

MEMORANDUM OF LAW

DATE: June 14, 1989

TO: Councilmember Abbe Wolfsheimer, District 1  
FROM: City Attorney  
SUBJECT: Applicability of Ralph M. Brown Act  
to Rancho Penasquitos Park Allocation Committee

Arising both from discussions with your staff and a complaint from Alan F. Dickey, Chairman of the Rancho de los Penasquitos Planning Board, we have been asked to determine the applicability of the Ralph M. Brown Act (California Government Code 54950 et seq.) to the above-referenced committee.

The Ralph M. Brown Act requires that "deliberations be conducted openly...." Section 54950. Its requirements apply to legislative bodies and advisory committees "created by charter, ordinance, resolution or by any similar formal action...." Section 54952.3. Hence we must determine whether the questioned committee has in fact been created by such formal action. San Diego City Attorney Memorandum of Law, May 15, 1987, followed a similar analysis.

It is conceded that the purpose of the committee is to make recommendations on park and recreation facilities as contemplated in Document No. 00-17179, a development agreement between the City of San Diego and American Newland Associates, et al, which provides:

6.14 Financing Other Park and Recreation  
Improvements

No later than the effective date, Newland shall deliver to City an irrevocable letter of credit in form and substance acceptable to the City Manager in the amount of two million two hundred thousand dollars (\$2,200,000) which shall secure Newland's obligation to pay City funds in like amount for the design and construction of Black Mountain open space park

or other park and recreation facilities as recommended by a Rancho Penasquitos board to be established solely for the purpose of making recommendations on these improvements. All projects and expenditures of funds shall be approved by the City Council.

Contrary to the June 2, 1989 letter of Mr. Dickey, no Council action has been taken to create such a board. However, seeing a

need for community involvement, Councilmember Wolfsheimer "announced...the formation of the First District Rancho Penasquitos Parks Allocation Committee." News Release 89-1, May 16, 1989. While this committee held an initial meeting on May 16, 1989, its May 31, 1989 meeting came into question with the insistence of Mr. Dickey that he be allowed to tape record same. While the Brown Act specifically permits tape recordings of public meetings within the purview of the Act (Section 54953.5), we still must determine whether this committee was created by "formal action" and hence subject to the Act.

While there is no precise definition of "formal action", we are not persuaded that a press announcement by a single Councilmember is sufficient to create an advisory committee by "formal action" and hence trigger the requirements of the Brown Act. The committee, though contemplated by a development agreement that was approved by ordinance, did not have a precise membership, term of office, designated chairman or defined duties. Moreover its makeup had not been created or sanctioned by Council action. *Joiner v. City of Sebastopol*, 125 Cal. App. 3d 799, 805 (1981). Hence such an ad-hoc group of citizens do not constitute an "advisory committee" within the meaning of Section 54952.3 of the Ralph M. Brown Act. We further note that such an ad-hoc group had no authority over the expenditure of public funds since that function is specifically reserved to the City Council. Development Agreement No. 00-17179, section 6.14. Should Mr. Dickey disagree with this conclusion, he is free to challenge further action by mandamus. Section 54960.

We are quick to caution, however, that should such a group be recognized by Council action or exercise sufficient authority over Council expenditures, the group would be subject to the Ralph M. Brown Act under section 54952.2 as a decision making body versus an advisory body. Open Meeting Laws 1989, Calif. Atty. Gen. Office, p.13.

Since the existing evidence does not support a finding that the ad-hoc committee has either been created by "formal action" or recognized by the Council, we need not reach the issue of Mr.

Dickey's right to tape the proceedings. We note parenthetically that the extended conversation on the tape of criminal sanction for taping is an apparent reference to Penal Code section 632, which prohibits recording of "confidential communications" which is statutorily defined (Penal Code section 632 (c)) and is not applicable in the instant context. Hence we return the supplied tape to Mr. Dickey.

JOHN W. WITT, City Attorney

By

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Chief Deputy City Attorney

TB:skc:mb:072:(043.2)

cc Alan F. Dickey

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