



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
PUBLIC INTEGRITY DIVISION

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June 26, 2006

The Honorable Members of the Board
Association of Students of Santa Monica College
1900 Pico Boulevard
Santa Monica, California 90405

Subject: Allegations of Brown Act Violations
PID Case No. 06-0366

Dear Members of the Board,

We have received a complaint alleging numerous violations of the Brown Act by your agency during the past school year. We have reviewed the constitution by which your organization was established, along with the applicable legal authorities to determine whether your organization constitutes a legislative body" within the meaning of Government Code Section 54952. We find that the Association of Students of Santa Monica College ("ASSMC") is, in fact, a legislative body, required to comply with the Brown Act (Government Code Section 54950 et. seq).

The Association of Students of Santa Monica College was created by formal action by the governing Board of the College, which was authorized to permit such an organization.

The governing board of a community college district may authorize the students of a college to organize a student body association. The association shall encourage students to participate in the governance of the college and may conduct any activities, including fundraising activities, as may be approved by the appropriate collect officials. The association may be granted the use of the community college premises and properties without charge, subject to any regulations that may be established by the governing board of the community college district.

Education Code Section 76060.

The purpose of a student association like the ASSMC is set forth in the California Administrative Code which requires the governing board of a community college to provide an opportunity for students to participate effectively in the district and college governance. Similar statutory authorities were relied upon by the Office of the Attorney General in

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determining that an academic senate constitutes a legislative body subject to the Brown Act 83 Op.Atty Gen. 304 (1983). Article I Section 6(4) of the Constitution of your agency states: 'The Associated Students Board of Directors and the Judicial Board shall be governed by the provisions of the Ralph M. Brown Act, revised.'" We therefore conclude that the ASSMC is governed by the Brown Act

Our purpose in bringing this to your attention is to encourage voluntary compliance by your agency with the requirements of the Brown Act We believe that your agency supports the notion of open and transparent governance. In order to provide you with some guidance, we make the following observations regarding the alleged violations without making any formal finding of fact thereon.

A meeting is defined as any congregation of a majority of the members at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains. Government Code Section 54952.2(a). Notice of meetings must be given by posting a copy of the proposed agenda in a location that is visible and accessible during the entirety of the applicable notice period. See, Government Code Section 54954.2, 54956. 78 Ops. Atty.Gen. 327, 331-332 (1995). This office has taken the position that internet posting is not sufficient because it requires the use of an intermediate device and access to the internet that may not be immediately available to an interested citizen without interruption during the notice period.

As a legislative body bound by the Brown Act, your agency must provide notice any time a majority of the members meet at the same time to hear, discuss or deliberate upon any matter that is within your subject matter jurisdiction. Moreover, all meetings of a legislative body are open and public, unless a specific statutory exception applies. Government Code Section 54953.

Permissible closed session subjects are expressly established, and the statutory language is, by law, narrowly construed. Matters to be discussed in closed session are limited to those subjects which are expressly authorized. Government Code Section 54962. Sufficient notice of the subject to be discussed in closed session is required. Government Code Section 54954.2(a). No matter may be addressed in closed session that has not been properly noticed on the written agenda for the meeting at which the closed session is being held.

At properly noticed meetings, matters to be discussed in closed session must first be announced in open session, and public comment, if any, must be permitted before adjournment to closed session can occur. Government Code Section 54957.7(a). Any action taken in closed session must be reported out immediately following the closed session when the agency reconvenes in open session. Government Code Section 54957.7(b).

It has been alleged that college administrators “ushered the public out of the room after the agendaized portion of regular meetings. . .ostensibly these closed sessions were for ‘team building’ and other issues the dean had decided did not fall under the jurisdiction of the public’s purview.” If, in fact, the allegation is true, several violations of the Brown Act have occurred.

