



Meeting Date: January 9, 2019

Report Type: Discussion

Defined Contribution Plans Committee

Historic City Hall, Hearing Room

915 I Street

www.CityofSacramento.org

Title: Ralph M. Brown Act Training

Location: Citywide

Recommendation: Receive and file.

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Presenter: Jeff Massey, Senior Deputy City Attorney, (916) 808-5346, Office of the City Attorney

Department: Human Resources

Division: Human Resources Administration

Dept ID: 08001011

Attachments:

01 Ralph M. Brown Act Presentation

The Brown Act Basics:

Deferred Compensation Committee

Presented By:

Jeffrey Massey

Senior Deputy City Attorney

A Brief History of the Brown Act

- In 1952, the *San Francisco Chronicle* exposed secret meetings conducted by local governments
- The League of California Cities drafted a new state open meeting law which Assembly Member Ralph M. Brown carried and Governor Earl Warren signed into law. The Ralph M. Brown Act, or the Brown Act for short, added Chapter 9 [§§ 54950-58] to the California Government Code

General Principles

- All meetings shall be open and public
- Actions and deliberations must be taken openly
- All persons shall be permitted to attend and participate in the meetings
- Only matters on the agenda can be discussed

Who is Subject to the Brown Act?

- Applies to “legislative bodies” including city councils and also advisory committees created by ordinance or resolution, and a commission or task force, other than an ad hoc committee or less than a quorum advisory committees

What is a Meeting?

- Any congregation of a majority of the members at the same time and place to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the body
- “Deliberation” includes collective decision-making and also the collective acquisition and exchange of facts preliminary to the ultimate decision
- “Action taken” is a collective decision or actual vote by a majority of the members of a body



What is Not a Meeting?

- Individual contacts between a committee member and another person; or
- A majority of the members at a:
 - Open meeting of another body, for example, a properly agendized commission meeting
 - Members attending a League of Cities Conference
 - Social or ceremonial event

But members cannot discuss matters that are within their jurisdiction among themselves at these events!



Communication that Violates the Brown Act

A majority of members are prohibited from using a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on business within its subject matter jurisdiction outside of a noticed, agendaized meeting



Serial Meetings



- A series of private meetings or “serial meetings” allow a majority to commit to a decision or engage in deliberation of public business is a violation of the open meeting requirement
- Beware of “daisy chain” contacts: A to B and B to C can lead to a collective concurrence
- Beware of “hub & spoke” contacts: one person is the hub who then feeds and receives information to and from other members



Serial Meetings in the Industrial Age

- In-Person: A series of individual meetings that lead to a collective concurrence violates the Brown Act. But, a minority can discuss a policy privately without violating the Brown Act
- Telephone: A series of individual telephone conversations that lead to a collective concurrence violates the Brown Act - physical presence of members is unnecessary to establish an informal meeting
- Letters: Similar to the telephone, a series of correspondence that lead to a collective concurrence violates the Brown Act



More Technology, More Problems



- The Internet and social media provide abundant opportunities for officials to post their unfiltered opinions, thoughts and general comments about city issues
- When these entries or articles are especially timely or controversial, they practically invite comments by interested residents and local officials
- No court has specifically ruled on the Internet or social media posts in regards to Brown Act requirements. However, the same serial meeting rules that apply to e-mail may likely apply to other digital and social online conduct such as texting, tweeting, liking, swiping, and commenting on stories and third party blogs and posts

Email

- A majority of members may not email each other to develop a collective concurrence as to action to be taken by the board. This applies to personal and work emails
- This is the case even if the e-mails are also sent to the secretary and chairperson of the agency, the e-mails are posted on the agency's Internet website, and a printed version of each e-mail is reported at the next public meeting of the board
- With the reply-all button so readily accessible, creating an “exchange of facts” is all too easy





Text Messages

- A series of cell phone text messages that lead to a collective concurrence violates the Brown Act
- Text messages sent to committee members during an open meeting are secretive because members of the public are not privy to the content of the text message
- If a group text message or a series of text messages include a majority of the board or committee members and relate to the deliberations at hand, then the board or committee has violated the Brown Act



Open Meeting Issues

- The potential to inadvertently hold a “meeting” is concerning
- Meetings must be open to the public, in a public location, with no restrictions on who may attend and where open discussion is allowed
- Fair notice must be given to the public of what will be discussed at a public meeting so the individual citizen can make an informed decision on whether or not he or she wants to attend that particular meeting
- With so much access to digital and social media, platforms that are significantly more open, transparent and accessible than city hall, it is ironic that such communication may be a violation



- Yet, the potential Brown Act pitfalls are real
- Local officials should be wary of commenting on any other official's social media content to avoid unintentionally creating a serial meeting
- Not all social media discussions are public and not everyone may be heard either. Posting their own comment may be safest, but liking, retweeting, and commentating on other official's sites and posts may be a violation of the Brown Act

Questions?