

September 3, 1998

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

ATTENDANCE OF NON-COMMITTEE MEMBERS AT MEETINGS OF COUNCIL
STANDING COMMITTEES (ATTORNEY GENERAL OPINION NUMBER 97-1207)

INTRODUCTION

The California State Attorney General recently issued an opinion stating that members of a legislative body of a local public agency may not ask questions, make statements or sit in special chairs on the dais while attending a meeting of a standing committee of the legislative body as observers. 81 Op. Cal. Att'y Gen. 156 (1998) [the Opinion]. See attached Exhibit A.

This office has reviewed and considered the Opinion (No. 97-1207) and its history. We recommend that City Council members who attend a meeting of a Council standing committee, of which they are not members, be allowed to speak to any issue pending before the committee, just as members of the public may speak, but that non-committee members not be afforded special treatment by sitting with the members of the committee or participating in the discussion and deliberation on the pending matter.

DISCUSSION

The Ralph M. Brown Act (Cal. Gov't Code 54950-54962) [the Act] requires the legislative body of a local agency to hold its meetings open to the public, to provide notice of the meetings, and to provide a written agenda of items to be discussed. Gov't Code 54954.1, 54954.2. The Act applies to charter cities, such as San Diego. Under the Act, a meeting of the legislative body occurs whenever a majority of the members are together at the same time and place to *hear, discuss or deliberate* upon any matter which is under the subject matter jurisdiction of the agency. Gov't Code 54952.2.

The Opinion is based in part on an earlier Attorney General opinion which concluded that it was a violation of the Act for a fourth member of a seven-member legislative body to attend a meeting of one of its standing committees. The fourth member's attendance would create a quorum of the legislative body, resulting in a meeting that was not noticed to the public as required by the Act. This analysis does not directly apply to The City of San Diego, because standing committees are made up of a majority of Council members. Thus, the attendance of an additional Council member at a fully attended committee meeting would not create a Council

quorum.

In 1997, in response to the Attorney General's earlier opinion, the legislature amended the Act, adding subdivision (c)(6) to section 54952.2, to exclude the following situation from the definition of "meeting" for purposes of the Act.

The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend *only as observers*. [Emphasis added.]

It is this revision to the Act that the Attorney General interprets in the Opinion. This office agrees with the Opinion insofar as it recognizes that the legislature, in adopting the 1997 changes to the Act, intended to allow non-committee members to attend meetings of a standing committee, but not to afford them any special privileges. We concur in the conclusion that participation in the discussion and deliberation by non-committee members could be construed as a meeting of the legislative body in violation of the Act. We also agree that allowing the non-members to sit with the committee creates the impression that the standing committee meeting is, in fact, a meeting of the legislative body. Treating the non-members the same as the public eliminates this potential confusion.

We disagree, however, with the Attorney General's conclusion that non-committee members may not speak at all to matters pending before the committee. We have serious concerns that precluding non-committee members from exercising a right afforded the general public, to be heard on a matter pending before the committee, may impermissibly infringe on protected speech under the First Amendment. The Council members who are not members of the committee should be permitted to comment on a pending matter as would members of the public.¹ In our opinion, such comment does not violate the Act, so long as the non-committee member does not sit with the committee members and discuss and debate the pending item.

CONCLUSION

Members of the City Council may attend meetings of standing committees to which they are not appointed provided they attend only as observers. They are permitted to speak to an item, just as members of the public may speak, but may not be given special status by sitting with the committee or being allowed to participate in the discussion and deliberation on a pending item.

Respectfully submitted,

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