

The Ralph M. Brown Act

**Alegría De La Cruz
Sonoma County Counsel's Office**

March 29, 2019

History

In 1951, San Francisco Chronicle reporter Mike Harris spent 6 weeks looking into how local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings were common.

Legislature Responds

- In response, the public pushed for a new state open meeting law and Assemblyman Ralph M. Brown introduced the Brown Act. The bill was signed into law in 1953.



The Intent of the Brown Act

- Government officials are elected by the people and govern on behalf of the people.
- Legislative bodies must discuss, deliberate and act on the public's business openly.
- The public needs to have access and be able to observe, monitor, and evaluate its legislative bodies.

When Does the Brown Act Apply?

All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting.

Government Code Sec. 54953.

Pop Quiz

The Board of Supervisors wants to learn more about what other jurisdictions have done to encourage schools to serve healthy meals to elementary school kids. They appoint 5 members of the community to an advisory task force to research this issue and make recommendations. The task force is not compensated. The task force does not receive any reimbursements for their time.

Are these task force members required to conduct meetings that comply with Brown Act requirements?

Answer

Yes. Whenever a Brown Act body takes action to create a committee, commission, task force – even if it is only temporary and advisory – the new commission must comply with the notice and open meeting requirements of the Brown Act.

What is a Legislative Body?

The Brown Act broadly defines a “legislative body” to include:

“A commission, committee, board, or other body of a local agency whether **permanent or temporary, decision making or advisory**, created by charter, ordinance, resolution or formal action of the legislative body.” Government Code Sec. 54952(b).

What is a Legislative Body?

- If a legislative body takes action to create a subcommittee or advisory body, that subcommittee or advisory body becomes its own legislative body.

Government Code Sec. 54952(b)

What is NOT a Legislative Body?

An advisory committee **created by a single officer** is not subject to the Brown Act. This committee would not have authority to take action or advise a legislative body. It would exist solely to make recommendations to be considered by a single officer.

California Attorney General Opinion 72-67.

Ad Hoc Committees

Ad Hoc Committees do not need to comply with the Brown Act's notice and open meeting. Ad Hoc Committees are limited to committees that meet both requirements:

- * The committee is comprised solely of less than a quorum of the legislative body which created it; and
- * The committee meets for a short duration to gather information about a single subject.

What Type of Committee?

- **Standing Committees**

- Ongoing or indefinite term
- Continuing subject matter
- Subject to Brown Act requirements, even if less than a quorum

- **Ad Hoc**

- Temporary committee
- Single/Limited purpose
- Dissolved when Done
- Less than a quorum
- Not subject to Brown Act

Pop Quiz

The Education Equality Committee has 5 members. It establishes a subcommittee of 2 of its members to research successful policies that have been developed in other communities. The subcommittee will meet the first Wednesday of every month. The subcommittee will report back to the full committee at least once a year to update the full committee about their latest research and make recommendations.

Is the Research Subcommittee an Ad Hoc Committee or a Standing Committee?

Answer

It is a standing committee. It has some of the characteristics of an ad hoc committee because it is only 2 of the 5 members and it is limited to a single subject. However, it is not a temporary project. It is scheduled to meet on a regular basis for an indefinite period of time. Therefore, this Research Subcommittee must comply with the Brown Act's notice and open meeting requirements.

What is a Meeting

- * Deliberations or actions by a majority;
and
- * Series of communications involving a majority of members.

Serial Meetings

A majority of members of a legislative body shall not, outside of an open and public meeting, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business.

[Government Code Sec. 54952.2(b).]

Email or Text Chain

- Commissioner A texts Commissioner B to chat about agenda item #7. Commissioner B emails Commissioners C and D about the same issue. The group may be forming a serial meeting if the series of communications involves a quorum.



Hub and Spoke



- Commissioner A calls Commissioner B to discuss agenda item #3. Next, A texts C and D to get their thoughts too.

Quorum Issues

- A quorum of one public body wants to go to the noticed public meeting of another legislative body to listen to deliberations. Legal concerns?
- To give testimony in favor or opposed to specific policy determinations?

Quorum Issues, part 2

The attendance of a majority of the members of a legislative body at an open and public meeting of another body is legal, provided that the majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body.

- Gov't Code 54952.2(c)(4)

What is NOT a Serial Meeting?

- Individual contacts between Commissioners and staff, counsel or others, e.g. staff meeting with a Commissioner to answer questions or provide information. Government Code Sec. 54952.2(c)(1)
- Staff should not ask and Commissioner should not answer questions about concerns or positions of other Commissioners.

