

The Brown Act: Basics for Committee Members

Chad Pimentel
General Counsel

September 4, 2018

DISCLAIMER

This presentation is not intended to be legal advice. It neither creates nor alters a privileged attorney-client relationship.

The Big Question

- What does the Brown Act do?
- The Brown Act requires that all meetings of public agencies take place in public after sufficient notice has been given to the public of the matters to be discussed at the meeting.

That Doesn't Seem So Hard

- Unfortunately, the simple answer to the big question ends up raising a number of smaller questions, each of which has a more complicated answer.
 - What is a “public agency”?
 - What is a “meeting”?
 - What does it mean to meet “in public”?
 - What happens if a public agency does not meet in public?

What is a Public Agency?

- Public agencies include:
 - Governing bodies of local agencies (e.g. City Councils, School Boards, Public Utilities Boards); AND
 - Sub-committees or appointed bodies that:
 - Include a majority of board members, OR
 - Are standing committees, OR
 - Are created by formal action of the governing body.
- The High School Consolidation Committee is subject to the Brown Act because it is an appointed body created by formal board action.

What is a Meeting?

- Any gathering of a majority of the members of the legislative body to hear, discuss, and/or deliberate on any item of business within the subject matter jurisdiction of the body.
 - We just discussed the subject matter jurisdiction of the committee earlier tonight.
- “Gatherings” do not have to happen in person.
 - Conference calls
 - Group e-mails
 - Serial Meetings (more later)

What is Not a Meeting?

If a majority of the DAC does not discuss DAC business, there is no “meeting” if a majority of members attend:

- Conferences and similar gatherings which are open to the public.
- Open and noticed meetings of another legislative body.
 - So a majority of you can attend meetings of the BOE so long as you avoid discussing Committee business that is not on the BOE agenda.
- Purely social or ceremonial occasions.
 - So you do not need to run away from each other at the supermarket.

Serial Meetings

- In addition to prohibiting gatherings of a majority of the BOC to discuss business, the Brown Act also limits how BOC members can interact in smaller groups.
 - Communications with less than a quorum of other Board member on a topic are permissible.
 - Using a series of such communications to circumvent the Brown Act is not.
- Separate conversations or communications outside of a meeting with members of a legislative body are OK if the person does not communicate to other members of the board the comments or positions of any other member of the board.

An Example

- HSCC Member Al Meda e-mails HSCC Chair Jen Cinelle to tell her that he has heard community concerns about the possible reuse of Thompson Field.
 - So far, so good. members are permitted to engage in one-on-one communications about HSCC business.
- Cinelle forwards the e-mail to nine other members with the heading “FYI”.
 - We now have a meeting. By communicating Meda’s position to three other members, Cinelle has inadvertently brought together a majority of the DAC. This is true even though Meda does not yet know Cinelle’s position on the issue.

Best Practices to Avoid Serial Meetings

- If an e-mail concerns an issue that needs the District's attention, consider sending it to a District representative instead of another HSCC member. That minimizes the risk of e-mail chains.
- Scrupulously avoid the "reply-all" button.
- Do not ask staff if they know how other members feel about a given issue. Even though staff are not part of the agency for Brown Act purposes, if staff conveys the position of other members, it is a violation of the Act.

What Does It Mean to Meet “In Public”?

- Notice must be given of the time, place, and agenda of issues to be discussed at a meeting.
- HSCC may not discuss non-agendized items in the absence of an emergency.
- Location must be accessible to the public.
- Teleconferences are permitted. But if you call in, the location you call from must be both accessible to the public and identified in advance on the meeting notice.
 - Yes, this means that if you called in from your house, you would have to make your house publicly accessible during the meeting (!)
- Public must be given the opportunity to comment on each agenda item.

Questions?