CASE NO. S260209

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MICHAEL GOMEZ DALY et al.,

Petitioners (in superior court) and Respondents (on appeal),

v.

BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY, et al.,

Respondents and Real Party in Interest (in superior court) and Appellants,

---

After Order by the Court of Appeal
Fourth Appellate District, Division Two
Civil No. E073730

EXHIBITS TO APPELLANTS' MOTION FOR JUDICIAL NOTICE

VOLUME V OF VI, PAGES 1133 – 1364 OF 1653

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EXHIBIT S cont'd

Fresno, CA
(Fresno Co.)
Bee
(Clr. D. 129,955)
(Clr. S. 152,301)

FEB 1 - 1986

Allen's P. C. B Est. 1888

A cure for sneaky government

On June 5, 1985, at a meeting of the Los Angeles City Council, Councilman Burt Snyder asked the council president for a suspension of the rules to take up item 53. That item had not appeared on the council's agenda nor had it been posted in public. But there was no objection from other members, and the council president asked for discussion. When no member of the council wished to speak, the president called for a vote. Item 53, never identified and never read in public, passed without objection.

Not until the next day, when the mayor signed the ordinance, did the people of Los Angeles learn what the council had wrought: A 10 percent salary increase for council members, the mayor, the city attorney and the city controller. It was all perfectly legal.

That kind of conduct would be prohibited under AB 2674, co-authored by Assemblymen Lloyd Connelly and Ross Johnson. AB 2674 would revise the Brown Act, the open meeting law, to require local agencies t post agendas for all regular and speci meetings and to prohibit action on any ite not on the agenda. Such requirements a ready exist for school boards, communi college boards and state bodies.

And to put teeth into the Brown Act, t new legislation would also authorize priva citizens and groups to sue local agencies th try to hide their actions. The courts would given the authority to declare null and vo actions taken without proper notice or illegally closed local meetings. The Legis ture last year passed a similar provision plying to state agencies.

Open meetings are vital to free gove ment. But open meetings, by themselves, not enough if local officials can obscure th actions. By removing the shadows wh timid local governments now hide from p lic controversy, AB 2674 would strike a b for accountability and responsiveness.

Van Nuys, CA
(Los Angeles Co.)
Daily News
(Cir. D. 135,010)
(Cir. Sat. 145,767)
(Cir. Sun. 122,031)

JAN 2 0 1986

Allen's P. C. B Est. 1888

Editorials

60

No more secret raises?

No more stealth city councils? That remains to be seen. But at least it may be more difficult in the future for the Los Angeles City Council to raise its pay in secret, as it so adroitly did June 5.

Assemblyman Lloyd Connelly, D-Sacramento, introduced a bill Wednesday that would require city councils and other local governments to post specific meeting agendas to tell the public, in advance, what they are doing. Connelly said his measure (an amendment to the state's open-meeting law, the Ralph M. Brown act) was expressly designed to prevent actions like that of the Los Angeles City Council, which quietly voted itself a 10 percent raise over two years through an agenda item identified to the press and public only as "Item 53." Only after the fact did observers of the meeting realize what had happened.

The action was later overturned in court, but not because of secrecy. Superior Court Judge Irving A. Shimer noted that the council's conduct obviously violated the spirit of the Brown Act, but he had to grant that the act does not require notice of all actions to be taken at a given meeting — as long as the meeting itself is open. And this meeting was open, although a key part of the agenda was secret. So the raise was invalidated on the grounds the council took liberties with the City Charter provision allowing it no more than one 5 percent raise every year. By giving itself 10 percent at once to cover the next two years, the council had given itself the second-year raise too early.

The council hardly seemed chastened by this setback. Later in the summer, it was found to be placing last-minute motions on the agenda almost routinely. On its meeting of Aug. 20, for instance, it brought out seven such surprise items; on Aug. 28, it acted on three zoning motions for which written copies were not even distributed to council *members*, much less the press. All this was legal, the city attorney's office said. If that was so, then clearly there had to be a change in the law.

Connelly's bill, AB 2674, would make the necessary revisions. Not only would it require agenda items to be posted in advance, but it would make that provision enforceable by allowing citizens to sue to have an unannounced council action overturned in court. The bill deserves bipartisan support and quick passage.

That's not to say it will ensure open government throughout the state. One bill won't close all the potential loopholes in the Brown Act, nor will it discourage secretive city councils and their sympathetic legal counsel from inventing new dodges. It's a constant struggle to keep public business open to the public, and the Brown Act, much amended since its original passage in 1953, probably will have to be revised again and again. But every time the Brown Act is tightened, local officials do have a tougher time finding ways to hide from the public. That's progress.

The Sacramento Bee

Locally owned and edited for 128 years
JAMES McCLATCHY, *editor, 1857-1883*
C.K. McCLATCHY, *editor, president, 1883-1936*
WALTER P. JONES, *editor, 1936-1974*
ELEANOR McCLATCHY, *president, 1936-1978*

Volume 258—No. 42,836
Monday, January 27, 1986

C.K. McCLATCHY, *editor*
GREGORY E. FAVRE, *executive editor*
PETER SCHRAG, *editorial page editor*
FRANK R. J. WHITTAKER, *general manager*

Editorials

Closed Votes At Open Meetings

On June 5, 1985, at a meeting of the Los Angeles City Council, Councilman Burt Snyder asked the council president for a suspension of the rules to take up item 53. That item had neither appeared on the council's agenda nor had it been posted in public. But there was no objection from other members, and the council president asked for discussion. When no member of the council wished to speak, the president called for a vote. Item 53, never identified and never read in public, passed without objection.

Not until the next day, when the mayor signed the ordinance, did the people of Los Angeles learn what the council had wrought: a 10 percent salary increase for council members, the mayor, the city attorney and the city controller. It was all perfectly legal.

That kind of conduct would be prohibited under AB 2674, by Assemblymen Lloyd Connelly and Ross Johnson. AB 2674 revises the Brown Act, California's open meeting law, to require local agencies to post agendas for all regular and special meetings and to prohibit action on any item not on the agenda. Such requirements already exist for school and community college boards and state bodies.

And to put teeth into the Brown Act, the bill would also authorize private citizens and groups to sue local agencies that try to hide their actions. The courts would be given the authority to strike down actions taken without proper notice or at illegally closed local meetings. The Legislature last year passed a similar provision applying to state agencies.

Open meetings are vital to free government. But open meetings, by themselves, are not enough if local officials can obscure their actions. By removing the shadows where timid local governments now hide from public controversy, AB 2674 would strike a blow for accountability and responsiveness.

Oakdale, CA
(Stanislaus Co.)
Leader
(Cir. W. 4,717)

FEB 5 - 1986

Allen's P. C. B Est. 1888

Our Opinion

Closed meeting law needs help

Popular country western singer Charlie Rich had a big hit several years ago with his recording of "Behind Closed Doors." Rich, however, wasn't referring to how some government agencies work. He wasn't referring to California's open-meeting law, but perhaps he should have been.

Too many government agencies, including some locally, flirt with the legalities of doing business behind closed doors, over lunch or with giving proper and advanced notice to the public. This is wrong. It should be pure and simple illegal.

The current penalty for when agencies violate the open-meeting law is a slight slap on the wrist (usually a public reprimand or an editorial by a newspaper). More definite control and penalties are needed and help, hopefully, is on the way.

Last year, the state Legislature put a little bite into the open-meeting law covering state agencies. This year, it has a chance to do the same for the law covering local governments. It's about time.

Assemblymen Ross Johnson (R-Fullerton) and Lloyd Connelly (D-Sacramento) have introduced a bill that not only would strengthen existing requirements that local governments notify citizens of actions they plan to take, but it would also impose penalties on governments that fail to comply.

Under the existing Brown Act, passed in 1953, local legislative bodies such as city councils, school boards, water districts, board of directors and others, need only to post notices of upcoming meetings. The Johnson-Connelly proposal would require that they post specific agendas 72 hours before their meetings.

More importantly, however, the bill would allow courts to invalidate actions taken at meetings that do not comply with the law. This might discourage agencies from closing their sessions at the last minute.

Johnson and Connelly got together after the Fullerton assemblyman learned of the unorthodox manner in which Los Angeles City Council members voted themselves a 10 percent pay raise last summer. The pay increase was known only as "item 53" on the consent caledar and did not appear on the council's agenda and was not discussed in an open meeting prior the vote.

The increase was later voided because it exceeded the ceiling imposed in the Los Angeles City Charter. However, the council's vote was legal under the Brown Act, which certainly reveals a major flaw in the current Brown Act.

This is just one example of the arrogant manner in which goverments sometimes handle what is euphemistically called the "public's business."

It's unfortunate that government officials seem to need constant reminding, but in order for our free society to remain free it is essential that people be fully aware of actions supposedly taken on their behalf. We must also have the power to nullify actions of which they were not made aware.

There is no foolproof way to ensure that government business is conducted in the "open."

But if governments continue to arrogate power unto themselves, they should at least have some incentive to do so in public rather than behind closed doors. And, if necessary, their actions should be nullified by the courts if illegal. The Johnson-Connelly bill is long overdue and is certainly needed.

Support for reform

Bakersfield, CA
(Kern Co.)
Californian
(Cir. D. 66,867)
(Cir. S. 74,643)

FEB 9 - 1986

Allen's P. C. B Est. 1888

It takes far more than just great, ethical principles eloquently articulated to make democracy work.

One of the tools that makes things work as well as they do is the Ralph M. Brown Act, California's anti-secret meeting law.

Despite an almost slavish fealty to it on the part of the media, and a *sotto voce* complaint — sometimes bordering on the bitter — by politicians and bureaucrats that it is an unneeded, insulting encumbrance, most dispassionate observers admit that the Brown Act is flawed.

There is a way to correct some of the problems in the form of AB2674 by Assemblymen Lloyd Connelly, D-Sacramento, and Ross Johnson, R-Fullerton.

The Brown Act requires that agencies notify the public of meetings and make decisions in public. There are exemptions, such as personnel matters and pending lawsuits, which may require confidential debate and deliberation.

AB2674 will plug two enormous loopholes. It will require that specific agendas be available to the public between 24 and 72 hours before a meeting, depending on the type of meeting; and it will allow a court to void actions that are taken if they are adopted illegally.

As things stand now, all the public has a right to know is that a body — such as a city council — is going to meet. Incredibly, what the meeting will be about need not be stated, making citizen preparation difficult, to say the least.

And, if the act is violated, there is nothing that anyone can do about it, except, perhaps, to try to embarrass the perpetrators.

Unfortunately, those who are most likely to disregard citizen rights normally don't embarrass too easily.

Lest some politicians start yelping about the added burden this will place on government, with a concomitant decrease in efficiency — the usual bromides that they try to get the public to swallow when reforms are proposed — note that school districts, commmunity college districts and state agencies already are operating under the new rules. They have been tested — and found to work — for a year, through corrective legislation to the Bagley-Keene Open Meeting Act, which governs state agencies, and the Education Code.

The new provisions apply only to two of the five types of meetings (regular and special) of government. Emergency, adjourned and continued meetings remain exempt, providing flexibilty local officials may need occasionally.

One sample of what can happen:

The Los Angeles City Council decided it was time for a pay raise for its full-time, paid members (who number 15, but they generously included the mayor — who had to sign the bill — the city attorney and the city controller).

The matter was not included in the daily or supplemental printed calendar. The motion was not read prior to the vote and then by an obscure reference ("Item 53").

The dialogue of suspending procedural rules, taking the matter out of order, reading by item number only, adopting and forwarding to the mayor for signature takes 15 lines in a trial transcript and never makes reference to what the matter was about. A slow, out-loud reading takes 38 seconds.

In a taxpayer suit to void the action, the Los Angeles County Superior Court said the council's procedures were legal, and complied with the minimum requirements of the law. The Opinions of the Attorney General support that. The matter ultimately was voided because of a fluke relating to an ambiguity in the Los Angeles City Charter regarding maximum magnitudes of pay raises.

As Johnson says, "This bill deserves support because it gives real meaning to the idea that citizens can participate in government and retain some degree of control over their own government."

FEB 18 1986

The Times

SAN MATEO TIMES AND DAILY NEWS LEADER
THE ADVANCE STAR

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To give our readers the widest scope of information, The Times prints the informed and varying opinions of many leading columnists. Their opinions are not necessarily those of The Times

B12— San Mateo Friday, Feb. 14, 1986

Two additions to Brown Act merit approval

The public has a right to know how public business is being conducted. That is the purpose in this state of the Ralph M. Brown Act — to prevent government from being conducted in secret.

The Legislature will soon consider two crucial improvements (AB2674) to the Brown Act, sponsored by Assemblymen Lloyd Connelly of Sacramento and Ross Johnson of Fullerton. They point out that, as the act now stands, it contains no meaningful advance notice and agenda requirements, and no effective remedy for actions taken by local public bodies in violation of the act.

In other words, there is no mechanism by which decisions adopted in violation of the Brown Act can be declared "null and void."

These two critical shortcomings would be corrected by additions to the Brown Act contained in AB2674. We think the public interest will be served by prompt approval of this legislation.

Local legislative bodies subject to the open meeting requirements of the Brown Act include city councils, county boards of supervisors, school districts and planning commissions. The courts have held that the act applies to informal as well as formal meetings of such bodies.

One might reasonably assume that action taken by a governmental body in secret, when the law requires such decisions to be made in an open meeting, would render the action null and void. The courts have consistently stated, however, that the action is still valid.

To remove the inadequacies in the present law, AB2674 would add a new section to the Brown Act requiring local bodies to post a specific agenda of all items of business to be transacted or discussed at regular and special meetings no later than 72 hours prior to regular meetings and 24 hours prior to special meetings.

No action could be taken on items of business that did not appear on the posted agenda, and no item could be added to the agenda after it had been posted.

A second addition would authorize private citizens and organizations to challenge in court the actions of local bodies taken in violation of the Brown Act and have such actions declared "null and void."

Assemblyman Connelly points out that AB2674 is modeled on AB214 last year, which he also authored. The latter bill added a "null and void" provision to the Bagley-Keene Open Meeting Act which pertains to meetings of state agencies. We agree with Connelly, now that AB214 is law, it is time for the Legislature and the governor to strengthen the Brown Act.

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CHAIR, ADMINISTRATION OF JUSTICE
STATE ADMINISTRATION
HEALTH & WELFARE

LLOYD G. CONNELLY
MEMBER OF THE LEGISLATURE
SIXTH ASSEMBLY DISTRICT

February 28, 1986

Honorable Dominic L. Cortese, Chairman
Assembly Local Government Committee
State Capitol, Room 6031
Sacramento, California 95814

Dear Mr. Cortese:

AB 2674, relating to the Ralph M. Brown Act, is set for hearing before the Assembly Local Government Committee on March 11, 1986.

AB 2674 adds two important provisions to the Brown Act. First, the bill requires that entities governed by the Brown Act post specific agendas for their meetings. Recent amendments provide a mechanism for entities to add items to the agenda subsequent to it being posted.

Secondly, AB 2674 allows private citizens and organizations to have actions taken in violation of the Brown Act declared "null and void." Presently, actions taken in violation of the Brown Act are, nevertheless, valid; they are immune from challenge.

The attached Fact Sheet fully explains the bill.

AB 2674 is sponsored by Common Cause and supported by the Attorney General, California District Attorneys Association, League of Women Voters, several district attorneys, and numerous newspapers.

I request your support of AB 2674 and thank you for your attention.

Cordially,

LLOYD G. CONNELLY
Member of the Assembly

LGC:grs

Enclosures

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DOROTHY GREEN, Taxpayer and Voter, Petitioner/Plaintiff, vs. CITY OF LOS ANGELES, LOS ANGELES CITY COUNCIL, and JAMES HAHN, AS CONTROLLER OF THE CITY OF LOS ANGELES, Respondents/Defendants.	Case No. C 554145 STATEMENT OF INTENDED DECISION

After a review of the evidence presented on October 28, 1985, and further argument and a reading of the briefs, the Court finds and rules as is further stated in this intended decision.

