

League of California Cities

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SACRAMENTO 9521
1108 "D" STREET

SACRAMENTO 95814
1108 ~~10~~ STREET
(916) 444-5790

BERKELEY 94705
HOTEL CLAREMONT
(415) 843-3083

LOS ANGELES 90017
702 HILTON CENTER
(213) 624-4934



Sacramento, Ca. 95814
July 5, 1974

To: Mayors, City Managers, City Clerks and City Attorneys

Subject: Open Public Meetings -- Brown Act

We recently had occasion to review the requirements of the Ralph M. Brown Act and in doing so had an opportunity to consider a current analysis prepared by Frank Gillio, City Attorney of Los Altos Hills and Millbrae. Because of the importance of the open meeting requirements of the Brown Act and because of the severity of the penalties involved, we believe it is desirable that all city officials be familiar with its provisions and urge that city attorneys reviewing a copy of the enclosed analysis recommend that copies be run for each member of the city council.

In the December 1973 report of the U.S. Senate Committee on Government Operations on "Confidence and Concern: Citizens View American Government," the concluding sentence of the report states: "But if independence marks the American spirit still, the people also display a concern for their community that can only be mobilized by leadership that welcomes citizen participation and trusts the people with the truth." As Thomas Fletcher, President of the National Training and Development Service, Washington, D.C., said: "The key to that conclusion is that in order to do it, everyone must participate in the decision process." This can only be accomplished in a truly open government.

There are very few exceptions to the open meeting requirements of the Brown Act and Mr. Gillio discusses them in some detail. In our opinion, executive sessions may not be held to consider so-called "personnel" matters. The term is too loose and too broad because the Brown Act only permits an executive session to consider the appointment, employment or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee. It also permits a legislative body to meet in executive session with its designated representative prior to and during labor negotiations to discuss salaries, salary schedules and fringe benefits when necessary to review the city's position and instruct such representative. These are very specific exceptions. There are several others which the analysis discusses. Thus, in giving notice to news media of a proposed executive session, the notice should be in the language of the statute and not simply that a so-called "personnel" matter is to be discussed.

In addition to attaching a copy of Frank Gillio's analysis, we have also attached a copy of the Brown Act which we hope will be helpful to you in the conduct and notice of your meetings.

Richard Carpenter
General Counsel

RC:mvb
Enclosures

Open Public Meetings

Requirements of the Ralph M. Brown Act and Exceptions Thereto

by

Frank Gillio
City Attorney of
Los Altos Hills and Millbrae

The Brown Act, described as the strictest open meeting law in the United States, requires that meetings of each of the following be open and public without any restriction on the right of the public to attend:

1. The City Council,
2. City Boards or Commissions,
3. Advisory Committees, or
4. Any other body on which city officers serve in their official capacity and which is supported partially or totally by city funds.
5. Any private nonprofit organization receiving public money pursuant to the Economic Opportunity Act of 1964.
6. Any nonprofit corporation created by one or more public agencies who also appoint the board of directors and whose purpose relates to acquisition, construction, reconstruction, maintenance or operation of any public work project.

The requirement that meetings be open to the public does not apply to meetings of committees of a City Council consisting of less than a quorum of its members.

Executive or personnel sessions from which members of the public and press are barred may be held during a regular or special meeting for the following purposes:

1. To consider the employment or dismissal of a public officer or employee, or to hear charges brought against such a person, unless the officer or employee in question requests a public hearing;
2. To discuss with the City Attorney litigation pending, proposed, or anticipated, where a public discussion would benefit the City's adversary and be detrimental to the public.
3. To meet with the Attorney General, District Attorney, Sheriff or Chief of Police (or their deputies) on matters "posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities."

4. To instruct city representatives concerning salaries, salary schedules, or compensation paid in the form of fringe benefits prior to or during negotiations with employee organizations.

5. To negotiate and discuss with employee organization representatives following the intervention of a State labor conciliator in a labor dispute.

6. To consider matters affecting the national security, in the case of a body operated by a private corporation on which city officers serve in their official capacity and which is supported partially or totally by city funds.

In addition, if any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Duly accredited representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any such session. The body may establish a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

Each body subject to the Brown Act is forbidden from conducting any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex.

Attendance at a meeting in violation of the Brown Act where action is taken and with knowledge of the fact that the meeting is in violation of the Act, carries criminal penalties.

The term "action is taken" means

1. A collective decision made by a majority of the members, or

2. A collective commitment or promise by a majority of the members to make a positive or a negative decision, or

3. An actual vote by a majority of the members when sitting as a body on a motion, proposal, resolution, order or ordinance.

The stated purpose of the Brown Act is to insure that public commission, boards and councils, and other public agencies in the State of California conduct their deliberations and take their actions openly.