

ADMINISTRATIVE MEMORANDUM

SUBJECT Updating of certain mailing lists used by
State agencies

NUMBER 58

DATE March 22, 1976

Chapter 362 of the 1975 Session Laws directs each State agency to maintain the currency of mailing lists for the distribution of "public documents," as that term is defined in the session law. Chapter 362 was the subject of Legislative Memorandum #3, dated July 31, 1975, and was included in the 1975 legislative summary sent you under date of August 28, 1975. As we move toward the statute's effective date of July 1, 1976, this office has begun to receive inquiries from the constituent institutions about compliance with Chapter 362. (You will recall that compliance with Chapter 362 as to the mailing lists of each institution has been delegated by Legislative Memorandum #3 to the respective institution.) The following remarks, approved by the Office of the Attorney General, are responsive to those inquiries:

1. Chapter 362, section 1, subsection (a), speaks to updating mailing lists

- of State "agencies"
- for distributing "public documents" that they issue.

Public documents "issued by" State agencies are those documents prepared by or for a State agency with State-appropriated funds and are mailed or to be mailed with State-appropriated funds.

2. Section 1, subsection (b), defines "public document" as

- "any annual, biennial, regular or special report or publication"
- produced in a quantity "of which at least 500 copies are printed for distribution by mail to the general public."

"Printing" means reproduction by any repetitive process, including movable-type press, photocopying, engraving, and memory typewriter. While the statute specifies categories of printed matter contemplated for legislative coverage, the language effectively covers anything from a pocket calendar to a curricular study. These interpretations are necessary for the fabrication and category of a document become secondary in face of the focus of the law, which is waste of State-provided postage, materials, and effort.

However, the scope and type of document distribution covered by the act are limited. Excluded from legislative coverage by inference are hand-distributed or State courier-distributed publications in any quantity (not to be distributed by mail). Excluded by inference are publications irrespective of quantity addressed to alumni only or to members of the booster club (contemplated recipients are not the general public).

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3. Section 1, subsection (c), defines "agency" (of the State) in a way that places the burden of statutory compliance on the smallest element of State government that may be said to have issued the publication. This could be either an individual or an entire State department. The issuer would, of course, be created by State law or acting pursuant to powers or duties created by State law to function as an instrumentality of the State. Such agencies, then, would include University officers, administrative offices, academic departments, and the Board of Trustees, for example, but not separately incorporated and privately supported agencies, like the athletics booster clubs or alumni associations at some of our institutions.

Because each issuing office is a separate State agency for purposes of the statute, one document might be the subject of more than one mailing list. Therefore, if one publication is centrally prepared by or for an institution but distributed intra-campus, in lots, to several offices, each office would need to examine its use of a publication with regard to scope and nature of issuance and should respond to the statute with reference only to that office's use of the publication. For example, assume that an institutional catalogue were printed in a quantity of 10,000 and were distributed 5,000 to the Registrar for distribution by mail or otherwise to current students, 3,000 to Admissions for mailing on request to the general public, 1,000 to the Vice Chancellor for Academic Affairs for distribution as a reference book to other colleges and educational organizations, 500 to the Office of Development for mailing to foundations and government agencies, and 500 to the Dean of Students for discretionary use. The distributions would be treated under Chapter 362 as follows:

a. 5,000 to the Registrar for current students--not subject to Chapter 362 because recipients contemplated are not the general public.

b. 3,000 to Admissions for mailing pursuant to any request--subject to Chapter 362, as recipients are essentially the general public.

c. 1,000 to Vice Chancellor for Academic Affairs for distribution as a reference to other colleges and educational organizations--not subject to Chapter 362 because recipients contemplated are not the general public.

d. 500 to Office of Development for mailing to foundations and governmental agencies--not subject to Chapter 362 because recipients contemplated are not the general public. (Note. If the 500 copies are intended for mailing to anyone or agency interested in contributing to the institution, Chapter 362 would require a mailing list update because recipients are essentially the general public.)

e. 500 to the Dean of Students for discretionary use--Chapter 362 would apply only if in fact all 500 copies were earmarked by the Dean for distribution by mail to the general public. Yet, if the copies were not so earmarked but were in fact later distributed by mail to the general public, an obligation to update the list created by the previous year's distribution would be generated and continue until the earmarking for mailing or the practice of mailing at least 500 copies to the general public ceased as an activity of the Dean's Office.