FACTS

On June 5, 1985, by unanimous vote of the twelve (12) members present (Messrs, Bernson, Braude, Cunningham, Farrell, Ferraro, Flores, Lindsay, Snyder, Stevenson, Wachs, Yaroslavsky, and President Russell), the City Council voted to approve an ordinance, designated Ordinance No. 159926, increasing by 10 percent the salaries of the Mayor, the City

Attorney, all City Council members, and the City Controller. The matter of the salary increases was designated as item "53." The salary ordinance was not on the Daily Council Printed Calendar which affords the public prior notice of intended Council business. The term "Item 53" did not appear on the daily or supplemental printed calendar. The motion dealing with the salary ordinance was not read aloud prior to the vote. The salary ordinance was not read aloud by the clerk.

The ordinance was not posted nor placed where it could be reviewed by the public prior to the time item "53" was called up during the morning session by Councilman Snyder. The motion to increase salaries and the ordinance providing for the same and the O.S.A. Report were not distributed to the public or news media prior to or during consideration and vote on the matter on June 5, 1985.

There was no prior notice to the public that the Council was to consider the salary ordinance during its June 5, 1985, session. It is noted, however, that the Official Salaries Authority Report was filed on May 22, 1985, and placed in the City Clerk's File under No. 85-0918 -- this report was available to the public prior to the proceedings that took place on June 5, 1985. The dollar amount of salary increases for each office were not included in the recommendations of the Official Salaries Authority. The O.S.A. Report of May 22, 1985, recommended that the City Council "...enact an ordinance granting the Mayor, City Attorney, members of the City Council and City Controller the maximum salary increase allowable by Current Charter provisions."

As the evidence disclosed, there was no discussion on the motion by the City Council. Item 53 was distributed to council members in the course of its general deliberations without identification until such time as Councilman Snyder obtained the attention of the council's president, Pat Russell. Although there was no discussion with respect to the motion or the ordinance dealing with their salary, the Court concludes that council members reviewed them during the 15 or 30 minutes the items were placed before them.

Item 53 was taken out of order after the council's president initialed approval with the knowledge that Councilman Snyder had indicated a desire that council rules be suspended with respect to item 53. In accordance with that request, the motion was stamped "Suspension Requested" and the following ensued:

"MS. RUSSELL: If there is no objection - ITEM 53. Is there any objection to suspension. If not, the matter is before us. Is there any discussion? Open the roll on Item 53. Close the roll.

CLERK: 12 Ayes.

MS. RUSSELL: That matter is approved.

MR. SNYDER: The ordinance Madam President - I have another roll call on the ordinance.

MS. RUSSELL: Open the roll on the ordinance.

MS. RUSSELL: Close the roll.

CLERK: 12 Ayes.

MS. RUSSELL: That matter. . .

MR. SNYDER: Forthwith to the mayor.

MS. RUSSELL: Forthwith to the mayor. Next order, Madam Clerk."

The practice of the council has been to direct the clerk to identify the subject of the ordinance before a vote. However, in this instance, the clerk was not requested to identify the subject matter of the ordinance that was included in item 53. Ten votes were required for the suspension of the rules. Twelve votes were required for the approval of the ordinance on its first reading and ten votes were required for approval of salary increases of elected officials. The 12 Aye votes cast met all of these requirements.

The council's actions were reported in the journal as 85-0918. The Digest of Council Calendar (Journal) is the report of City Council actions published by the City Clerk after each City Council session. It is not available to the public until several days after the City Council actions have taken place.

A member of the press requested and received copies of the motion and the ordinance on June 5, 1985, and a story appeared in the local paper on June 6, 1985. The Ordinance, increasing salaries, was signed by the Mayor on June 6, 1985.

DISCUSSION

The City Council's action did not violate the Ralph M. Brown Act (California Government Code §54950, et seq.).

The City Council's consideration of the motion and the salary ordinance in a public place, during its regular session and its members having cast their votes in public met the

minimum requirements of the Brown Act. The Court agrees with defendants' position that the act does not require prior distribution or posting of agendas, prior publication or distribution of material to be considered, nor does it require that matters be given a particular number or that they be orally described prior to the taking of a vote.

The openness of the proceedings coupled with public availability (provided on request) of documents and a written record of what transpired is sufficient under the act. It is said that the Brown Act attempts to strike a balance between public knowledge about the legislative processes and the efficiency of the processes.

Government Code §54957.5 states, in relevant part, that agenda and other writings, when distributed to the legislative body, are public records and shall be made available pursuant to Government Code §§6253 and 6256. The essence of the latter sections is that the documents or materials shall be made available and provided upon request, which, as a practical matter, is usually after the legislative body has acted.

The City Council complied with its procedural rules.

Rule 76 (Suspension) of rules adopted by the Los Angeles City Council provides:

"These rules or any one thereof, except as provided in Rule 32 and Rule 63 may be suspended by a vote of two-thirds of the members of the Council."

Twelve votes were cast to suspend the rules although only 10 were required.

Rule 63 provides:

"No ordinance shall be introduced for adoption by the Council except upon motion by one of the members thereof, Upon such ordinance being introduced, it shall be read the first time by the Clerk. Any member may withhold unanimous consent to the adoption of such ordinance at its first reading. If unanimous consent is withheld such ordinance shall be laid over for one week. An ordinance may be adopted at its first reading if approved by unanimous vote of all of the Council present, provided there shall not be less than 12 members present."

Section 26 of Article III of the Los Angeles City Charter (Mandatory Provisions) states: "No ordinance shall be passed finally on the day it's introduced, but the same shall be layed over for one week, unless approved by the unanimous vote of all the members present, provided there shall not be less than three-fourths of all members present."

The record discloses that the required number (12) were present and voted to pass the ordinance finally on the day it was introduced (June 5, 1985). It is noticed that the charter provision does not refer to a reading aloud or otherwise of the ordinance, although Council Rules appear to require such a reading.

The Court concludes that the City Council had the power to suspend its procedural rules and that the passage of the ordinance was accomplished within the mandatory provisions of Section 26 of the City Charter.

//

Government Code §54950 sets forth legislative intent with respect to the conduct and openness of public agencies' handling of public business. In relevant part it reads "It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."

Although the court has concluded that the City Council's actions on June 5, 1985 met minimum requirements of the letter of the law, it nonetheless failed to comply with the spirit of the law as is set forth in Section 54950. A recently adopted City Council practice requiring the Minute Clerk to read aloud the title or synopsis of a measure sought to be passed "on Suspension of Rules," will certainly inform Council members on the one hand and on the other it will alert the public and the media so that they will know what to request of its Council since predistribution or prepublication of materials and notice are not mandatory under these circumstances.

Suspension

Salary Ordinance No. 159926, increasing salaries by 10% violates Article V, Section 65.6 of the Charter of the City of Los Angeles.

The relevant portion of Charter Section 65.6 that is at the heart of the dispute reads in part: "... however, that once salaries have been initially established as provided in this section, no increase in the annual salary for an official shall thereafter be greater than five percent for each calendar year following the operative date of the most recent change for the salary for that office.

//

Although the court recognizes that the Charter provision as set forth above is capable of several interpretations, as the briefs and argument of counsel have demonstrated, it adopts a common sense interpretation consistent with what the voters had before them when Proposition T was submitted for a vote.

The court finds that the five percent limitation of Section 65.6 is a limitation on the salary increase for each of two years. (July 1, 1985 thru June 30, 1987). The court concludes that the 5% limitation of Section 65.6 is a limitation on salary increases available for each of the two fiscal years. Charter Section 65.6 does not authorize compounding of salaries, therefore the second year's 5% increase shall not be compounded on the first year's increase. The court expressly rejects defendants' contention that the 5% limitation is only part of the calculation of the amount of salary increases available for the ensuing two-fiscal year period. An argument that employees' salaries are compounded is not persuasive since the salary of elected officials is set by Charter Section 65.6.

According to several reports, filed by the Official Salary Authority, City officials are underpaid and should be paid more than they currently receive. If that is so, the answer to the problem is the submission of a new proposition that will amend the Charter to increase salaries rather than strained interpretations of the present charter provision in an attempt to obtain a salary that was not voted by the electorate. The court concludes that the ordinance increasing salaries is void.

//

CONCLUSION

Consistent with this court's decision as set forth previously, it will order appropriate injunctions precluding the defendants from implementing a salary ordinance that provides more than a five percent increase for each year.

This court will issue its order that:

1. Ordinance No. 159926, which increased City officials' salaries by 10%, is void.

2. Defendants are permanently enjoined from disbursing salaries to public officials as provided for in Ordinance No. 159926.

3. Defendants are permanently enjoined from implementing any salary increase that is more than 5% for each year under Charter Section 65.6 as presently constituted.

4. Compounding of salaries is not provided for in City Charter Section 65.6 as presently constituted.

The matter of attorneys' fees shall be determined by this court pursuant to notice of motion provided for in Civil Code Section 1717.

Counsel for plaintiffs shall submit a judgment consistent with this court's ruling within 10 days.

In the event a statement of decision is requested, this intended notice of decision shall serve as a statement of decision as provided in California Rules of Court 232.

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Counsels' attention is directed to People v. Casa Blanca Convalescent Homes, Inc. (1984) 159 Cal.App.3d 509.

DATED: NOV 0 4 1985

RAYMOND CARDENAS

Raymond Cardenas
Judge of the Superior Court

AMENDMENTS TO ASSEMBLY BILL NO. 2674

Amendment 1

In line 1 of the title, strike out "54956.5, 54957.7," and insert:

54956, 54956.5,

Amendment 2

On page 3, strike out lines 3 to 20, inclusive, and insert:

54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post a specific agenda of the items of business to be transacted or discussed at the meeting. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and employees of the local agency. No action shall be taken on any item not appearing on the posted agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under either of the following conditions:

(1) Upon a formal written finding by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a formal written finding by a two-thirds vote of the legislative body that failure to take action will result in serious harm to the public and that the need to take action arose suddenly and unexpectedly and subsequent to the agenda being posted as specified in subdivision (a).

Amendment 3

On page 3, strike out lines 23 to 25, inclusive, on page 4, strike out lines 1 to 18, inclusive, and insert:

54954.3. (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on items of interest to the public, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2.

(b) The legislative body of a local agency shall adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out.

SEC. 2.5. Section 54956 of the Government Code is amended to read:

54956. A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering personally or by mail written notice to each member of the legislative body and to each local newspaper of general circulation, radio or television station requesting notice in writing. ~~Such~~ The notice shall be delivered personally or by mail and shall be received at least 24 hours before the time of ~~such~~ the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at ~~such~~ these meetings by the legislative body. ~~Such~~ The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. ~~Such~~ The waiver may be given by telegram. ~~Such~~ The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

The call and notice shall be posted at least 24 hours prior to the special meeting and shall specify the time and location of the meeting and be posted in a location that is freely accessible to members of the public and employees of the local agency.

Amendment 4

On page 4, line 25, strike out "the 24-hour notice" strike out lines 26 and 27 and insert:

either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

Amendment 5

On page 5, strike out lines 26 to 40, inclusive, on page 6, strike out lines 1 to 23, inclusive, in line 24, strike out "SEC. 6." and insert:

SEC. 4. Section 54960.1 is added to the Government Code, to read:

54960.1. (a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, or 54956 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 30 days from the date the action was taken. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) An action taken shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, and 54956.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

(3) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(4) The action taken was in connection with the collection of any tax.

SEC. 5.

Amendment 6

On page 6, line 40, strike out "SEC. 7." and insert:

SEC. 6.

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Open Meeting Laws

California Department of Justice

John K. Van de Kamp
Attorney General

State of California

Office of the Attorney General

John K. Van de Kamp
Attorney General

The enclosed publication - "Open Meeting Laws" - is a compilation and discussion of the laws, court decisions and Attorney General opinions concerning the requirement for open meetings of governmental bodies in California.

Public agencies generally are required by law to conduct their business in an open forum. However, the Legislature and the courts have recognized the legitimate need on occasions for public agencies to meet in private forum in order to carry out their responsibilities in the best interests of the public. For example, certain matters concerning the personal privacy of public employees or the litigation strategy of a public agency are more appropriately discussed in closed, rather than open, session.

The purpose of this pamphlet is the resolution of issues through the systematic discussion of open meeting laws as interpreted by the courts and this office. I hope that this pamphlet will be a useful tool in the hands of public officials and those who monitor government agencies with respect to minimizing potential disputes concerning the appropriateness of closed sessions in various situations. Although the general concept of open meetings is a simple one, the application of this principle, as illustrated in this pamphlet, can be quite complex.

When disputes over open meetings cannot be amicably resolved, the pamphlet contains a discussion of the available enforcement remedies (pp. 24-27). Criminal enforcement may be pursued by a district attorney, provided that it can be shown that those responsible knew in advance that a meeting was in violation of the law. Private parties may initiate litigation and under some circumstances be entitled to attorney fees. However, the law does not authorize public attorneys to enter into civil enforcement actions.

As this pamphlet goes to publication, I have directed the editor to begin preparation of a brand new publication on this subject for distribution by the end of 1985. Ideas and suggestions regarding coverage and format are welcome and should be addressed to the editor.

Lastly, it is my hope that this pamphlet will assist the public and public officials in better understanding and carrying out the requirements of California's open meeting laws.

Sincerely,

JOHN K. VAN DE KAMP
Attorney General

Open Meeting Laws

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PREFACE

This pamphlet, previously entitled "Secret Meeting Laws and Public Agencies," was first published in 1972 from a draft developed by Deputy Attorney General Clayton P. Roche and subsequently has been revised three times. Each revision attempts to incorporate recent legislative amendments, court opinions and Attorney General opinions. The most significant changes in this edition are set forth below.

1. We have retitled the publication "Open Meeting Laws" out of recognition that, subject to exception, the Legislature has mandated that meetings of public bodies be open and public.

2. New legislation expressly authorizes closed sessions to consider "pending litigation." It is unclear what effect this legislation will have on the use of the attorney-client privilege to authorize closed sessions in situations not involving pending litigation. (See pp. 19-20.)

3. New legislation permits legislative bodies to meet with their negotiators in closed session to discuss the price and terms of payment in connection with the purchase, sale, exchange or lease of real property. (See pp. 18-19.)

4. The less than a quorum exception does not apply to members of different legislative bodies when they act as a unitary committee. (See pp. 7-8.)

5. The determination of an employee's salary may not be made in closed session. (See p. 16.)

6. The personnel exception now includes evaluation of performance. (See p. 14.)

7. Independent contractors generally are not covered by the personnel exception. (See p. 15.)

8. Court decisions have clarified the circumstances where attorney fees may be awarded and the criteria for their calculation. (See p. 26.)

This edition includes opinions of the Attorney General through volume 67, page 177; court decisions through 36 Cal.3d 475 and 157 Cal.App.3d 805; and Legislation through the 1983-84 Legislative Session.

The Attorney General welcomes comments on this publication and also will consider for future editions any

interpretations that may be made by court decision or written opinions of counsel. Such comments may be sent to the editor.

To order additional copies
of this publication, write to:

Public Inquiry Unit
Office of the Attorney General
1515 K Street, Suite 511
Sacramento, California 95814

December 1984

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Govt Code § 25151; 61 A.G. 323

I. INTRODUCTION

The Office of the Attorney General receives repeated requests for information about the applicability of state and local laws on open meeting requirements. Our resources do not permit us to individually analyze each case to determine the facts, research legal issues and provide specific advice on the requirements of the law. However, we have prepared this pamphlet to assist citizens, public officials and the media in understanding the general requirements of the Ralph M. Brown Act and other open meeting laws.

Although the discussion set forth in this pamphlet is necessarily general, we have attempted to draw from a number of appellate court decisions and Attorney General opinions to provide specific applications of open meeting laws. It should be noted that Attorney General opinions, unlike appellate court decisions, are advisory only and do not constitute the law of the state.

If you have specific questions or problems, the statute, cases and opinions should be consulted. You also may wish to refer the matter to the attorney for the agency in question, a private attorney for consultation on specific requirements of the law, or if criminal activity is suspected, the district attorney.

The laws discussed in the pamphlet are:

1. The Ralph M. Brown Act
   Government Code Sections 54950-54961

2. Education Code Sections 35145-35146
   regarding school districts

3. State Agency Open Meeting Act (hereinafter "State Act"), Government Code Sections 11120-11131, regarding state government

For easy reference, a copy of these sections, incorporating all legislative enactments through the 1983-84 Legislative Session, is attached. As these laws may be amended by the Legislature at any time, a current copy of the statutes in question should be consulted if a specific question arises.