NOT a Meeting

- Attendance at social or ceremonial events where no business of the Commission is discussed. Government Code Sec. 54952.2(c)(5).
- Community forums and meetings of other government bodies.

NOT a Meeting

- Attendance at public conferences if Commissioners do not discuss among themselves the business of their jurisdiction. Government Code Sec. 54952.2(c)(2)(3) and (4).

Social Media

Law in this area is developing. Best practices to avoid allegations of Brown Act violations include:

- Not engaging in discussions within the Commission's subject matter jurisdiction on fellow Commissioners' blogs and FB pages.
- Not texting, emailing or engaging in other forms of electronic communication during meetings.
- Do not send "reply all" texts or emails.

Notice & Posting Agendas

- Agenda must be posted 72 hours in advance (if a special meeting is called by the Commission, 24 hour notice must be given)
- Brief description of items of business
- Agendas must be publicly accessible and distributed in advance to those who request copies

Notice & Posting

- Agendas must be posted on the local agency's website.
- If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability as required by Section 202 of the Americans with Disabilities Act (42 USC section 12132). The agenda shall include information regarding how, to whom and when a request for disability-related modification or accommodation may be made by a person with a disability in order to participate in the public meeting.

Notice & Posting – Legal Update

As of January 1, 2019, a legislative body of a city, county, city and county, special district that has a website, there are a host of new requirements about the website posting.

- The agenda link must be in a prominent and direct link to the current agenda.
- This new law would not apply to most commissions created by the Board, but it would apply to special districts.

Notice & Posting – Legal Update

Please review the handout of Government Code § 54954.2(a)(2) for all of the new website posting requirements for special districts and the county's own legislative body.

Items Not on Agenda



- No discussion or decision on items not on the posted agenda

Items Not on Agenda

- Members or staff may briefly respond to questions posed by the public.
- Members may ask staff a question, make a brief announcement or make a brief report on his or her own activities.
- Members may ask staff to report back to the body at a subsequent meeting, or take action to direct staff to place a matter on a future agenda.

Public Comment

- Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject area of the legislative body. (Gov. Code § 54954.3(a).)
- Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.

Public Comment – Legal Update

- Many commissions have adopted a policy to limit public comment on a topic (such as 3 minutes per speaker).
- Recent change in the law requires that whenever a Brown Act body limits the time for public comment, it must provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity. Government Code section 54954.3.

Closed Sessions



Closed Sessions – General Principles

Closed sessions are narrow exceptions to the open meeting rule. Standard is NOT whether the subject is sensitive, embarrassing or controversial.

- Permitted only where specifically available by statute (e.g., anticipation of litigation, personnel, real estate negotiations, labor negotiations, etc.)
- Each closed session exception has detailed requirements. If the Commission wants to go to closed session, please coordinate with Counsel.

Executive Salaries– Legal Update

- Recent law calls for further transparency: “orally report a summary of a recommendation for a final action on salaries, salary schedules or compensation paid in the form of fringe benefits for local agency executives.” The oral report must be made prior to taking final action on the compensation, in open session at the same meeting where the final action is taken. AB 1344.
- Fringe benefits are not defined in the new law, but could include health and welfare benefits, paid vacation, auto allowance, cell phone allowance, etc.

Brown Act Violations: Civil Action

- Any individual or the District Attorney may file a civil lawsuit for injunctive relief or to void action taken in violation of the Brown Act. Government Code Sec. 54960.
- Attorneys' fees are available to prevailing plaintiffs. Government Code Sec. 54959.

Brown Act Violations: Criminal Penalties

- Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of the Brown Act and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled to, is guilty of a misdemeanor. Government Code Sec. 54959.

Helpful Resource

California League of Cities Brown Act Guide

<http://www.cacities.org/Resources/Open-Government>

Ethics Training

- AB 1234 requires that if a local agency provides any type of compensation, salary or reimburses the expenses of its governing body, the local agency's officials must receive training in ethics every 2 years.
- The Fair Political Practices Commission provides excellent free online AB 1234 training. <http://localethics.fppc.ca.gov>. The course covers California's Political Reform Act, explaining that when a public official has a financial interest in a decision before him or her, the public official must step aside from the decision-making process. The course also covers California's ethical contracting laws.

Questions?

Thank you to the Commissioners and to all staff for your service to the community!