

DATE: December 2, 1987

TO: Aurelia Koby, Director, San Diego RETC
FROM: City Attorney
SUBJECT: Private Industry Council

This memo is in response to two questions you had regarding Private Industry Council (PIC) members. You requested me to clarify certain requirements in regards to PIC meetings. You wanted to know whether PIC members could discuss items not put on the PIC meeting agenda seventy-two hours prior to the regular meeting.

The Ralph M. Brown Act, California Government Code section 54950, et seq. generally requires that the meeting of legislative bodies of local agencies be open and public. A legislative body is defined in section 54952.3 as ". . . any advisory commission, advisory committee or advisory body of a local agency, created by charter ordinance, resolution or by any similar formal action of a legislative body or member of a legislative body of a local agency."

The Regional Employment and Training Consortium (RETC) is a joint powers agency formed pursuant to the California Joint Powers Act (Government Code . 6500, et seq.) by agreement between the City of San Diego and the County of San Diego. Its primary purpose is to administer job training programs under the Job Training Partnership Act (JTPA). JTPA mandates that a partnership be formed between the local governing body and private industry to plan and administer a program for delivery of service. 29 U.S. . 1512. The PIC is appointed by the RETC Policy Board as an advisory body of RETC and is a legislative body per Government Code section 54952.3.

Subdivision (a) of section 54954.2 reads as follows:

54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an

agenda containing a brief general description of each item of business to be transacted or discussed at the meeting. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. No action shall be taken on any item not appearing on the posted agenda. Emphasis added.

However, subdivision (b) of section 54954.2 permits the legislative body to take action on items of business not appearing on the posted agenda for a regular meeting if any of specified conditions exist. These conditions include: the determination by a majority vote of the legislative body that an emergency situation exists; a determination by a two-thirds vote or, if less than two-thirds of the members are present, a unanimous vote that the need to take action arose subsequent to the posting of the agenda; or the item was posted for a prior meeting occurring not more than five calendar days prior to the date action is taken and at the prior meeting the item was continued to the meeting at which action is being taken.

Further, subdivision (a) of section 54954.3 requires that every agenda for regular meetings provide an opportunity for members of the public to directly address the legislative body on items of interest to the public that are within the subject matter jurisdiction of the legislative body but prohibits any action from being taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of section 54954.2.

It is the position of this office that discussion of non-agenda items by PIC board members at a regular meeting constitutes action and under the Brown Act is not allowed, unless such discussion qualifies under the exceptions mentioned above. If PIC members wish an item to be a topic for discussion, they need to notify you in advance so that item can be put on the agenda for the required seventy-two hours posting; or there can be a space on each agenda for members to bring up items they want to place on the next agenda for discussion. I have enclosed for you a brief informational memo regarding the Brown Act that has been utilized in our office.

Your second question concerned liability of PIC board members while engaged in Private Industry Council related duties. The PIC members are officers appointed by the RETC Policy Board, a governmental agency. Case law holds that "the term officer . . .

is sufficiently comprehensive to include all persons in any public station or employment conferred by government." *City Council v. McKinley*, 80 Cal.App.3d 204, 210 (1978).

Section 825(a) of the California Government Code states:

- (a) If an employee or former employee of a public entity requests the public entity to defend him against any claim or action against him for an injury arising out of an act or omission occurring within the scope of his employment as an employee of the public entity

and such request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.

Section 810.2 defines employee: "'Employee' includes an officer, judicial officer as defined in Section 28 of the Elections Code, employee, or servant, whether or not compensated, but does not include an independent contractor."

PIC members, as public officers, would be covered by RETC for liability incurred while acting within the scope of their duties as board members.

JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

MKJ:mrh:664.3(x043.2)

Enclosure

ML-87-117