Also included in the appendix of this pamphlet, but without discussion, are the open meeting laws specifically applicable to the state Legislature, the Regents of the University of California, and auxiliary and student body

organizations of the California State University. Though not of the same general interest as the Ralph M. Brown Act, these revisions may be of interest to some persons receiving this pamphlet. (See Gov. Code Sections 9027-9033 regarding the Legislature; Ed. Code, Sections 92030, 92032 and 92033 regarding the Regents of the University of California; and Ed. Code, Sections 89920-89928 regarding auxiliary and student body organizations of the California State University.)

Section citations are to the Government Code unless otherwise noted. Cases are cited by name, and published opinions of this office are cited by volume, page and year (e.g., 32 Ops.Cal.Atty.Gen. 240 (1958); vol. 32, p. 240). Unpublished letter opinions are cited as index letters by year and number (e.g., I.L. 67-147). Published opinions are available through law libraries and many attorneys' offices. For the most part, letter opinions are indexed and found only in the offices of the Attorney General. Copies will be furnished on request for a fee.

II. THE RALPH M. BROWN ACT

A. Purpose and scope of the act

The purpose of the Act can be briefly stated. It is to insure that the deliberations as well as the actions of local agencies are performed at meetings open to the public and as to which the public has been given adequate notice. It is to prevent government from being conducted in secret. (Section 54950.)

In furtherance of this purpose, the Act requires, with certain exceptions, that all meetings of legislative bodies of local agencies be open and public. (Section 54953.) Meetings must be conducted in such a manner as to permit full and complete disclosure of the actions taken and the participation of individual members in such action. Thus, secret ballot voting at meetings required to be open and public is prohibited. (59 Ops.Cal.Atty.Gen. 619 (1976).)

B. To whom does the act apply?

The Act applies to the legislative bodies of all local agencies of the state. An understanding of the terms "local agency" and "legislative body," as well as the "less than quorum exception," is important to any determination as to the applicability of the Act.

1. Local agencies

Local agencies include all cities, counties, school districts, municipal corporations, other special districts and all other local public bodies. (Section 54951.) For example, the Act applies to a housing authority (Torres v. Board of Commissioners (1979) 89 Cal.App.3d 545; I.L. 71-103); to an air pollution control district (I.L. 71-198 and I.L. 70-213); and to such other local bodies as voluntary area and local health planning agencies (I.L. 72-29). The Act is a matter of statewide concern, and therefore, applies equally to charter and general law cities. (San Diego Union v. City Council (1983) 146 Cal.App.3d 947.) We, however, have held that it is not applicable to county central committees. (59 Ops.Cal.Atty.Gen. 162 (1976).)

Besides purely public agencies, the Act covers all nonprofit organizations which receive public funds to be expended for purposes of the Economic Opportunity Act of 1964 so far as consistent with federal law. (Section 54951.1.) Likewise, also covered is a nonprofit corporation formed to acquire or operate any public works project if the board of directors is appointed by the forming public agency or agencies. (Section 54951.7.)

Inasmuch as the terms and requirements of the Brown Act differ in certain respects from those of the State Agency Open Meeting Act (Government Code Section 11120 et seq.), a potentially significant question is whether an entity is a local or state agency. This question was addressed and resolved as to housing authorities created pursuant to Health and Safety Code Section 34208 in the case of Torres v. Board of Commissioners, supra, 89 Cal.App.3d 545. The court first concluded that "the Legislature intended that all agencies be included in some open meeting act unless expressly excluded." It then went on to hold that the housing authority was included within the definition of local agency under the Brown Act and, therefore, was not subject to the agenda requirements set forth in the State Agency Act Section 11125. The court reasoned:

"While a housing authority may be a state agency for some purposes . . . if it is within the Brown Act's definition of a local agency, it is simply not included within the State Act. We hold that a housing authority created by Health and Safety Code section 34200 et seq. is included within the statutory definition of a local agency under the Brown Act in that it is either an 'other local public agency' or a 'municipal corporation' or both, as those terms are used in Government Code

section 54951. . . . The term 'municipal corporation' is broader than the term 'city,' particularly when the term 'city' already appears in the applicable statute. . . . In order to give meaning to the term 'municipal corporation' in Government Code section 54951 we hold that such term is not restricted to its technical sense of a 'city,' general law or charter, but rather includes such entities as housing authorities. . . . In addition, a housing authority is local in scope and character, restricted geographically in its area of operation, and does not have statewide power or jurisdiction even though it is created by, and is an agent of, the state rather than of the city or county in which it functions. . . .

"Furthermore, as perceptively noted by the trial court, the placement of Government Code section 11120 and its history is some persuasive indication that the State Act was meant to cover executive departments of the state government and was not meant to cover local agencies merely because they were created by state law. A housing authority is no more a state agency under these acts than is a city or a county. The fact that such entities from time to time administer matters of state concern may make them state agents for such purposes but not state agencies under the open meeting acts." (Citations omitted.) (Torres v. Board of Commissioners, supra, 89 Cal.App.3d at pages 549, 550.)"

2. Legislative bodies

The term "legislative body" is not used in its technical sense in the Act. The Act's application is not limited to boards and commissions insofar as they perform "legislative" functions. Actions which are primarily executive or quasi-judicial in nature are also covered. (61 Cps.Cal.Atty.Gen. 220 (1970).)

Besides the actual governing body of a local agency:

a. The Act applies to boards, commissions, or committees of the governing board or on which members of the governing board serve in their official capacity and which are supported in whole or in part by the local agency whether such boards, commissions, or committees are organized and operated by the local agency or a private corporation. Thus, it would apply to a voluntary organization composed jointly of members of boards of supervisors and city councils of cities within the county. (I.L. 70-91.) It, however is not applicable to a county board of parole

commissioners, since such serves as an adjunct of the courts. (I.L. 62-46.)

b. The Act applies to any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body. (Section 54952.2.)

c. The Act applies to permanent boards and commissions of a local body, such as planning commissions, library boards, and recreation commissions. (Section 54952.5.) The Act is not applicable to a meeting of all judges of a superior court of a county. (I.L. 60-16.)

d. The Act applies to advisory boards, commissions, and committees of a local agency if they are formed by some formal action of the governing body, or a member of the governing body of the local agency. The Act, however, specifically excepts from such coverage any such advisory bodies composed solely of less than a quorum of the legislative body. (Section 54952.3.)

A possible example of a covered advisory committee is described in a 1965 letter opinion of this office (rendered before the specific addition of Section 54952.3) wherein a hospital district formed a liaison committee composed of three members of the district board and three members of the medical staff. (See I.L. 65-57.) Another example is the San Francisco Public Schools Commission (the Riles Commission) which was formed to advise the local school board, the local superintendent of schools, and the State Superintendent of Public Instruction on how to improve San Francisco's schools. (I.L. 75-196.)

In Henderson v. Board of Education (1978) 78 Cal.App.3d 875, it was held that an ad hoc committee composed solely of less than a quorum of the members of the Board of Education and created for the purpose of advising the full board as to the qualifications of candidates for appointment to a vacant position was excepted from the requirements of the Act by the terms of Section 54952.3.

In 61 Ops.Cal.Atty.Gen. 1 (1978), this office concluded that a bargaining committee created to "meet and confer" with employee organization representatives pursuant to Section 3505 was not an advisory committee since its function was to negotiate rather than study and recommend. Thus, the meetings of the bargaining

committee were not required to be open and public by Section 54952.3. This office has also held that the Act is not applicable to a county juvenile justice commission since such is in effect a part of the court system. (I.L. 75-109.) Nor is it applicable to a local admissions committee of the county superintendent of schools, since such is an advisor or adjunct to a single county officer. (56 Ops.Cal.Atty.Gen. 14 (1973).)

e. A single individual acting on behalf of a local agency is not a "legislative body" within the meaning of the Act, since all definitions of "legislative body" connote a group of persons. Thus, a hearing officer functioning by himself in an employee disciplinary hearing is not a "legislative body." (Wilson v. San Francisco Mun. Ry. (1973) 29 Cal.App.3d 870.) Similarly, this office has concluded that an individual city council member having the responsibility to screen candidates for vacant city offices is not a "legislative body" and, therefore, not subject to the Act.

3. The less than a quorum exception

Permeating the whole coverage or applicability of the Act is what may be termed the "less than a quorum exception" to the Act. As noted above on the general applicability of the Act, Section 54952.3, relating to advisory bodies of the local agency, now expressly codifies this exception as it relates to such advisory bodies. Section 54952.3 was added to the Act in 1968. However, since the opinion of this office rendered in 32 Ops. Cal.Atty.Gen. 240 (1958), such an exception has been recognized in varying circumstances. In general terms, the concept is that the Act does not apply to meetings of committees of less than a quorum of the legislative body of the local agency. This is because the findings of such a committee have not been deliberated upon by a quorum of the legislative body, and consequently, the opportunity for a full public hearing and consideration of the committee's findings and recommendations by a quorum still remains. Hence the public's rights under the Act are still protected.

In 1969, this office expressed the following view: "The resolution of the quorum problem with respect to other legislative bodies, that is, bodies other than the advisory commissions referred to in section 54952.3, should continue to be governed by our prior interpretation of the law as set forth in . . ." our 1958 opinion, I.L. 69-131. Again in 1972, we reaffirmed

our prior holdings, such as I.L. 69-131, supra, wherein we stated: "There have been no amendments to the Act nor case law since these letter opinions which would change the views of this office as expressed therein." (I.L. 72-49.) Capsulized, these views would appear to mean that at least ad hoc, nonpermanent committees or boards not formed by formal action, such as by charter, ordinance, resolution, or similar formal action, would additionally still fall within the "less than a quorum exception." The distinction between permanent and ad hoc committees arises by virtue of the addition in 1961 of Section 54952.5, making the Act applicable to permanent boards or commissions of a local agency. (I.L. 65-57; I.L. 68-106.)

Some examples from our pre-1968 opinions may be helpful to illustrate this distinction. In 1963, we held that an ad hoc committee appointed by the mayor consisting of less than a quorum of the council to study the possible subsidy of a local bus company by the city would be exempt from the Act. (I.L. 63-97.) In the opinion discussed above, wherein we held that the hospital district liaison committee consisting of three board members and three medical staff members was subject to the Act, we stated that "inasmuch as the Joint Conference Committee is a 'permanent committee'" the Act would be applicable "regardless of whether the governing body is represented by three or two [less than a quorum] members on the committee." (I.L. 65-57.) We also advised in that opinion that if investigative committees were to be formed which included less than a quorum of the board, the applicability of the Act would depend upon whether these committees were permanent, or were formed for a limited duration for a specific problem. (See also Henderson v. Board of Education, supra, 78 Cal.App.3d 875.)

In Joiner v. City of Sebastapol (1981) 125 Cal.App.3d 799, the applicability of the less than a quorum exception was examined in the context of a committee comprised of less than a quorum of the board of supervisors and the planning commission. The court concluded that the less than a quorum exception is not applicable because the committee acted as a "unitary" body when it reviewed the qualifications of job applicants and made recommendations to the full board of supervisors. Since the less than a quorum exception can only apply to a subcommittee of a single legislative body, the conclusion that members of the board and the planning commission were acting jointly as a "unitary" body meant that the less than a quorum exception was inapplicable. Accordingly, the meetings of the committee were subject to the open meeting requirements

of the Act. Had the members of the board and the planning commission met only for the purposes of exchanging information, they would have qualified as subcommittees of their respective legislative bodies, and the less than a quorum exception would have applied. (See also 64 Ops.Cal.Atty.Gen. 856 (1981).)

For an application of Sections 54952, 54952.3, and 54952.5, defining the term "legislative body," as they interrelate with the "less than quorum exception," see I.L. 76-174, wherein we concluded that a meeting of two subcommittees consisting of less than a quorum of the members of their respective parent boards of supervisors to discuss mutual water problems was not covered by the Act because (1) each subcommittee, although literally within the Section 54952 definition, is excluded therefrom by the traditionally recognized "less than quorum exception"; (2) each subcommittee is further excluded from the Section 54952.3 definition by the "less than quorum exception" explicitly set forth in that section; and (3) the subcommittees meet for the purpose of discussing a particular matter and, therefore, are nonpermanent and not covered by the definition of legislative body set forth in Section 54952.5. (See also 61 Ops.Cal. Atty.Gen. 1 (1978) wherein we concluded that a local agency bargaining committee designated to meet and confer with representatives of employee organizations pursuant to Government Code Section 3505 was not a legislative body within the meaning of Sections 54952, 54952.3, and 54952.5.)

The "less than a quorum exception" does not exempt from the open meeting requirements a series of meetings, each of which technically is comprised of less than a quorum of the agency's membership, but which taken as a whole involves a majority of the agency's members. These rotating or seriatim meetings do not fall within the rationale of the "less than a quorum exception" because they ultimately involve participation of a quorum of members. In 63 Ops.Cal.Atty.Gen. 820 (1980), this office concluded that such seriatim meetings between members of the community redevelopment agency and the planning commission or the city council were prohibited.

C. <u>What is a meeting</u>?

The question as to what constitutes a meeting within the Act sometimes may present a difficult question. Basically, a meeting is any gathering of a quorum of a legislative body, no matter how informal, where business is transacted or discussed. (61 Ops.Cal.Atty.Gen. 220 (1978).) Of course,

no problem exists as to regularly scheduled, duly noticed, regular and special meetings of a legislative body. The problem arises as to informal meetings of a majority of the members of a board. Such a meeting may have varying purposes and characteristics. It is significant to note that the Act itself does not define the term "meeting."

In a published opinion of this office written in 1963, we expressed the view that so-called "informal," "study," "discussion," "informational," "fact finding," or "pre-council" gatherings of a majority of the members of a board probably fell within the scope of the Act as "meetings," whether or not the individual members intended to take, or even took, any action at such gatherings. (42 Ops.Cal.Atty.Gen. 61 (1963).)

In 1964 we held that regularly scheduled luncheon meetings by the members of one or more city councils with representatives of certain civic associations for the purpose of discussing items, such as school and airport problems and other items of public importance, fell within the Act. We pointed out, however, that our opinion was not to be construed to prohibit legislative bodies from mere social attendance at luncheons and dinners, such as are often given by fraternal groups such as the Rotary Club or Kiwanis. (43 Ops.Cal. Atty.Gen. 36 (1964); see also I.L. 71-122.)

The courts have specifically held that the Act now applies to informal meetings. In Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs. (1968) 263 Cal.App.2d 41, the court held that a luncheon gathering which included five county supervisors, the county counsel, county executive, county director of welfare, and certain union officers to discuss a strike which was underway against the county was a meeting within the Act and therefore newspaper reporters were improperly excluded. The court's language at pages 50-51 of the decision is an excellent summary of the reasoning behind its decision. The court stated:

> "In this area of regulation, as well as others, a statute may push beyond debatable limits in order to block evasive techniques. 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. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to

prevent. Construed in the light of the Brown Act's objectives, the term 'meeting' extends to informal sessions or conferences of the board members designed for the discussion of public business. The Elks Club luncheon, attended by the Sacramento County Board of Supervisors, was such a meeting."

Thus, meetings include informal gatherings where the public's business is discussed, as well as informal meetings.

A meeting, however, requires the presence of two or more persons. Therefore, a hearing conducted by a single hearing officer on an employee disciplinary action was not a meeting within the meaning of the Act. (Wilson v. San Francisco Mun. Ry., supra, 29 Cal.App.3d at page 880.)

D. Notice of meetings

1. Regular meetings

The legislative body of a local agency must provide by ordinance, resolution, bylaw, or rule, as appropriate to that body, for the time of holding regular meetings. (Section 54954.) It may adjourn or continue a meeting to a time and place specified in a notice of adjournment which is to be posted within 24 hours on or near the door of the meeting place. If no time is specified, the meeting is adjourned until the time of the next regular meeting. (Sections 54955, 54955.1.)

The Act itself contains no agenda requirements for regular meetings. (Torres v. Board of Commissioners, supra, 89 Cal.App.3d 545.) Such requirements, however, may be found in the particular act which governs a particular legislative body, e.g., Section 25151, relating to posting an agenda for meetings of boards of supervisors. (61 Ops.Cal.Atty.Gen. 323 (1978).) Thus, it has been held ". . . That where the subject matter is sufficiently defined to apprise the public of the matter to be considered and notice has been given as required by law, the governing body is not required to give further special notice of what action it might take . . . ." (Phillips v. Seely (1974) 43 Cal.App.3d 104, 120; see also III, infra, re Education Code Section 35145 regarding agenda requirements for school districts, and 67 Ops. Cal.Atty.Gen. 84 (1984) regarding agenda requirements of Government Code Section 11125 of the State Agency Act.)

