substantially similar documents, such as certificates of recognition for constituents, in a calendar month, where there is a clear
- legislative purpose and the delivery or distribution is done at a public meeting or community event in the Member's district
- Documents mailed or delivered to legislator or legislative staff at their business address
- Documents mailed or delivered by the Rules Committee or other authorized Assembly offices as part of the Assembly's normal administrative business or if otherwise required by law, the Rules of the Assembly, or the Joint Rules of the Senate and Assembly
- Informational brochures set out in a public place if pick-up is not solicited by the Member or staff.

Proposed Board Policy Regarding Pre-Election Mail

60-Day Pre-Election Mail Ban

Board Members and agency staff would be barred from mailing or personally delivering any document on behalf of any Board Member to a person's residence, place of employment, business or P.O. Box within 60 days of an election where a Board of Equalization Member is on the ballot for that election.

The only exceptions to this 60-day pre-election mail ban would be as follows:

- Documents mailed or delivered by the BOE as part of the BOE's normal agency business.
- Official BOE public notices.
- Mailings concerning changes in the law provided that the mailing includes all five Board Member names.
- Mailings to constituents pursuant to a BOE sponsored event where the Board Member is participating.
- Mailings and deliveries may be made in the ordinary course of Board Member business to state or federal government officials.

- Mailings sent in response to an unsolicited request for information, either written or oral received by a Board Member.
- Documents may be mailed or delivered to, or on behalf of, a constituent concerning casework being done for that constituent.
- Board Members may mail or deliver personalized hand-written notes.
- Mailings and deliveries may be made in the ordinary course of Board Member business to any local government official whose government agency has jurisdiction in all or part of a Board Member's district.
- Mailings or deliveries of certificates to school officials for the purpose of recognizing student achievement if not intended for distribution to student's homes.
- Personal delivery or distribution of up to 200 substantially similar documents, such as certificates of recognition for constituents, in a calendar month, where there is a clear Board of Equalization purpose and the delivery or distribution is done at a public meeting or community event in the Member's district.
- Press releases may be mailed or delivered to bona fide members of the media only.
- Documents may be mailed or delivered to legislators or legislative staff at their business address.
- Documents may be mailed or delivered to other Board Members or BOE staff at their business address.
- Informational brochures set out in a public place if pick-up is not solicited by the Board Member or staff.

Sincerely,

Jerome E. Horton

JEROME E. HORTON, Chairman
3rd District, Board Member

cc: Ms. Kari Hammond
Ms. Shellie Hughes
Mr. Sean Wallentine
Mr. Jim Kuhl
Mr. Russell Lowery
Ms. Yvette Stowers