

MEMORANDUM OF LAW

DATE: May 11, 1988

TO: Rudy V. Cervantes, Consultant to the Rules
Committee

FROM: City Attorney

SUBJECT: Mayor's Hispanic Advisory Committee

By memorandum dated April 11, 1988, you have asked for information about two issues on behalf of the Mayor's Hispanic Advisory Committee. To answer these questions, it is necessary to understand the history and manner of selection of this Committee. This information was obtained from LaDonna Hatch of the Mayor's Office and Chief Deputy City Attorney Jack Katz.

BACKGROUND FACTS

The Mayor's Hispanic Advisory Committee was originally created by the former mayor. The Committee is not designated in the Charter; nor is it established in the City's Municipal Code or other ordinances of the City. The members were selected without a formal appointment process and without benefit of a Council resolution or other formal action of the Mayor and Council.

QUESTIONS PRESENTED

1. Is the Mayor's Hispanic Advisory Committee subject to the provisions of the Brown Act? Must meetings be noticed? Are the meetings open to the public?
2. What are the requirements regarding using the name of the Mayor's Hispanic Advisory Committee in relation to partisan activities? Can the Committee support the election of candidates for elected offices?

ANALYSIS

The Ralph M. Brown Act, codified at Government Code sections 54950 et seq., applies only to those legislative bodies, including advisory groups, that fit the definition of "legislative body" in the statute. Government Code section 54923.2.

This statute reads in relevant part:

Section 54952.3 Advisory body as "legislative body"

As used in this chapter, "legislative body" also includes 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. . . . Emphasis added.

Under the plain words of this statute, to be subject to the Ralph M. Brown Act, an advisory group must be created by:

- 1) Some formal action, and
- 2) That action must be by a legislative body or member of a legislative body.

The Mayor is clearly a member of a legislative body; that is, of the City Council of The City of San Diego. The issue, then, is whether some "formal action" created the Mayor's Hispanic Advisory Committee. The term "formal action" is not defined in the statute. However, it is clear from the wording of the statute that "formal action" must rise to the level of a charter, ordinance or resolution to fall within the statutory meaning.

Under the facts presented, there was no "formal action" creating the Mayor's Hispanic Advisory Committee. Therefore, the Ralph M. Brown Act does not apply to require them to hold their meetings in public or to provide notice of their meetings. (See Gov't Code section 54953.)

As to the second question presented, this office has opined on several occasions on the subject of political activity of City officers and employees. See attached memoranda dated September 29, 1986, August 20, 1985, February 20, 1985, August 7, 1981, June 20, 1975 and August 1, 1967. The principles enunciated in these memoranda apply equally to formal or informal advisory

groups of the City as well as to City officers and employees; namely, that an individual has a right to participate in a political activity as long as the individual does not use City time, facilities, supplies or indicia of office. Therefore, the members of the Mayor's Hispanic Advisory Committee may not use that Committee's name to endorse particular candidates or issues.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:fs:920(x043.2)

Attachments

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