2. Special meetings

In order to hold a special meeting, a legislative body must provide advance notice of such meeting to each

member of the legislative body and to each local newspaper of general circulation, and radio or television station which has requested notice in writing. The notice shall state the time and place of the special meeting. It shall also state the business to be transacted, and no other business shall be considered at the special meeting. (Section 54956.)

Notice is required even if no action is taken by the legislative body at the special meeting. (Section 54956; 41 Ops.Cal.Atty.Gen. 61 (1963).) It is also required if the special meeting is to be held in closed session (43 Ops.Cal.Atty.Gen. 79 (1964).) If a legislative body holds an informal meeting falling within the scope of the Act, such as a luncheon meeting, notice must be given. For example, if a city council attends a luncheon meeting to discuss area problems with a civic group, the public has a right to know of and attend such discussions. (43 Ops. Cal.Atty.Gen. 36 (1964).)

The notice required by Section 54956 shall be delivered personally or by mail and shall be received at least 24 hours before the time of the meeting. Thus, mailing the notice 24 hours in advance is not sufficient; notice must actually be received 24 hours prior to the special meeting. (Section 54956; 53 Ops.Cal.Atty.Gen. 246 (1970).)

A member of the legislative body may waive failure to receive notice of the meeting by filing a waiver prior to the time of the meeting or by being present at the meeting when it convenes. Moreover, absent a written request therefor, the legislative body is not required by the Act to provide the media with notice of its special meetings. (62 Ops.Cal.Atty.Gen. 658 (1979).)

The detailed provisions of the Act as to time and notice of meetings do not apply to regular or special meetings of advisory commissions, committees, or bodies of a local agency created by formal action of the legislative body or a member thereof. However, such a group may provide for regular meetings, and if it does so, it shall provide for the time and place for holding such regular meetings. (Section 54952.3.)

3. Emergency meetings

In an "emergency situation," the legislative body is not required to deliver written notice to the news media 24 hours in advance of its special meeting. An emergency situation is defined to include a work stoppage or other

activity and a crippling disaster, which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body. In such cases, telephonic notice shall be provided to local newspapers of general circulation and radio or television stations one hour prior to the meeting unless telephonic services are not functioning. In the event that telephonic services are not functioning, notice must be given as soon after the meeting as possible. The minutes of the meeting, a list of the persons notified or attempted to be notified, a copy of a roll call vote, and any actions taken shall be posted for a minimum of ten days in a public place as soon after the meeting as possible. The legislative body may not meet in closed session during an emergency meeting. Except for the 24-hour notice requirement, the special meeting requirements set forth in Section 54956 shall apply in emergency meetings. (Section 54956.5.)

4. Special notice provisions - district landowners

The legislative body of a district subject to the Act must mail notice of all regular and special meetings to any district landowner who has filed a written request for such notice. The request must be renewed annually. (Section 54954.1.)

The legislative body may impose a reasonable charge for this service based on estimated costs of providing notice. (Section 54954.1.) Any estimate by the legislative body which has a reasonable cost accounting basis would appear acceptable. (62 Ops.Cal.Atty.Gen. 658 (1979).)

E. Public's rights while attending a meeting

What are the public's rights with regard to attendance at meetings? A member of the public can attend a meeting without having to register or give other information as a condition of attendance. (Section 54953.3; see also 27 Ops.Cal.Atty.Gen. 123 (1956).) If a register, questionnaire or similar document is posted or circulated at a meeting, it must clearly state that completion of the document is voluntary and not a precondition for attendance. (Section 54953.3.) A legislative body may not prohibit any person attending an open meeting from tape-recording the proceedings, absent a reasonable finding that such would constitute a disruption of the proceedings. (Section 54953.5; Nevens v. City of Chino (1965) 233 Cal.App.2d 775; I.L. 66121; cf. 62 Ops.Cal.Atty.Gen. 292 (1979).)

On the other side of the coin, a legislative body may, if necessary, exclude all persons from a meeting where a

disturbance has been created and the meeting cannot continue by merely excluding the disorderly persons. However, in such situations, newspaper personnel not involved in the disturbance must be permitted to attend the session as continued. (Section 54957.9.) Although this office has held that the Act neither explicitly nor implicitly gives radio stations the right to broadcast meetings of legislative bodies (38 Ops.Cal.Atty.Gen. 52 (1961)), Government Code Section 6091, enacted in 1965, conditionally authorizes the broadcasting by radio and television stations of meetings required by law to be open.

Any agenda or other writing distributed to all or a majority of the members of the legislative body of a local agency for the discussion or consideration at a public meeting are public records and shall be made available to members of the public in accordance with the provisions of Section 54957.5 and the Public Records Act (Government Code Section 6250 et seq.). (Section 54957.5; I.L. 77-67.) Pursuant to Government Code Section 6257, a fee or deposit may be charged to any person requesting a copy of a public record. (Section 54957.5.)

In 64 Ops.Cal.Atty.Gen. 317 (1981), we determined that when an agency tape recorded an open meeting, the tapes and a tape recorder must be made available to the public. The opinion reasoned that the tapes were public records open for inspection, and as such, the public had to be afforded the right to review their communicative content. The agency was not required to prepare a transcript, but if one were prepared, the public generally would have the right to receive copies. If the agency wished to destroy the tapes, it was required to do so in accordance with statutory procedures for the destruction of public records.

Except as specifically authorized by the Act, the legislative body of a local agency may not impose fees to defray its costs in carrying out the provisions of the Act. (Section 54956.6.)

A local agency may not conduct any meeting or function where racial or other discrimination is practiced. (Section 54961.)

Local legislative bodies may go beyond the minimal requirements of the Act and provide greater public access to their meetings. (Section 54953.7.) Elected legislative bodies may require such access of agencies for which all or a majority of their members are appointed by or under the authority of those legislative bodies. (Section 54953.7.)

F. Permissible closed sessions

Authority for closed sessions must be found in the explicit terms of the Act or inferred from some other confidentiality provision in the law. (61 Ops.Cal.Atty.Gen. 220 (1978).) The Act itself contains several purposes for which a legislative body may meet in private or in closed session. Additionally, the courts and this office have held several other situations to fall within the closed session exception to the open meeting requirements of the Act.

Prior to or after holding any closed session, the legislative body of the local agency shall state the general reason or reasons for the session. The legislative body may also cite the legal authority under which the closed session is held. The scope of the closed session shall be limited to matters covered by the legislative body's statement of reasons. The legislative body is neither authorized nor required to include in its statement of reasons information which could constitute an invasion of privacy or otherwise unnecessarily divulge particular facts concerning the closed session. (Section 54957.7.)

1. Expressly authorized closed sessions

a. Personnel exception

The Act provides in Section 54957 for closed sessions to consider the appointment, employment, performance, or dismissal of a "public employee" as defined by the Act or to hear complaints and charges against such "public employee." This exception is commonly known as the "personnel exception." An employee may request and require a public hearing where the purpose of the closed session is to discuss specific charges or complaints against him or her. A general discussion of an employee's job performance may, however, be held in closed session irrespective of the employee's desires. (61 Ops.Cal.Atty.Gen. 283 (1978).)

We have held that "public employee" as defined by the Act does not include anyone elected or appointed to an elective office; that the definition contemplates only "nonelective officers" insofar as it may include officers. (59 Ops.Cal.Atty.Gen. 266 (1976).) Moreover, mayors, chairpersons of boards of supervisors, and other presiding officers, although receiving separate appointments to their presiding offices, are not employees within the meaning of Section 54957. Therefore, complaints against such presiding

officers may not be discussed in a closed session. (61 Ops.Cal.Atty.Gen. 10 (1978).)

In Rowen v. Santa Clara Unified School District (1981) 121 Cal.App.3d 231, the court held that discussions regarding the qualifications of an independent contractor to sell surplus land for the district should have been conducted in public. The personnel exception set forth in Section 54957 is specifically applicable to the hiring of employees, but the court refused to apply it to independent contractors in this case. Since special services contracts are not subject to the bid process, the court commented that the need for public consideration of the independent contractor's qualifications was especially important.

The legislative body must report at the public meeting during which the closed session is held or at its next subsequent public meeting any action taken during its closed session, and the roll call vote thereon, to appoint, employ, or dismiss an employee. (Section 54957.1.) This reporting requirement applies to all legislative bodies irrespective of whether they are otherwise required to act by roll call vote. (59 Ops.Cal.Atty.Gen. 619 (1976).) However, the requirement has been construed to apply only to actions to "appoint," "employ," or "dismiss." Accordingly, an action to establish the compensation of a hospital administrator need not be reported at the next subsequent public meeting of the legislative body. (63 Ops.Cal.Atty.Gen. 215 (1980).)

The personnel exception is probably the most widely used permitted closed session device. This office has opined that the primary purpose of the exception is to avoid undue publicity and embarrassment to the affected employee and that an ancillary purpose of the exception is to encourage the free discussion of personnel matters by the legislative body. (63 Ops.Cal.Atty.Gen. 215 (1980); 61 Ops.Cal.Atty.Gen. 283 (1978); 59 Ops.Cal.Atty.Gen. 532 (1976).) Examples of its application may be helpful to demonstrate that in addition to actual hiring and firing, it has a legitimate intermediate scope.

1. In Cozzolino v. City of Fontana (1955) 136 Cal.App.2d 608, the court upheld a closed hearing to consider the propriety of a past firing by the chief of police, and to ratify such action.

ii. In Letsch v. Northern San Diego County Hosp. Dist. (1966) 246 Cal.App.2d 673, the court held that a hospital board could meet in closed session to discuss the qualifications of a radiologist, who was apparently an independent contractor, prior to terminating the radiologist's contract.

iii. In Lucas v. Board of Trustees (1970) 18 Cal.App.3d 990, a decision not to rehire the district superintendent of a high school district was held to be properly made in closed session. Also, in 59 Ops.Cal.Atty.Gen. 532 (1976), this office upheld the use of a closed session by a school district governing board to discuss and evaluate the performance of its superintendent.

iv. In San Diego Union v. City Council (1983) 146 Cal.App.3d 947, the court considered whether the city council could meet in closed session to consider the job performances and salary levels of certain appointed officials. The court concluded that a closed session was appropriate for the purpose of reviewing an appointee's job performance and making the threshold decision of whether any salary increase should be granted. However, all discussions concerning the amount of any salary increase should be held in public session.

The court specifically rejected the argument that the terms "employment" or "performance" as used in Section 54957 should be interpreted to include salary level determinations. The court stated, "Salaries and other terms of compensation constitute municipal budgetary matters of substantial public interest warranting open discussion and eventual electoral public ratification." (San Diego Union v. City Council, supra, at page 955.) The court stated that although an individual's job performance could be considered in closed session, there were a variety of other factors that must be considered in determining the appropriate salary level, e.g., availability of funds; other funding priorities; relative compensation of similar positions elsewhere, both inside and outside of the jurisdiction.

This opinion calls into question the opinions discussed below, which appear to have taken a broader construction of the "employment" and "performance" exceptions.

In 61 Ops.Cal.Atty.Gen. 283 (1978) and in several letter opinions of this office, it was held that the personnel exception could be used to discuss the salaries of individual employees as opposed to discussing salary scales in general. Thus, in I.L. 66-184, we took the view that it was proper under the personnel exception to discuss in private the salary of the manager of a special district, and the discussions could include his work history and his suitability for his position. In I.L. 68-117, we held, however, that it was not permissible for a school board to hold a closed session to consider the salaries of all the teachers of the school district, since there were no individual qualifications to be discussed. Similarly, in Santa Clara Federation of Teachers v. Governing Board (1981) 116 Cal.App.3d 831, the court held that the board's consideration of a hearing officer's decision on teacher layoffs must be held in public. The holding of a closed session by a county board of supervisors for the purpose of discussing salaries of specific employees, although permissible under the Act, may, however, be prohibited by Section 25307, which provides, inter alia, that all meetings of the board pertaining to salaries of county employees shall be open and public. (61 Ops.Cal.Atty.Gen. 282 (1978).)

v. In 63 Ops.Cal.Atty.Gen. 153 (1980), this office held that abstract discussions concerning the creation of a new administrative position and the workload of existing positions are inappropriate for a closed session. However, if the workload discussions involve the performance of specific employees, a closed session may be proper.

vi. In 65 Ops.Cal.Atty.Gen. 412 (1982), we concluded that a county retirement board could review in closed session the medical records of a county employee seeking a disability retirement.

b. National and public security exception

The Act contains an exception as to matters affecting national security. (Section 54957.)

The Act also permits local agencies to meet in closed session with the Attorney General, district attorney, sheriff, or chief of police on matters posing a threat to the security of public buildings and public services or facilities. (Section 54957.)

c. Labor negotiations exception

The Act further provides for closed sessions to enable the legislative body to instruct its representatives concerning discussions with employee organizations and unrepresented employees regarding salaries and fringe benefits. (Section 54957.6.) Similarly, the legislative body of a local agency may meet with a state conciliator who has intervened in the negotiations. (Section 54957.6; 51 Ops.Cal.Atty.Gen. 201 (1968).) The legislative body may appoint from its membership one or more members to act as its designated representative, with whom it may meet and confer in closed session under the provisions of Section 54957.6. However, if the legislative body decides to conduct its meet-and-confer sessions itself without using a designated representative, the legislative body may not meet in closed session to review and decide upon its bargaining position. (57 Ops.Cal.Atty.Gen. 209 (1974).)

The closed session held pursuant to Section 54957.6 may not extend to all normal meet-and-confer topics; the scope of the session must be limited to salary, benefits, and other matters inextricably related thereto. (61 Ops.Cal.Atty.Gen. 323 (1978).)

d. License application exception

The Act establishes special provisions for the consideration of license applications by persons with criminal records. (Section 54956.7.)

e. Real estate negotiation exception

In 1984, the Legislature added Section 54956.8 to the Act authorizing closed sessions to discuss specified real estate negotiations. Effective January 1, 1985, the exemption allows a local

legislative body to meet with its negotiator prior to or during negotiations concerning the purchase, sale, lease or exchange of property by or for the local agency. The legislative body may meet for the purpose of giving instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange or lease. The closed session, however, must be preceded by an open session in which the legislative body identifies both the real property in question and the persons with whom its negotiator may negotiate. Eminent domain proceedings are not subject to the restrictions set forth in Section 54956.8, and that section does not prohibit a local agency from holding closed sessions for discussions regarding eminent domain proceedings.

f. Pending litigation exception

In 1984, the Legislature enacted Section 54956.9 concerning pending litigation. Prior to the enactment of this section, there was no express authorization for closed meetings concerning pending litigation. Effective January 1, 1985, such an exception is expressly authorized.

Section 54956.9 requires the local agency to follow the procedure set forth in the statute. The statute authorizes local legislative bodies to conduct closed sessions with their legal counsel to discuss pending litigation when discussion in open session would prejudice the agency in that litigation. "Litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body, hearing officer or arbitrator. For the purpose of this statute, litigation is pending when any of the following occurs: an adjudicatory proceeding to which the agency is a party has been initiated formally; the agency has decided or is meeting to decide whether to initiate litigation; or in the opinion of the legislative body and its legal counsel, there is a significant exposure to litigation if matters related to specific facts and circumstances are discussed in open session. The agency is also authorized to meet in closed session to consider whether a public discussion of issues related to specific facts and circumstances would subject the agency to significant exposure of litigation.

Prior to conducting a closed session under this section, the legislative body must state which subdivision of the statute authorizes the session,

and if the action has already been initiated, it must state the title of the litigation unless to do so would jeopardize service of process or settlement negotiations. In addition, the legal counsel shall submit to the agency a memorandum stating the specific reasons and legal authority for the closed session including the title of the litigation, if any, or the specific facts and circumstances in question. This memorandum will be protected from disclosure by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled.

At the time of this pamphlet's publication, this office had not written any opinions or taken any position with respect to an interpretation of this section.

The text of Section 54956.9 is set forth in the appendix.

