

April 4, 1990

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
OPEN MEETING REQUIREMENTS
OF THE RALPH M. BROWN ACT
(CALIFORNIA GOVERNMENT CODE
SECTION 54950 ET SEQ.)

In December 1986 we conducted a special briefing for the Mayor, City Council and staff members on the requirements and restrictions of California's open meeting law, the Ralph M. Brown Act. You may recall that this special briefing was the result, in part, of a civil complaint filed in Superior Court by the San Diego Tribune alleging that Brown Act improprieties had occurred during the budget sessions of 1986. Rather than replicate that special briefing, this report will highlight the requirements, restrictions and consequences of the Act.

The purpose of the Act is clearly stated in its first section:

Section 54950. Declaration, intent, sovereignty

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly emphasis added.

The people of this State do not yield their sovereignty to the agencies which serve them.

The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.

The people insist on remaining informed so that they may retain control over the instruments they have created.

California Government Code section 54950

Since the special briefing of December 11, 1986, my office has issued a variety of opinions, the most recent of which is our memorandum of law of March 30, 1990 (attached for your review). This memorandum typifies the problem that is deserving of special caution. While legislative bodies may operate through committees made up of its members and those committees are expressly exempt from Brown Act requirements so long as they are composed of members which constitute less than a quorum (Government Code

section 54952.3), care must be taken to avoid any serial activity by which information is obtained or opinions are formulated that would make the public deliberations process a sham.

As cautioned by the California Attorney General:

Serial, rotating, or seriatim meetings by which a quorum of the board becomes involved in the information acquisition or deliberation process are prohibited unless the notice and public access provisions of the open meeting laws are satisfied. Similarly, meetings in which the hub of a wheel (e.g., a chairperson or executive director) communicates with the various spokes (e.g., board members) also are prohibited.

Open Meeting Laws, California Attorney General's Office 1989, p. 15.

As the Attorney General points out, staff cannot be used to avoid the serial meeting restrictions since it is the nonpublic transmittal of information and intent that is restricted.

The Ralph M. Brown Act provides both criminal and civil remedies as follows:

1. Section 54959. Attendance at meeting where action taken in violation of this chapter is a misdemeanor

Each member of a legislative body who attends a meeting of such legislative body where action is taken in violation of any provisions of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

2. Section 54960.1. Action to void action of legislative body

(a) Any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, or 54956 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

The civil remedy also provides that court costs and reasonable attorney fees may be awarded. California Government Code section 54960.5.

In both spirit and substance, The Ralph M. Brown Act requires that the public's representatives conduct the public's business in public.

Respectfully submitted,

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City Attorney

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Attachment

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