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4. Subsection (a) requires, in effect, that mailing lists subject to Chapter 362 be updated at approximately 12-month intervals, using June 30 to mark the permissible later limit of each update period. If, however, a special report or other ad hoc publication, though ostensibly a "public document" under Chapter 362 and previously mailed to the general public in a quantity of at least 500, were not to be re-distributed, then the updating requirement on or before the subsequent June 30 would not be imposed. On the other hand, if the one-time mailing of a public document ostensibly governed by Chapter 352 precipitated further requests for that document, then the re-printing of that document in a lot of which at least 500 copies were to be distributed to the general public by mail after an intervening update deadline would require updating the mailing list. In determining what recipients constitute the general public upon the re-mailing, it appears that addressees who comprise only those who renewed their request would, despite their request, be considered members of the general public unless they had originally received copies of the document as members of a special group, e.g., alumni, library directors, enrolled students. That is to say, a special group as opposed to a segment of the general public is distinguished by more than the fact that the group members requested a public document.

5. Subsection (a) requires that mailing lists governed by Chapter 362 be updated so as to comprise only "those persons and organizations who, within the previous 12 months, have either requested that they be included in such a mailing list or have renewed a request that they be so included." However, if a person or organization receives a governed publication by reason of the recipient's office or official duties, e.g., the State Librarian, the recipient may be presumed or deemed to have requested the pertinent publication or renewed that request whether or not such request or renewal was actually transmitted to the issuing State agency. (Note. A group of recipients who receive a publication by reason of their office are likely not to be on a mailing list governed by Chapter 362. However, if those recipients were really only one group of recipients in a larger group of recipients on a statutorily governed mailing list, the smaller group would, without an actual or presumptive request, be forced from the list by operation of Chapter 362. Clearly, however, such request must be presumed or deemed made by the smaller group members. Otherwise, the effect of Chapter 362 would be not to diminish but to generate mailing and administrative costs through renewal procedures for the maintenance of routine mailings to pertinent officials.)

6. Chapter 362 contains no penalty for non-compliance, only a requirement that the specified updating of mailing lists be certified to the Director of the Budget as having been completed within the 12 months preceding the certification date, which shall be not later than July 1, except by extension of the certification deadline up to 90 days beyond July 1 by order of the Director of the Budget "for good

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cause shown." Unless the Director of the Budget promulgates regulations for Chapter 362 to the contrary, the required certification appears to constitute only a written assurance that the stipulated updating has been accomplished, not the submission of the actual, updated mailing lists to the Director of the Budget.

Chapter 362 requires that certification is to be made by the issuing agency's head. Although the certification dates and the agents for so certifying could then become numerous at any institution, it appears administratively desirable for there to be a uniform certification date throughout The University and for only designated officers of The University to render the certification to the Director of the Budget. Accordingly, I am taking hereby the following action to assist The University in complying with Chapter 362:

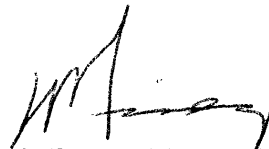
a. Requesting each Chancellor to name himself as the certifying officer for all mailing lists generated at his respective institution that are subject to update pursuant to Chapter 362.

b. Requesting each certifying officer to use May 31 as the effective date of mailing list update.

c. Requesting that in rendering the certification to the Director of the Budget as required under Chapter 362 the certifying officer use the following wording:

I hereby certify that any mailing lists of (name of constituent institution) subject to the provisions of Chapter 362, 1975 Session Laws, have been carefully reviewed, updated, and corrected within the 12-month period ending June 30, 19__, so that any mailing lists of this institution subject to the provisions of Chapter 362 were in compliance with the requirements of Chapter 362 as of May 31, 19__.

If you have questions about this Administrative Memorandum about Chapter 362, I request that you direct those questions to Mr. David Edwards of this office.



William Friday

Attachment