2. Impliedly authorized closed sessions

a. Attorney-client privilege

Additionally, the courts and this office have recognized an implied exception to the Act to permit a local agency to confer in private with its attorney in matters of litigation, and within the confines of the attorney-client privilege. (Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs., supra, 263 Cal.App.2d 41; 36 Ops.Cal.Atty.Gen. 175 (1960).) The court in Sacramento Newspaper Guild reasoned that the Act was not intended to impliedly repeal preexisting and well established laws relating to privileges and confidentiality.

In 1984, the Legislature added Section 54956.9 to the Brown Act, effective January 1, 1985. That section specifically created an exception for pending litigation. At present, there are no court cases nor Attorney General opinions interpreting this new provision. Accordingly, it is unclear whether this legislation stands as an augmentation to the court created attorney-client exception or whether it represents the exclusive authority under which closed sessions may be conducted.

Under the cases interpreting the implied attorney-client privilege, the courts have found that the privilege is broad enough to permit a legislative body to meet in closed session with its

legal advisor to discuss "potential" litigation so long as it relates to an existent set of concrete facts and circumstances, and thus, litigation need not be pending nor imminent to give rise to the privilege. (Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App.3d 813; see also I.L. 75-282.) In Sutter, the court stated that the purpose of permitting closed sessions between an agency and its legal advisor was to facilitate candid advice, avoid litigation, promote settlements and prevent the agency from having to fight in a legal forum with one arm tied behind its back. The court found that the board of supervisors had ample justification for a closed session to discuss the possibility of future litigation over an EIR and conditional use permit where similar matters had been the subject of previous litigation. In 67 Ops.Cal.Atty.Gen. 111 (1984), this office opined that an advisory committee created by the Board of Supervisors to advise it on airport matters could meet with counsel in closed session to discuss litigation to which the board is the sole party representing the interests of the county. In I.L. 75-282, it was also held that the Act does not require the legislative body to state who may be involved in such potential litigation before it may meet in closed session. However, a closed session is justified on the basis of the attorney-client privilege only if the statutory prerequisites to the establishing of such a privilege are satisfied. (Register Div. of Freedom Newspapers v. County of Orange (1984) 158 Cal.App.3d 893.) Thus, this office has concluded that discussions between adversary public agencies and their attorneys concerning the settlement of potential litigation are not confidential communications protected by the attorney-client privilege and, therefore, are not properly conducted during closed sessions. (62 Ops.Cal.Atty.Gen. 150 (1979).)

b. Other privilege and confidentiality provisions

Other privilege and confidentiality provisions which may, depending upon the facts of the particular case, justify the holding of a closed session include (1) the "official information privilege" (Evidence Code Section 1040) which protects certain confidential information acquired by public employees and (2) the exceptions to the California Public Records Act found in Sections 6254 and 6255. It would appear appropriate to discuss matters protected by these statutes during

closed session. (62 Ops.Cal.Atty.Gen. 150 (1979); 61 Ops.Cal. Atty.Gen. 220 (1978); 65 Ops.Cal.Atty.Gen. 412 (1982).)

Absent express authority or an independent confidentiality provision from which authority for a closed session may be inferred, meetings of legislative bodies must be open and public. Thus, in 61 Ops.Cal.Atty.Gen. 220 (1978), we concluded that meetings of the Board of Police Commissioners could not, as a general proposition, be held in closed session, even though the matters to be discussed were deemed sensitive by the commission and their disclosure considered contrary to the public interest. This office has also concluded that Evidence Code Section 1152, which renders inadmissible for the purpose of proving liability evidence of the conduct or statements of a litigant during settlement negotiations, does not authorize the holding of a closed session for the purpose of conducting settlement negotiations. Section 1152 has as its purpose the fostering of settlements of disputes rather than the protecting of confidential communications. (62 Ops.Cal.Atty.Gen. 150 (1979).)

This office also has refused to imply an exception to the open meeting requirements of the Act for "quasi-judicial" matters. Thus, we held that county boards of education could not meet in closed session to deliberate when deciding appeals from decisions of local school district boards refusing to enter into interdistrict attendance agreements. (See 57 Ops.Cal.Atty.Gen. 189 (1974); see also I.L. 71-198 and I.L. 70-213, deliberations of county air pollution control district board after public hearing on appeals must also be held in public.)

3. Time for closed sessions and required notice

The Act provides that closed sessions for personnel matters are to be held only during a regular or special meeting. (Section 54957.) Thus, in 43 Ops.Cal.Atty.Gen. 79 (1964), this office held that the requisite special meeting notice was required to hold a closed session as to whether to retain an incumbent school principal. Interesting, however, is the decision in Lucas v. Board of Trustees, supra, 18 Cal.App.3d 990, in which the court held that the school board need not publish a detailed agenda of matters to be considered at closed sessions which were to be held as part of, but apart from, a regular meeting. The rationale was that such would negate the purpose of the closed session in

personnel matters; that is, to avoid undue publicity and embarrassment to the officer or employee. The court relied for such rationale on a prior opinion of this office, 33 Ops.Cal.Atty.Gen. 32 (1959). We note, however, that the employee himself was notified beforehand that his contract would be considered at such sessions.

4. Minute book

The legislative body may designate, by ordinance or resolution, an officer or employee of the local agency who shall attend each closed session and maintain a minute book, which may consist of a recording of the closed session. The minute book is confidential and shall only be available to members of the legislative body and, in litigation involving an alleged violation of the Act during a closed session, to a local court of general jurisdiction. (Section 54957.2.) Neither the closed session minutes nor the information which they memorialize may be released by the legislative body or any of its members. (I.L. 76-201.)

The recording of closed sessions is authorized by Section 54957.2 only to the extent that such recording is done in a manner which does not violate the provisions of Penal Code Section 632. Thus, Section 54957.2 does not constitute a defense to criminal liability for recording confidential communications without the consent, or at least knowledge, of the parties. (62 Ops.Cal.Atty.Gen. 292 (1979).)

5. Miscellaneous considerations regarding closed sessions

Though the Act speaks in terms of "considering" personnel matters, there is no doubt that absent a provision in another code (such as the Education Code to be discussed later), to "consider" in closed session also includes the ability to act in closed session. The legislative body need not return to the open meeting before voting or taking action. (Krausen v. Solano County Junior College Dist. (1974) 42 Cal.App.3d 394, 404; Lucas v. Board of Trustees, supra, 18 Cal.App.3d 990.) Thus, in I.L. 61-85, we held that "consider" included the right to dismiss an officer or employee in closed session, reserving to the officer or employee, however, his statutory right to request a public hearing.

The closed session is precisely what the term indicates and does not include a semi-closed session. Neither members of the press nor any other members of

the public may be admitted as spectators to closed sessions held pursuant to the Act. (46 Ops.Cal.Atty.Gen. 34 (1965).) Nor would it be proper for an investigative committee of a grand jury performing its duties of investigating the county's business to be admitted to a closed session. (I.L. 70-184.) In both the foregoing examples, the proceedings of the closed session would in due course be disclosed by such third parties, thus negating the whole purpose of the closed sessions; that is, required secrecy in limited circumstances. This office, however, has held that a county board of supervisors may attend a closed session of a county grand jury which is held in the exercise of the grand jury's own investigative powers without violating the Act. (58 Ops.Cal.Atty.Gen. 829 (1975).) In 1979 the Act was amended to explicitly authorize members of a legislative body of a local agency to testify in private before a grand jury, either as individuals or as a body. (Section 54953.1.)

Finally, and of importance to an individual who may be the object of disciplinary action at a closed session, failure of the officer or employee to request a public hearing, as permitted by the Act, does not amount to a failure to exhaust his administrative remedies as a condition to attacking such disciplinary action in court. Thus, in Ball v. City Council (1967) 252 Cal.App.2d 136, the court held that a police chief who was fired for engaging in union activities was not foreclosed from appealing such firing in court merely because he failed to request that the matter of his firing be considered publicly rather than in private. The Act itself does not grant a quasi-judicial-type hearing. The police chief was an at-pleasure appointee, and no special administrative hearing was prescribed for such personnel action.

G. Penalties for violation of the act

The Act, in Section 54959, provides that a member of a legislative body who attends a meeting where action is taken in violation of the Act, and with knowledge that the meeting violates the Act, is guilty of a misdemeanor.

The term "action taken" includes a collective decision, commitment, or promise by a majority of the members of a legislative body. (Section 54952.6.) It is the participation of a majority of the members of the legislative body, rather than the outcome of any vote taken or the manner in which members of the majority vote, that gives rise to criminal liability. (I.L. 78-84.) That the collective decision is tentative rather than final does not shield knowing participants from criminal liability. (61

Ops.Cal.Atty.Gen. 283 (1978).) However, if there is deliberation without action, the criminal penalty is not applicable and only civil proceedings are available. (Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs., supra, 263 Cal.App.2d 41.)

There must be not only a volitional act constituting a violation, but also an act which is done with knowledge that it is illegal. Good faith reliance on the opinion of counsel that a nonpublic meeting is proper would normally preclude the finding of a "knowing" violation of the Act. (I.L. 76-173.) The determination as to whether there is sufficient evidence that members of a legislative body who have taken action at an illegal meeting in violation of the Act have done so knowingly must be made, in the first instance, by the district attorney or other local appropriate prosecuting attorney in light of all the facts. (I.L. 67-147.) In this regard, it is of interest that a legislative body of a local agency may require that a copy of the Ralph M. Brown Act be given to each of its members. (Section 54952.7.)

Although the Act itself only provides that a known violation is a misdemeanor if action is taken, under some circumstances a violation may also be a felony. If a conspiracy to commit a misdemeanor occurs, it can be a felony. (Penal Code Section 182.) There are no court decisions or prior opinions on this matter, but because meetings usually require the concurrence of more than one member, it would appear that the possibility that a conspiracy will have occurred will be present in many instances.

H. Enforcement provisions

Even if a criminal penalty is not applicable because action has not been taken, the Act, nevertheless, may be enforced to prevent further or future violations, as the Act can be enforced by civil action for activities beyond those covered by the penal provisions. (Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs., supra, 263 Cal.App.2d at page 48.)

If a member of the public or news media believes that the Act has been, is being, or will be violated, that person's recourse is both informal and formal. Informally the individual may advise the legislative body or the attorney for the legislative body of his or her belief or, if appropriate, a superior governing body of the agency. If such informal action is unavailing, the individual's recourse is in the courts. The Act provides for court proceedings by any interested person to prevent violation of the Act or for determinations as to the applicability of the

Act to both past and future conduct of the legislative body. (Section 54960.) "Interested persons" may include a county or its officers on whose behalf an action may be filed by the county counsel or, in counties not having a county counsel, the district attorney. It was not intended, however, that the county counsel or the district attorney be invested with powers as a civil prosecutor in matters relating to the Act. (62 Ops.Cal.Atty.Gen. 150 (1979).)

Section 54960.5 provides that a plaintiff may receive attorney fees, but the award is against the agency, not the individual member or members who violated the act. The defendant agency also may receive attorney fees when it prevails in a final determination and when the proceeding against the agency is frivolous and without merit. (Sutter Sensible Planning, Inc. v. Board of Supervisors (1981) 122 Cal.App.3d 813.)

In Common Cause v. Stirling (1981) 119 Cal.App.3d 658, the trial court measured the petition for attorney fees under Section 54960.5 against the standards established in Code of Civil Procedure Section 1021.5, regarding the enforcement of an important right affecting the public interest. Since the trial court concluded that attorney fees would not have been justified under Section 1021.5, it refused to grant an award under the Act. The appellate court reversed, stating that even though recoveries would be small under normal principles, the damage was to the public integrity, and therefore, the Legislature had determined that public funds should be made available to pay for attorney fees to enforce these laws. Factors, which should be considered in determining whether an award of attorney fees would be "unjust" and therefore should not be made, include the effect of such an award on settlement, the necessity for the lawsuit, the lack of injury to the public, the likelihood that the problem would have been solved by other means, and the likelihood that the problem would reoccur in the absence of the lawsuit.

The case was remanded to the trial court which still concluded that the plaintiff was not entitled to attorney fees. The matter once again was appealed, and the appellate court reversed the trial court a second time. (Common Cause v. Stirling, supra, 147 Cal.App.3d 518.) The court held that the plaintiff was entitled to attorney fees because it had established a legal principle on behalf of the public.

I. Effect of failure to hold open meeting

Though one might believe that the taking of action by a legislative body in secret, when the law requires such action to be taken in an open meeting, should and would void the action, such is not the case. The courts have

consistently stated that the action is still valid. In Stribling v. Mailliard (1970) 6 Cal.App.3d 470, the court was considering an attack on the San Francisco police regulation concerning the carrying of guns by off-duty policemen. As to the plaintiff's contention that the regulation was invalid because adopted in secret, the court stated, at pages 474-475:

> "Appellants allege that the disputed regulation was passed by the Police Commission secretly. Interested members of the public, it is alleged were not permitted to express their views. The Ralph M. Brown Act (Gov. Code § 54950) is cited as stating the public policy of the state. But even if we assume that section 54950 applies to the challenged regulation, the regulation would not be invalidated. (Old Town Dev. Corp. v. Urban Renewal Agency, 249 Cal.App.2d 313 [57 Cal.Rptr. 426]; Claremont Taxpayers Assn. v. City of Claremont, 223 Cal.App.2d 589, 593-594 [35 Cal.Rptr. 907]; Adler v. City Council, 184 Cal.App.2d 763, 774-775 [7 Cal. Rptr. 805].) (Some of the effects of the Adler case were removed by legislation, but the proposal to make void any action taken at nonpublic meetings was objected to by the Governor and was eliminated from the proposed amendment to the statute. See 42 Ops.Cal.Atty.Gen. 61, 66.)"

(See also Santa Clara Federation of Teachers v. Governing Board (1981) 116 Cal.App.3d 831; Morris v. County of Marin (1977) 18 Cal.3d 901, 908-909, note 4; Griswold v. Mt. Diablo Unified Sch. Dist. (1976) 63 Cal.App.3d 648; Greer v. Board of Education (1975) 47 Cal.App.3d 98.) For a similar conclusion regarding the validity of an action taken in violation of the State Agency Act, see American Petroleum Institute v. Knecht (C.D.Cal. 1978) 456 F.Supp. 889, 913-914, affirmed (9th Cir. 1979) 609 F.2d 889.

III. SPECIAL CONSIDERATIONS RELATING TO SCHOOL DISTRICTS

One local agency of great public interest is the governing body of a school district. There are a few special rules which should be pointed out that are applicable to school districts as opposed to local agencies generally. These are additional to the Ralph M. Brown Act.

1. Under the circumstances delineated by statute, school districts may hold closed sessions to consider the suspension of or other disciplinary action as to any pupil, with the right of the pupil or his parent or guardian to

request a public hearing. (Education Code Sections 35146 and 48914(c).)

2. As to such disciplinary action, the board may not take final action in closed sessions, but must do so in a public meeting. (Education Code Sections 35147 and 48914(g); see also 44 Ops.Cal.Atty.Gen. 147 (1964); I.L. 61-93.)

3. A list of all agenda items for all regular meetings must be posted where parents and teachers may see them at least 48 hours in advance of regular meetings and 24 hours in advance of special meetings. (Education Code Section 35145.) Failure to post an agenda item will apparently void the action on such item. In Carlson v. Pasadena Unified Sch. Dist. (1971) 18 Cal.App.3d 196, the court held that an injunction was proper to prevent the closure of a school where the agenda item as to such school said nothing concerning closing it, but merely stated that a proposed school site change would be considered. It should be noted, however, that Government Code Section 54957, which authorizes closed sessions on personnel matters, provides an exception to the open meeting and posted agenda requirements of Education Code Section 35145.5. Thus, a governing board may consider personnel matters in closed session without posting a detailed agenda specifying the matters to be discussed. (Campbell Elementary Teachers Assn., Inc. v. Abbott (1978) 76 Cal.App.3d 796; Lucas v. Board of Trustees, supra, 18 Cal.App.3d 990.)

4. The school district governing board shall adopt reasonable regulations to insure that members of the public are able to (1) place matters directly related to school district business on the agenda of the governing board meetings and (2) address the board regarding items on the agenda. (Education Code Section 35145.5.)