First, your agency must comply with the notice requirements established by the Brown Act, whether meeting in open or closed session. Any matter to be considered in closed session must be included in a written notice which is posted within the statutorily prescribed time. Government Code Sections 54954.2 (a), 54956, 54954.5. No matter may be considered in closed session unless proper notice of the subject has been given. Government Code Section 54962.

Second, closed session consideration is statutorily limited only to those matters expressly authorized. Therefore, all matters should be publicly heard unless there is an express exception that permits closed session consideration of a particular matter. The statutory language is thus controlling. Under the facts alleged, we observe that “team building” is not a permissible subject for closed session consideration. Team building is a valuable experience, and may be an appropriate subject for consideration at a retreat or seminar attended by a majority of the members of the association if, and only if, the requirements of notice and the restriction against discussion of any matter within the subject matter jurisdiction of the association are strictly enforced. (See, Government Code Section 54952(c) which permits attendance of a majority of members of a legislative body at (2) a conference or similar gathering open to the public, (3) an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, (4) an open and noticed meeting of another body of a local agency, (5) attendance at a purely social or ceremonial occasion, (6) open and noticed meeting of a standing committee, provided they do not discuss business of a specified nature that is within the subject matter jurisdiction of the agency). However, if, as alleged, a majority of the members of the association are meeting behind closed doors with members of the administration regarding matters that fall within the association’s general jurisdiction, or on matters that are not expressly authorized for closed session by the Brown Act, such meetings are illegal. Keeping in mind the broad definition of “meeting” as used in the Brown Act, agencies are well advised to refrain from creating the opportunity for violations to occur, even if the discussion outside the public purview does not result in any action being taken. This is necessarily so because the definition of “meeting” includes receipt of information.

An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Members are specifically prohibited from discussion of any issue within their subject matter jurisdiction at such sessions.

Sacramento Newspaper Guild v. Sacramento County Board of Supervisors (1968) 263 Cal.App.2d 41, 50-51.

It has been alleged that materials distributed to the association directors have not been available to members of the public. Please be advised that any materials distributed to all or a majority of the members of the agency must be made available to the public. Government Code Section 54957.5(a). Materials distributed during a public meeting must be made available for public inspection at the meeting if prepared by the agency or member of its legislative body, or after the meeting if prepared by some other person. Government Code Section 54957.5(b).

It has been alleged that persons recently elected as the incoming board of directors met in illegal closed sessions on May 10, 2006, and Tuesday May 30, 2006, with college administrators. Although they have not yet assumed office, they are nonetheless bound by the Brown Act, pursuant to Government Code Section 54952.1 which states:

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

This does not prevent the incoming members from meeting. It does, however, prevent them (and any other members) from meeting without public notice if any issues within the subject matter jurisdiction of the ASSMC are being discussed.

Finally, serial meetings, whether involving present or incoming members of an agency, are prohibited. (See, Government Code Section 54952.2(b), Stockton Newspaper/nc. v. Redevelopment Agency (1985) 171 Cal.App.3d 95.) Serial meetings are “a series of communications, each of which involves less than a quorum of the legislative body, but which taken as a whole involves a majority of the body’s members.” The Brown Act Open Meetings for Legislative Bodies (2003) page 11. The analysis is two-pronged: first, whether a series of communications (like a daisy chain) occurred, and second, whether the communications were used to develop a concurrence as to action to be taken. Thus, passing information to each of the members of an agency is wholly appropriate so long as the communication does not encourage or create concurrence about the action to be taken. This does not prevent members from communicating among themselves for the purpose of planning a meeting, but it clearly prevents communications that result in consensus or concurrence about action that will be taken.

The District Attorney has jurisdiction to seek judicial remedies for violations of the Brown Act, and we will vigilantly and vigorously enforce the provisions of the Act to protect the public’s right to participate in open and transparent decision making. We have not made any factual findings regarding the allegations addressed herein, nor do we intend to pursue further legal remedy at this time. We expect that your agency will take appropriate

action to ensure compliance with both the letter and the spirit of the open and public meeting requirements, which remains our ultimate goal.

Very truly yours,

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