IV. THE STATE AGENCY ACT

The Ralph M. Brown Act is by its terms not applicable to state agencies, but only local agencies. However, in the past the Attorney General has on occasion advised agencies which held regular meetings to follow the outline of the Act as a matter of policy. (See I.L. 66-21; I.L. 64-167; I.L. 64-69.) Since 1967 the state has had an act of general applicability to state boards and commissions which are required by law to conduct official meetings. The State Agency Open Meeting Act also applies to (1) commissions created by executive order, (2) multimember bodies on which a member of a state agency sits in his or her official capacity and which are supported in whole or in part by funds of the state agency or any of its members, and (3)

advisory bodies of three or more persons which are created by formal action of a state agency. (Sections 11121, 11121.7.)

The State Act does not apply to agencies whose meetings are required to be open and public by the Brown Act. (Torres v. Board of Commissioners, supra, 89 Cal.App.3d 545.) Agencies which are adjuncts of the court system, such as the Commission on Judicial Qualifications or the Judicial Council, and also agencies specifically exempted by law are excepted. As already noted, there are special provisions applicable to the Legislature and the Regents of the University of California which are set forth in the Appendix herein.

The state agency law is similar in many respects to the Ralph M. Brown Act, but in other respects is different, necessarily recognizing the difference in functions performed by the state as opposed to local agencies.

Some of the significant differences are:

1. The state law provides several statutory provisions for the holding of closed sessions tailored to the orderly functions of such agencies. For example, it provides:

a) Closed sessions for quasi-judicial determinations made by administrative agencies after an evidentiary hearing,

b) Closed sessions for the Franchise Tax Board to discuss confidential tax returns, as well as matters pertaining to the appointment or removal of the executive officer of the Franchise Tax Board,

c) Closed sessions for the selection of sites for state colleges, and

d) Closed sessions for the California Postsecondary Education Commission to consider matters pertaining to the appointment or termination of its director.

For these and other situations, Section 11126 of the Government Code should be consulted.

2. The state law contains specific agenda requirements. (Sections 11125 and 11125.1; see also: American Petroleum Institute v. Knecht, supra, 456 F.Supp. 889, 912-914, affirmed (9th Cir. 1979) 609 F.2d 889.)

3. The state law provides that a state agency shall designate an employee who shall attend its closed sessions and keep in a minute book a record of the topics discussed and decisions made at the meeting. (Section 11126.1.)

4. The state law provides that a state agency shall provide a copy of the State Agency Open Meeting Act to each member of the state agency upon his or her appointment to membership or on assumption of office. (Section 11121.9.)

5. The state law provides that prior to holding a closed session, a state agency shall state the general reason or reasons for the session, as well as the statutory or other legal authority under which such is being held. (Section 11126.3.)

6. The state law provides that attendance by a member of a state agency at a meeting of such agency with knowledge of the fact that the meeting is in violation of the State Agency Open Meeting Act is a misdemeanor. (Section 11130.7.)

V. CONCLUSION

The Office of the Attorney General has attempted herein to outline the provisions of the open meeting laws applicable to public agencies, primarily the Ralph M. Brown Act and, to a lesser degree, the act applicable to state agencies. It is to be again emphasized that this brochure is not to be considered a definitive statement of the law, but is prepared and furnished for informational purposes for members of the public or lay board members who wish to gain a general overview of these laws. Specific situations must be determined on their own facts and circumstances. The officers or attorneys of the local agency or the district attorney or county counsel of a county are the appropriate persons to address inquiries regarding the Ralph M. Brown Act, or a private attorney should be consulted for advice.

APPENDIX

54

THE RALPH M. BROWN ACT

Government Code Sections 54950 - 54961

§ 54950. Policy declaration

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

§ 54950.5. Title

This chapter shall be known as the Ralph M. Brown Act.

§ 54951. Definition of local agency

As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

§ 54951.1. Certain antipoverty organizations included

For the purposes of this chapter, and to the extent not inconsistent with federal law, the term "local agency" shall include all private nonprofit organizations that receive public money to be expended for public purposes pursuant to the "Economic Opportunity Act of 1964" (PL 88-452; 78 Stats 508) [42 USCS §§ 2701 et seq.].

§ 54951.7. Definition of local agency

"Local agency" includes any nonprofit corporation, created by one or more local agencies, any one of the members of whose board of directors is appointed by such local agencies and which is formed to acquire, construct, reconstruct, maintain or operate any public work project.

§ 54952. Definition of legislative body

As used in this chapter, "legislative body" means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation.

§ 54952.2. Bodies with delegated authority included

As used in this chapter, "legislative body" also means any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body.

§ 54952.3. Advisory commissions, committees, and bodies included

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.

Meetings of such advisory commissions, committees or bodies concerning subjects which do not require an examination of facts and data outside the territory of the local agency shall be held within the territory of the local agency and shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting.

If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws, or by whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. No other notice of regular meetings if required.

"Legislative body" as defined in this section does not include a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body.

The provisions of Sections 54954, 54955, 54955.1, and 54956 shall not apply to meetings under this section.

§ 54952.5. Boards or commissions included

As used in this chapter "legislative body" also includes, but is not limited to, planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency.

§ 54952.6. Definition of action taken

As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

§ 54952.7. Giving copies of law to legislative body members

A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

§ 54953. Open meetings

All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

§ 54953.1. Right to testify in private

The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

§ 54953.3. Registration not mandatory

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to

the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

§ 54953.5. Tape recording

Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings on a tape recorder in the absence of a reasonable finding of the legislative body of the local agency that such recording constitutes, or would constitute, a disruption of the proceedings.

§ 54953.7. Greater access to meetings permitted

Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

§ 54954. Conduct of business; time and place for regular meetings

The legislative body of a local agency shall provide, by ordinance, resolution, by-laws, or by whatever other rule is required for the conduct of business by that body, the time for holding regular meetings. Unless otherwise provided for in the act under which the local agency was formed, meetings of the legislative body need not be held within the boundaries of the territory over which the local agency exercises jurisdiction. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If, by reason of fire, flood, earthquake or other emergency, it shall be unsafe to meet in the place designated, the meetings may be held for the duration of the emergency at such place as is designated by the presiding officer of the legislative body.

§ 54954.1. Notice of meetings upon request

The legislative body of any district which is subject to the provisions of this chapter shall give mailed notice of every regular meeting, and any special meeting which is called at least one week prior to the date set for the meeting, to any owner of property located within the district who has filed a written request for such notice with the legislative body.

Any mailed notice required pursuant to this section shall be mailed at least one week prior to the date set for the meeting to which it applies except that the legislative body may give such notice as it deems practical of special meetings called less than seven days prior to the date set for the meeting.

Any request for notice filed pursuant to this section shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for notice shall be filed within 90 days after January 1 of each year. Any request for notice, or renewal request, filed pursuant to this section shall contain a description of the property owned by the person filing the request. Such description may be in general terms but shall be sufficient enough to readily identify such property.

The legislative body may establish a reasonable annual charge for sending such notice based on the estimated cost of providing such a service.

§ 54955. Adjournment

The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

§ 54955.1. Continuance

Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section

54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

§ 54956. Special meeting

A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering personally or by mail written notice to each member of the legislative body and to each local newspaper of general circulation, radio or television station requesting notice in writing. Such notice shall be delivered personally or by mail and shall be received at least 24 hours before the time of such meeting as specified in the notice./ The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by the legislative body./ Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

§ 54956.5. Emergency meeting

In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with the 24-hour notice requirement of Section 54956

For purposes of this section, "emergency situation" means any of the following:

(a) Work stoppage or other activity which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(b) Crippling disaster which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

However, each local newspaper of general circulation and radio or television station which has requested notice of special meetings pursuant to Section 54956 shall be notified

by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting by telephone and shall exhaust all telephone numbers provided in the most recent request of such newspaper or station for notification of special meetings. In the event that telephone services are not functioning the notice requirements of this section shall be deemed waived, and the legislative body, or designee thereof, shall notify such newspapers, radio stations, or television stations of the fact of the holding of the special meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

Notwithstanding the provisions of Section 54957, the legislative body shall not meet in closed session during a meeting called pursuant to this section.

All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour notice requirement.

The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at such meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

§ 54956.6. Fees

No fees may be charged by the legislative body of a local agency for carrying out any provision of this chapter, except as specifically authorized by this chapter.

§ 54956.7. Closed session: Licensing matter

Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the

public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not be disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

§ 54956.8. Closed session: Real estate negotiations

Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies the real property or real properties which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

For the purpose of this section, the negotiator may be a member of the legislative body of the local agency.

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

§ 54956.9. Closed session: Pending litigation

Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(a) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the local agency is a party, has been initiated formally.

(b)(1) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of

its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency; or

(2) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) of this subdivision.

(c) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state publicly to which subdivision it is pursuant. If the session is closed pursuant to subdivision (a), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

The legal counsel of the legislative body of the local agency shall prepare and submit to the body a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to subdivision (a), the memorandum shall include the title of the litigation. If the closed session is pursuant to subdivision (b) or (c), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the body prior to the closed session if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.1.

For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

§ 54957. Closed sessions

Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right to access to public services or public facilties, or from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of

performance, or dismissal of a public employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing. The legislative body also may exclude from any such public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

For the purpose of this section, the term "employee" shall not include any person elected to office, or appointed to an office by the legislative body of a local agency; provided, however, that nonelective positions of city manager, county administrator, city attorney, county counsel, or a department head or other similar administrative officer of a local agency shall be considered employee positions; and provided, further that nonelective positions of general manager, chief engineer, legal counsel, district secretary, auditor, assessor, treasurer, or tax collector of any governmental district supplying services within limited boundaries shall be deemed employee positions.

Nothing in this chapter shall be construed to prevent any board, commission, committee, or other body organized and operated by any private organization as defined in Section 54952 from holding closed sessions to consider (a) matters affecting the national security, or (b) the appointment, employment, evaluation of performance, or dismissal of an employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing. Such body also may exclude from any such public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

§ 54957.1. Report of employment determinations

The legislative body of any local agency shall publicly report at the public meeting during which the closed session is held or at its next public meeting any action taken, and any roll call vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the legislative body.

§ 54957.2. Minutes of closed session

(a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5

(commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session.

(b) An elected legislative body of a local agency may require that each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body keep a minute book as prescribed under subdivision (a).

§ 54957.5. Agendas and other materials: Public records

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by a member, officer, employee, or agent of such body for discussion or consideration at a public meeting of such body, are public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) as soon as distributed, and shall be made available pursuant to Sections 6253 and 6256. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7.

(b) Writings which are public records under subdivision (a) and which are distributed prior to commencement of a public meeting shall be made available for public inspection upon request prior to commencement of such meeting.

(c) Writings which are public records under subdivision (a) and which are distributed during a public meeting and prior to commencement of their discussion at such meeting shall be made available for public inspection prior to commencement of, and during, their discussion at such meeting.

(d) Writings which are public records under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) Nothing in this section shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6257. The writings described in subdivisions (b), (c), and (d) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1), and subdivisions (b), (c), and (d) shall not be construed to exempt from public inspection any

record covered by that act, or to limit the public's right to inspect any record required to be disclosed by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a legislative body of the local agency. Nothing in this chapter shall be construed to require a legislative body or a local agency to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

§ 54957.6. Closed sessions: Employee salaries and benefits

Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees. Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives. Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

§ 54957.7. Statement of reasons and authority for closed session

Prior to (~~or after~~ holding) any closed session, the legislative body of the local agency shall state the general reason or reasons for the closed session, and (~~may~~) cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the legislative body may consider only those matters covered in its statement. In the case of special (, adjourned) and continued meetings, the statement shall be made as part of the notice provided for the ~~special~~ (, adjourned), or continued meeting. Nothing in this section shall require or authorize the giving of names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session.

§ 54957.9. Disruption of meeting; clearing room

In the event that 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 legislative 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. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

§ 54958. Application of chapter

The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

§ 54959. Violation of chapter: Criminal penalty

Each member of a legislative body who attends a meeting of such legislative body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

§ 54960. Civil action for violation of chapter

Any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body.

§ 54960.5. Costs and attorney fees

A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960 where it is found that a legislative body of the local agency has violated the provisions of this article. Such costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee thereof.

A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

§ 54961. Discrimination

No local agency shall conduct 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. This section shall apply to every local agency as defined in Section 54951, 54951.1, or 54951.7.

* * * *

THE STATE AGENCY ACT

Government Code Sections 11120-11131

§ 11120. Policy statement; requirement for open meetings

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

§ 11121. State body; defined

As used in this article "state body" means every state board, or commission, or similar multimember body of the state which is required by law to conduct official meetings and every commission created by executive order, but does not include:

(a) State agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act, (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Sections 9027 to 9032, inclusive).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 1702 of the Health and Safety Code, except as provided in Section 1720 of the Health and Safety Code.

(f) State agencies provided for in Section 11770.5 of the Insurance Code.

§ 11121.2. State body; multimember agency

As used in this article, "state body" also means any board, commission, committee, or similar multimember body which exercises any authority of a state body delegated to it by that state body.

§ 11121.7. Member of state body acting in official capacity as member of other agency

As used in this article, "state body" also means any board, commission, committee, or similar multimember body on which a member of a body which is a state body pursuant to Section 11121, 11121.2, or 11121.5 serves in his or her official capacity as a representative of such state body and which is supported, in whole or in part, by funds provided by the state body, whether such body is organized and operated by the state body or by a private corporation.

§ 11121.8. Applicability to advisory bodies

As used in this article, "state body" also means any advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

§ 11121.9. Requirement to provide law to members

Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

§ 11122. Action taken, defined

As used in this article "action taken" means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

§ 11123. Requirement for open meeting

All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

§ 11124. No conditions for attending meetings

No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

§ 11124.1. Right to record meetings

Any person attending an open and public meeting of the state body shall have the right to record the proceedings on a tape recorder in the absence of a reasonable finding of the state body that such recording constitutes, or would constitute, a disruption of the proceedings.

§ 11125. Required notice

(a) The state body shall provide notice of its meeting to any person who requests such notice in writing. Notice shall be given at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The notice requirement shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public, provided, however, that no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The notice of a meeting of a body which is a state body as defined in Section 11121, 11121.2, 11121.5, or 11121.7, shall include a specific agenda for the meeting, which shall include the items of business to be transacted or discussed, and no item shall be added to the agenda subsequent to the provision of this notice.

(c) The notice of a meeting of an advisory body, which is a state body as defined in Section 11121.8, shall include a brief, general description of the business to be transacted or discussed, and no item shall be added subsequent to the provision of the notice.

(d) Notice of a meeting of a state body which complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(e) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(f) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

§ 11125.1. Public records

(a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by a member, officer, employee, or agent of such body for discussion or consideration at a public meeting of such body, are public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) as soon as distributed, and shall be made available pursuant to Sections 6253 and 6256. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7.

(b) Writings which are public records under subdivision (a) and which are distributed prior to commencement of a public meeting shall be made available for public inspection upon request prior to commencement of such meeting.

(c) Writings which are public records under subdivision (a) and which are distributed during a public meeting and prior to commencement of their discussion at such meeting shall be

made available for public inspection prior to commencement of, and during, their discussion at such meeting.

(d) Writings which are public records under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6257. The writing described in subdivisions (b), (c), and (d) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to exempt from public inspection any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

§ 11125.2. Announcement of personnel action

Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

§ 11125.5. Emergency meeting, defined; notice; public report

In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125.

For purposes of this section "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(a) Work stoppage or other activity which severely impairs public health, safety, or both.

(b) Crippling disaster which severely impairs public health, safety, or both.

(c) Difficulties with examinations for licensure which require immediate attention.

(d) Administrative disciplinary matters, including, but not limited to, consideration of proposed decisions and stipulations, and pending litigation, which require immediate attention.

(e) Consideration of applications for licensure where a decision must be made in less than 10 days.

(f) Consideration by a licensing agency of proposed legislation which requires immediate attention due to legislative action which may be taken prior to the next regularly scheduled meeting of the agency, or due to time limitations imposed by law.

(g) Action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code if a 10-day delay would detrimentally affect the ability to provide or operate low- or moderate-income housing or seriously affect the fiscal integrity of the program pursuant to which the loan or grant was made or the assisted housing development.

However, newspapers of general circulation and radio or television stations which have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. In the event that telephone services are not functioning the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify such newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at such meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

§ 11126. Closed sessions

(a) Nothing contained in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless such employee requests a

public hearing. As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void. The state body also may exclude from any such public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body. Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

For the purposes of this section, "employee" shall not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees.

(b) Nothing in this article shall be construed to prevent state bodies which administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(c) Nothing in this article shall be construed to prevent an advisory body of a state body which administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters which the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(d) Nothing in this article shall be construed to prohibit a state body from holding a closed session to deliberate on a decision to be reached based upon evidence introduced in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 or similar provision of law.

(e) Nothing in this article shall be construed to prevent any state body from holding a closed session to consider matters affecting the national security.

(f) Nothing in this article shall be construed to grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(g) Nothing in this article shall be construed to prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests which the donor or proposed donor has requested in writing to be kept confidential.

(h) Nothing in this article shall be construed to prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(i) Nothing in this article shall be construed to prevent the Trustees of the California State University from holding closed sessions dealing with site selection for the state university.

(j) Nothing in this article shall be construed to prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(k) Nothing in this article shall be construed to prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or data the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the executive officer of the Franchise Tax Board.

(l) Nothing in this article shall be construed to prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under the provisions of Section 6027 of the Penal Code.

(m) Nothing in this article shall be construed to prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(n) Nothing in this article shall be construed to prevent a state body which invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues which could have a material effect on the net income of the corporation.

(o) Nothing in this article shall be construed to prevent a state body, or such boards, commissions, administrative officers, or other representatives as may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(p) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against regulated utilities.

(q) Nothing in this article shall be construed to prevent a state body from holding a closed session to confer with legal counsel regarding pending litigation when discussion in open session concerning those matters would adversely affect or be detrimental to the public interest.

(r) Nothing in this article shall be construed to prevent a state body which invests in retirement, pension, or endowment funds from holding closed sessions to confer with legal counsel regarding pending litigation, when discussion in open session concerning these matters would adversely affect, or be detrimental to, those funds. For purposes of subdivision (q) and this subdivision, litigation shall be considered pending when a complaint, claim or petition for writ of mandate has been filed, or the threat of litigation is imminent in the sound opinion of the state body.

(s) Nothing in this article shall be construed to prevent the examining committee established by the State Board of Forestry, pursuant to Section 763 of the Public Resources

Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(t) Nothing in this article shall be construed to prevent an administrative committee established by the State Board of Accountancy pursuant to section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountarncy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(u) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter which properly could be considered in closed session by the state body whose authority it exercises.

(v) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter which properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(w) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.8 from conductiong a closed session to consider any matter which properly could be considered in a closed session by the state body it advises.

(x) Nothing in this article shall be construed to prevent the State Board of Equalization from holding closed sessions when considering matters pertaining to the appointment or removal of the executive secretary of the State Board of Equalization, or for the purpose of hearing confidential taxpayer appeals or data the public disclosure of which is prohibited by law.

(y) Nothing in this article shall be construed to prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

§ 11126.1. Minutes; availability

The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

§ 11126.3. Public notice and legal authority for closed session

Prior to holding any closed session, the state body shall state the general reason or reasons for the closed session, and cite the specific statutory authority, including the particular section and subdivision, or other legal authority under which the session is being held. In the closed session, the state body may consider only those matters covered in its statement. The statement shall be made as part of the notice provided for the meeting and of any order or notice required by Section 11129. Nothing in this section shall require or authorize the giving of names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session.

§ 11126.5. Removal of disruptive persons

In the event that 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 state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a precedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

§ 11126.7. Charging fees prohibited

No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

§ 11127. State bodies covered

Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

§ 11128. Time restrictions for holding closed sessions

Each closed session of a state body shall be held only during a regular or special meeting of the body.

§ 11129. Continuation of meeting; notice requirement

Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body which is noticed pursuant to Section 11125. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

§ 11130. Legal remedies to stop or prohibit violations of act

Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to actions or threatened future action by members of the state body.

§ 11130.5. Court costs; attorney's fees

A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 where it is found that a state body has violated the provisions of this article. Such costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof.

A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

§ 11130.7. Violation with knowledge; misdemeanor

Each member of a state body who attends a meeting of such body in violation of any provision of this article, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

§ 11131. Prohibited meeting facilities; discrimination

No state agency shall conduct 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. As used in this section, "state agency" means and includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

* * *

§ 35145. Except as provided in Sections 54957 and 54957.6 of the Government Code and in Section 35146 of, and subdivision (c) of Section 48914 of, this code, all meetings of the governing board of any school district shall be open to the public, and all actions authorized or required by law of the governing board shall be taken at such meetings and shall be subject to the following requirements:

(a) Minutes must be taken at all such meetings, recording all actions taken by the governing board. Such minutes shall constitute public records, and shall be available to the public.

(b) An agenda shall be posted at a place where members of the public, including district employees, may view the same at least 48 hours prior to the time of regular meetings and at least 24 hours prior to special meetings. This agenda must include, but is not limited to, items on which the governing board may take action at that meeting. (See similar Section 72121 relating to community colleges.)

§ 35145.5. It is the intent of the Legislature that members of the public be able to place matters directly related to school district business on the agenda of school district governing board meetings, and that members of the public be able to address the board regarding items on the agenda as such items are taken up. Governing boards shall adopt reasonable regulations to insure that this intent is carried out. Such regulations may specify reasonable procedures to insure the proper functioning of governing board meetings.

This subdivision shall not preclude the taking of testimony at regularly scheduled meetings on matters not on the agenda which any member of the public may wish to bring before the board, provided that no action is taken by the board on such matters at the same meeting at which such testimony is taken. Nothing in this paragraph shall be deemed to limit further discussion on the same subject matter at a subsequent meeting. (See similar Section 72121.5 relating to community colleges.)

§ 35146. Notwithstanding the provisions of Section 35145 of this code and Section 54950 of the Government Code, the governing body of a school district shall, unless a request by the parent has been made pursuant to this section, hold closed sessions if the board is considering the suspension of, or disciplinary action or any other action except

expulsion in connection with any pupil of the school district, if a public hearing upon such question would lead to the giving out of information concerning school pupils which would be in violation of Article 5 (commencing with Section 49073) of Chapter 6.5 of Part 27 of this code.

Before calling such closed session of the governing board of the district to consider these matters, the governing board of the district shall, in writing, by registered or certified mail or by personal service, if the pupil is a minor, notify the pupil and his or her parent or guardian, or the pupil if the pupil is an adult, of the intent of the governing board of the district to call and hold such closed session. Unless the pupil, or his or her parent, or guardian shall, in writing, within 48 hours after receipt of such written notice of intention, request that the hearing of the governing board be held as a public meeting, then the hearing to consider such matters shall be conducted by the governing board in closed session. If such written request is served upon the clerk or secretary of the governing board, the meeting shall be public except that any discussion at such meeting that might be in conflict with the right to privacy of any pupil other than the pupil requesting the public meeting or on behalf of whom such meeting is requested, shall be in closed session. Whether the matter is considered at a closed session or at a public meeting, the final action of the governing board of the school district shall be taken at a public meeting and the result of such action shall be a public record of the school district.

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SPECIAL PROVISIONS

STATE LEGISLATURE

Government Code Sections 9027-9032

§ 9027. All meetings of the Assembly and Senate and the committees and subcommittees thereof, and any conference committee, shall be open and public and all the proceedings shall be conducted openly so that the public may remain informed, except as otherwise provided in this article.

All meetings of any conference committee shall be open to press representatives accredited by the Joint Rules Committee.

§ 9028. Any such meetings at which the discussion or adoption of any proposed resolution, rule, regulation, or formal action occurs, or at which a majority or quorum of the body is in attendance, shall be held only after full and timely notice to the public as provided by the Joint Rules of the Senate and Assembly.

§ 9029. Nothing contained in this article shall be construed to prevent: the Assembly or the Senate or a committee or subcommittee thereof from holding executive sessions to consider the appointment of members to committees or to the chairmanship or vice chairmanship thereof, or 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, or an elected public official, or to consider matters relating to internal house management, or to consider assignment of bills to committee, or affecting the safety and security of the State Capitol or Members of the Legislature, its staff and employees, or the Members of the Assembly or the Senate from meeting privately in caucus with members of their own political party.

§ 9030. Each Member of the Legislature who attends a meeting of the Assembly, the Senate, or any committee or subcommittee thereof, where action is taken in violation of Section 9027, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

§ 9031. Any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of Section 9027 by Members of the Legislature or to determine the applicability of this chapter to actions or threatened future action of the Legislature.

§ 9032. If any provision of this article, or the application thereof, to any person or circumstance is held invalid, the validity of the remainder of such article and the application of such provision to other persons and circumstances shall not be affected thereby.

* * *

SPECIAL PROVISIONS
REGENTS UNIVERSITY OF CALIFORNIA
California Constitution, Article IX,
Section 9, Subdivision (g)
Education Code Sections 92030, 92032, 92033

CALIFORNIA CONSTITUTION

§ 9(g). Meetings of the Regents of the University of California shall be public, with exceptions and notice requirements as may be provided by statute.

EDUCATION CODE

§ 92030. All meetings of the Regents of the University of California shall, except as otherwise provided in this article, be subject to Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

§ 92032. Notwithstanding any provision of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code:

(a) The Regents of the University of California may, as occasioned by necessity, hold special meetings. The regents shall give public notice for these meetings. This notice shall be given by means of a notice hand delivered or mailed to any newspaper of general circulation, or any television or radio station, so that the notice may be published or broadcast at least 72 hours before the time of the meeting. The notice shall specify the time, place, and agenda of the special meeting. The regents shall not consider any business not included in the agenda portion of the notice. Failure to satisfy the provisions of this subdivision shall not be excused by the fact that no action was taken at the special meeting.

(b) The Regents of the University of California may conduct closed sessions when it meets to consider or discuss:

(1) Matters affecting the national security.

(2) The conferring of honorary degrees or other honors or commemorations.

(3) Matters involving gifts, devises, and bequests.

(4) Matters involving the purchase or sale of investments for endowment and pension funds.

(5) Matters involving litigation, when discussion in open session concerning those matters would adversely affect, or be detrimental to, the public interest.

(6) The acquisition or disposition of property, if discussion of these matters in open session could adversely affect the regents' ability to acquire or dispose of the property on the terms and conditions it deems to be in the best public interest.

(7) Matters concerning the appointment, employment, performance, compensation, or dismissal of university officers or employees, excluding individual regents other than the president of the university.

(8) Matters relating to complaints or charges brought against university officers or employees, excluding individual regents other than the president of the university, unless the officer or employee requests a public hearing.

(c) While a witness is being examined during any open or closed session, any or all other witnesses in the investigation may be excluded from the proceedings by the regents.

(d) Committees of the regents may conduct closed sessions on Medi-Cal contract negotiations.

(e) The nominating committee of the regents may conduct closed sessions held for the purpose of proposing officers of the board and members of the board's various committees.

(f) Committees of the regents may conduct closed sessions held for the purpose of proposing a student regent.

(g) The regents shall not be required to give public notice of meetings of special search or selection committees held for the purpose of conducting interviews for university officer positions.

§ 92033. The Regents of the University of California shall provide a copy of this article and Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, to each regent upon his or her appointment to the board or assumption of the office of regent.

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SPECIAL PROVISIONS
CALIFORNIA STATE UNIVERSITY
Education Code Sections 89920-89928

Article 2. Meetings, Elections, and Judicial Determinations

§ 89920. Each governing board, or any subboard of the governing board, of an auxiliary organization shall conduct its business in public meetings. All governing board and subboard meetings shall be open and public, and all persons shall be permitted to attend any meeting of the governing board or subboard of an auxiliary organization, except as otherwise provided in this article.

§ 89921. Each governing board and subboard shall annually establish, by resolution, bylaws, or whatever other rule is required for the conduct of business by that body, the time and locations for holding regular meetings. Each governing board and subboard shall, at least one week prior to the date set for the meeting, give written notice of every regular meeting, and any special meeting which is called, at least one week prior to the date set for the meeting, to any individual or medium that has filed a written request for notice. Any request for notice filed pursuant to this section shall be valid for one year from the date on which it is filed unless a renewal request is filed.

No agenda requirement. See 89924 →

§ 89922. A special meeting may be called at any time by the presiding officer of a governing board or subboard, or by a majority of the members of the governing board or subboard, by delivering personally or by mail written notice to each member of the board or subboard, and to any medium or other party to be directly affected by a meeting, or any other person who has requested notice in writing. The call and notice of a special meeting shall be delivered at least 24 hours prior to any meeting and shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at these meetings by the governing board or subboard. Written notice may be dispensed with as to any member who, at or prior to the time the meeting convenes, files with the clerk or the secretary of the governing board or subboard a written waiver of notice. The waiver may be given by telegram. Written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

§ 89923. Any governing board or subboard may hold closed sessions to consider matters relating to litigation, collective bargaining, or the appointment, employment,

evaluation of performance, or dismissal of an employee, or to hear complaints or charges brought against an employee by another person or employee, unless the employee requests a public hearing. For the purposes of this section, "employee" does not include any person elected or appointed to an office. A board or subboard, upon a favorable majority vote of its members, may also hold a closed session to discuss investments where a public discussion could have a negative impact on the auxiliary organization's financial situation. In this case, a final decision shall only be made during public sessions.

§ 89924. No governing board or subboard shall take action on any issue until that issue has been publicly posted for at least one week.

§ 89925. Each auxiliary organization shall establish, by constitution, statute, bylaws, or resolution, provisions for elections of officers and board members. These provisions shall be designed to allow all those eligible to vote complete access to all information on issues and candidates. These provisions shall include, but not be limited to, provisions for sample ballots, numbers of days and hours for voting, polling locations, and notice of elections.

§ 89926. Where the constitution or articles of incorporation of an associated students auxiliary organization provides for a judiciary or judicial council with powers separate from the governing board of the auxiliary organization, decisions rendered by the judiciary or judicial council shall be final.

§ 89927. Each member of a governing board pursuant to this article who attends a meeting of the governing board where action is taken in violation of any provision of this article, with knowledge of the fact that the meeting is in violation of this article, is guilty of a misdemeanor.

§ 89928. This article is applicable to the governing board of any statewide student organization which represents the students of the California State University and student body organizations of the campuses of the California State University.

* * *

STATE OF CALIFORNIA

PUBLIC INQUIRY UNIT
OFFICE OF THE ATTORNEY GENERAL
1515 K STREET, SUITE 511
SACRAMENTO, CA 95814

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A - 437b

To Gene Erbin
from Ben Davis Jr.
372-0963

Brown Act

Bagley-Keene Open Meeting Act is directory or mandatory. " . . . we consider the legislative history of the statute as well as the historical circumstances of its enactment in determining the intent of the Legislature. . . " (People v. Black (1982) 32 Cal. 3d 15.)

Until 1961, the Ralph M. Brown Act contained no sanctions for the violation of the provisions. In Adler v. City Council (1960) 184 Cal. App. 2d 763 the court considered, inter alia, what the effect of violating the open meeting requirements of the act were, that is, did it invalidate action taken at the meeting?[4] In this respect the court stated:

"[1b] We think Turk v. Richard, *supra* , 47 So.2d 543, correctly reflects the spirit of ourBrown Act and we conclude that the dinner gathering of June 13, 1958, did not violate the statute, even upon the assumption that that law did apply to charter cities at the time in question.

"[5a] *But if the contrary were true it would not follow that the action of the zoning commission (much less that of the city council) in granting a conditional use change was invalidated by the commission's violation of the act.*

"It provides no penalty for infraction and no method of enforcement. Ordinarily this implies absence of intent to make the statute mandatory, existence of intent to leave it in the discretionary class. [6] 'The requirements of a statute are directory, not mandatory, unless means be provided for its enforcement.' (Gowanlock v. Turner, 42 Cal. 2d 296, 301 [267 P.2d 310].) See also Whitley v. Superior Court, 18 Cal. 2d 75, 80 [113 P.2d 449]; Abbott v. City of San Diego, 165 Cal. App. 2d 511, 524 [332 P.2d 324]; Jefferson Union Sch. Dist. v. City Council, 129 Cal. App. 2d 264, 266 [277 P.2d 104]. Of course, violation of a directory statute does not result in invalidity of the action so taken (see 82 C.J.S., § 374, p. 869).

"[5b] However, in view of the public purpose of the Brown Act, which is directed toward the conduct of public officials, we believe that section 1222, Government Code, and section 177, Penal Code, are here applicable and give mandatory complexion to the act. Government Code, section 1222: 'Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor.' Penal Code, section 177: 'When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.'

"*This is one of those instances in which the prescribed penalty for violation of the law precludes all others* (*cf.* John E. Rosasco Creameries v. Cohen, 276 N.Y. 274 [11 N.E.2d 908, 909, 118 A.L.R. 641]; Luchini v. Roux, 29 Cal. App. 755, 759 [157 P. 534]; Marconi W.T. Co. v. North P.S. Co., 36 Cal. App. 653, 658–659 [173 P. 103]; Vick v. Patterson, 158 Cal. App. 2d 414, 417 [322 P.2d 548]; In re Peterson's Estate, 230 Minn. 478 [42 N.W.2d 59, 63]; 55 A.L.R.2d annotation at 487), and leaves private persons, though taxpayers, without any right to declaratory relief or injunction incidental thereto. (Oppenheimer v. Clifton's Brookdale, Inc., 98 Cal. App. 2d 403, 404–405 [220 P.2d 422]; Triangle Ranch, Inc. v. Union Oil Co., 135 Cal. App. 2d 428, 434–437 [287 P.2d 537].)" (*Id.* , at pp. 774–775, emphasis added.)[5]

Since the decision in Adler v. City Council the courts have uniformly held that a violation of the open meeting requirements of the Ralph M. Brown Act would not invalidate action taken at such meeting, but would only subject the violators to possible criminal penalties. (See Griswold v. Mt. Diablo Unified Sch. Dist. (1976) 63 Cal. App. 3d 648, 656–658; Greer v. Board of Education (1975) 47 Cal. App. 3d 98, 120–122; Strobling v. Mailliard (1970) 6 Cal. App. 3d 470, 474; Old Town Dev. Corp. v. Urban Renewal Agency (1967) 249 Cal. App. 2d 313, 329; Claremont Taxpayers Assn. v. City of Claremont (1963) 223 Cal. App. 2d 589, 593.)

The foregoing case law, besides being the progeny of action taken during the 1961 legislative session. This action is summarized in Griswold v. Mt. Diablo Unified Sch. Dist., *supra*, 63 Cal. App. 3d at page 657 as follows:

"After Adler was decided the Legislature amended the Brown Act to add section 54959 which provides: 'Each member of a legislative body who attends a meeting of such legislative body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.' The Governor vetoed the first bill that would have added section 54959 because the bill contained a provision making any action taken at a meeting in violation of the Brown Act void. The Governor stated in his veto message, 'I believe that this bill would seriously imperil the finality of all local legislative decisions.' (Assem. Daily J. (May 8, 1961) p. 3430.) Thereafter, the Legislature passed and the Governor signed a bill which added section 54959 but eliminated the provision that would have made void any action taken at nonpublic meetings. (Stribling v. Mailliard (1970) 6 Cal. App. 3d 470, 474–475 [85 Cal.Rptr. 924]; 42 Ops. Cal. Atty. Gen. 61, 66.)

"Thus, the holding in Adler has not been rendered invalid by subsequent legislative enactments. . . . "[6]

[4]Many other points considered in Adler have been supplanted by subsequent legislation or later case law. See, e.g., 42 Ops. Cal. Atty. Gen. 61 (1963) analyzing 1961 amendments to the Ralph M. Brown Act and Sacramento Newspaper Guild v. Sacramento County Bd. of Supvrs. (1968) 263 Cal. App. 2d 41 (luncheon gathering of board of supervisors "meeting" within meaning of the act). Under this later case (and numerous opinions of this office) the dinner gathering would have violated the act.

[5]The test set forth in Adler that a statute generally may be said to be directory or mandatory depending on whether or not sanctions have been provided for its violation, and oft repeated in subsequent case law (e.g., Griswold v. Mt. Diablo Unified Sch. Dist. (1976) 63 Cal. App. 3d 648, 656), has apparently been disapproved by our Supreme Court. (See People v. McGee (1977) 19 Cal. 3d 948, 962, fn. 5.)

[6]Additionally, in 1961 the Legislature added section 54960 (amended in 1969 . . .

test for determining whether a provision should be given 'directory' or 'mandatory' effect. 'In order to determine whether a particular statutory provision . . . is mandatory or directory, the court, as in all cases of statutory construction and interpretation, must ascertain the legislative intent. In the absence of express language, the intent must be gathered from the terms of the statute construed as a whole, from the nature and character of the act to be done, and from the consequences which would follow the doing or failure to do the particular act at the required time. [Citation.] *When the object is to subserve some public purpose, the provision may be held directory or mandatory as will best accomplish that purpose* [citation]. . . .' " (Italics added.) (*Morris* v. *County of Marin*, *supra*, 18 Cal.3d 901, 909-910.)[5]

In emphasizing that the designation of a statute as either mandatory or directory must be made with reference to the statute's purpose, *Pulcifer* reiterated the teachings of earlier decisions of both this court and the United States Supreme Court. **(8)** In *Ryan* v. *Byram*, *supra*, 4 Cal.2d 596, 604, our court, quoting at length from Cooley's respected Treatise on Taxation, observed in regard to the directory-mandatory determination that " 'the construction of particular provisions must be left for determination in such light as the obvious purpose they were intended to accomplish may afford. . . . No one should be at liberty to plant himself upon the nonfeasances or misfeasances of officers . . . which in no way concern himself, and make them the excuse for a failure on his part to perform his own duty. On the other hand, he ought always to be at liberty to insist that directions which the law has given to its officers *for his benefit* shall be observed.' " (Italics added.)

In *French* v. *Edwards* (1872) 80 U.S. (13 Wall.) 506, 511 [20 L.Ed. 702, 703], Justice Field, writing for a unanimous court, drew a similar distinction between statutory procedures which are not related to the protection of individual citizens and those procedures which are designed for an affected individual's benefit. **(9)** Justice Field wrote: "There are undoubtedly many statutory requisitions intended for the guide of officers in the conduct of business devolved upon them, which do not limit their power or render its exercise in disregard of the

[5] In *Morris* we pointed out that the dictum in *Gowanlock* v. *Turner* (1954) 42 Cal.2d 296, 301 [267 P.2d 310] to the effect that "[t]he requirements of a statute are directory, not mandatory, unless means be provided for its enforcement" "is not an accurate expression of the applicable California caselaw on the subject. (See, e.g., *Carter* v. *Seaboard Finance Co.* [(1949)] 33 Cal.2d 564, 573 [203 P.2d 758].)" (*Morris* v. *County of Marin*, *supra*, 18 Cal.3d 901, 910, fn. 5.) To avoid future confusion, we now specifically disapprove this dictum in *Gowanlock*.

requisitions ineffective. Such generally are regulations designed to secure order, system and dispatch in proceedings, and by a disregard of which the rights of parties interested cannot be injuriously affected. Provisions of this character are not usually regarded as mandatory. . . . But when the requisitions prescribed are intended for the protection of the citizen, . . . and by a disregard of which his rights might be and generally would be injuriously affected, they are not directory but mandatory. They must be followed or the acts done will be invalid. . . ."[6]

(2c) Under these authorities, the pertinent question in the instant case is whether the statutory requirement at issue was intended to provide protection or benefit to those individuals accused of welfare fraud or was instead simply designed to serve some collateral, administrative purpose.

The People claim that the statutory provision was not enacted for the benefit of those accused of welfare fraud, but rather to advance the financial interests of the state. Emphasizing that the Legislature specifically declined to bar prosecution even when an accused willingly makes restitution, the People tender two explanatory hypotheses for their position that the Legislature intended to protect the state, not its defendants. They argue that the Legislature either concluded that the chances were better to obtain restitution from alleged welfare defrauders if the state sought restitution before it filed criminal charges, or that the Legislature simply desired that the state pursue the less costly efforts for civil restitution before incurring the greater expense of criminal prosecution. In either event, the People assert, the Legislature did not mean to provide any benefit to criminal defendants; hence the state's failure to comply with the statute should not inure to a defendant's benefit.

Although the fiscal considerations suggested by the People may well have played some role in the enactment of the statutory provisions at issue, we believe that the legislation was also designed to provide at least some modicum of protection to individuals accused of welfare fraud.

First, the legislative history of the 1957 enactment, discussed above, suggests that the draftsmen intended the legislation to provide benefits to such individuals. As noted, the bill, as originally introduced, would not only have insured that the state sought restitution prior to bringing a

[6] See, e.g., *Holbrook* v. *United States* (9th Cir. 1960) 284 F.2d 747, 752; *Lesser* v. *United States* (2d Cir. 1966) 368 F.2d 306; *Minneapolis Star & Trib. Co.* v. *Commissioner of Tax.* (1970) 287 Minn. 117 [177 N.W.2d 33, 37].

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Monday, October 28, 1985

Council's Vote-by-Number for Pay Hike Blasted as Anti-Secrecy Act Violation

By SARAH BOTTORFF

A Los Angeles Superior Court judge could rule today in an apparently unprecedented trial of Los Angeles City Council procedures that a plaintiff's attorney claims are about as informative to the public as if the councilmembers conducted business in an "obscure Tibetan dialect."

Judge Raymond Cardenas did not indicate whether he would take the case under submission following the end of the trial today in *Green v. City of Los Angeles*, C554145. But attorneys for both sides said Friday as trial began that they expected their arguments to be completed quickly today.

The alleged secret action taxpayer Dorothy Green objects to, in what is apparently the first such trial on council public notice procedures, was a vote by councilmembers June 5 to hike their salaries and the salaries of the mayor, city attorney, and city controller by 10 percent for the 1985-86 fiscal year, adding $4,840 to the councilmembers' current $48,424 pay.

Green's attorneys Jeffrey Cohen and Barbara Blinderman claim the pay hike itself, temporarily enjoined by Superior Court Judge Irving Shimer pending trial, violates a City Charter provision calling for 5 percent annual salary increase. City Attorney representatives Frederick Merkin and Maureen Siegel claim the 5-percent provision in the charter is ambigious.

There was little discussion of that issue as trial began Friday, however. Most of the testimony and argument revolved around the method of passage of the pay hike, which Merkin acknowledged in his trial brief was "not on the council calendar, was not given full distribution (to members of the public), and was not orally described or otherwise identified other than by number."

But Merkin argued both in his brief and in court that the council frequently conducts business by number and without prior notice, and that such conduct does not violate the state Brown (anti-secrecy) Act in government or council rules.

'Secret Code'

Cohen, whose suit asks Cardenas to enjoin the council from acting in that manner in the future, said such conduct constitutes government "by secret code," and that the councilmembers might as well have been speaking Tibetan as English for all the public could understand of what happened when "motion 53" passed unanmously.

Asked a procedural question by the judge, Cohen replied, "I don't think so and my reason is 106. Now, you have no idea what I'm talking about."

Cardenas seemed swayed by that argument, asking Merkin repeatedly how a member of the public would know the subject matter of council discussion if the only words stated are numbers. Merkin replied that the public can go to a clerk and enquire what "motion 53" is, and that in any event no Brown Act violations occurred.

But the judge also asked a number of questions and seemed concerned about Merkin's argument that the courts have no right to tell the City Council how to conduct business, as long as it conducts it in accordance with the Brown Act.

The court heard from two council aides about council procedures during the brief period of testimony. Daily News reporter Mary Ann Milbourn, the only journalist to notice and immediately report the pay hike, successfully invoked the California Shield Law banning compelled testimony by news gatherers and declined to testify when called to the stand by Cohen.

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Council Pay Hike Voided in Ruling Based on Charter

By SARAH BOTTORFF

The Los Angeles City Council lost its self-approved pay raise Monday but won the apparently reluctant assent of a superior court judge to the allegedly secretive manner in which councilmembers voted themselves the extra money.

Judge Raymond Cardenas voided the 10 percent raise approved by councilmembers for themselves and other elected officials June 5 and promptly signed into law by Mayor Tom Bradley. Cardenas said the raises violated the City Charter's 5 percent pay hike limit.

But while he said the council "failed to comply with the spirit" of the state Ralph M. Brown (anti-secrecy) Act, Cardenas nonetheless ruled the lawmakers complied with the act's substance when they voted unanimously and without discussion for a measure referred to only as "Motion 53."

Ruling against plaintiff Dorothy Green, a citizen activist, in *Green v. City of Los Angeles*, C554145, Cardenas noted the council took the vote in public and would have had copies available had anyone requested a look at "Motion 53." The council therefore met what he called the "minimum standards" of the 1953 act intended to abolish secrecy in government, he said.

'Common-Sense Interpretation'

During the two-day trial last month, Senior Assistant City Attorney Frederick Merkin argued that the 10 percent hike was proper because there are a number of ways to interpret the City Charter's limitation of 5 percent per calendar year pay hikes for elected officials, taking into account retroactivity and differing definitions of the word "year."

"The court ... adopts a common-sense interpretation," Cardenas responded Monday. He then voided the pay hike.

Both sides said they were mulling appeals.

Green's attorney, Jeffrey Cohen, said his client was disappointed in the ruling, being less concerned with the pay raise than with the vote-by-number manner in which it was approved. The procedure is occasionally followed by a number of other local agencies and municipal boards throughout the state.

Cohen — and in his ruling, Cardenas — noted with favor that since the suit was filed the council has informally decided to have relevant portions of all motions read aloud in chambers before a vote is taken. But Cohen said the council can change its mind at any time, despite the judge's remark from the bench that such a practice is more within the "spirit" of the Brown Act.

Some news reporters at the superior court session Monday noted with irony that the new informal procedure has not worked out quite as planned, to judge from one incident last week in which the council inadvertently voted to condemn the Los Angeles County Board of Supervisors for turning a blind eye to racism.

The wording was contained in the unread portion of a motion before council Wednesday. The council voted to rescind the statement soon after reading news reports about it.

Confusion on Effect

As for what the council should now be paid, attorneys for the city and Green expounded markedly different views in the courtroom hallway after the verdict.

Cohen and co-counsel Barbara Blinderman argued that the council now may be unable to take even the 5 percent pay raise that Cardenas said is allowed under the charter. The charter also mandates a number of complex procedures be taken every two years before the council can vote itself a raise; those procedures have already been followed with the 10 percent hike and it may not be possible to take them again, Cohen argued.

Merkin dismissed that argument as groundless. But he and Deputy City Attorney Maureen Siegel, who assisted in the case, acknowledged confusion as to what to do with the 5 percent raise that Superior Court Judge Irving Shimer agreed to grant the council when he issued a preliminary injunction halting the 10 percent hike shortly before it was to become effective July 1.

Cardenas's ruling made no mention of the 5 percent raise now in existence, merely permanently voiding the 10 percent.

Merkin and Siegel said it was not immediately clear what the council should do now, although both said their advice would probably be to have the council vote in a new ordinance, in effect ratifying the 5 percent raise pending trial.

Merkin said he expects to ask for an executive session of the council to discuss Cardenas's ruling and the council's options.

The 5 percent pay increase allowed by Shimer was added to the mayor's $80,708 annual salary, the $68,600 paid to the city attorney, and $48,424 salaries for the controller and councilmembers.

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DIETER HAS SURGERY, RAMS HAVE QB CONTROVERSY/B-1

Tuesday
November 5, 1985

Morning final
25 cents

Vol. CXV No. 188

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L.A.'s sneak pay raise overturned

Judge says council violated spirit of law

By John Chandler
Herald staff writer

A Superior Court judge yesterday overturned a 10 percent pay hike for 18 city officials, saying the City Council used a "strained interpretation" of the City Charter to vote itself a raise last June.

Judge Raymond Cardenas also chided the council for violating the spirit of the state's open meeting law when it voted on the pay raise in a motion identified only as "Item 53."

"A common-sense interpretation" of the City Charter makes it clear that the law limits council pay raises to 5 percent a year, Cardenas said. The politicians had argued that a 10 percent raise every two years amounts to the same thing.

Cardenas' ruling invalidates pay raises for 15 City Council members and three other elected officials.

The difference will cost the

School

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Cardenas' ruling invalidates pay raises for 15 City Council members and three other elected officials.

The difference will cost the elected city officials several thousand dollars each during the current two-year salary period.

The losses amount to $4,035 for Mayor Tom Bradley, $3,430 for City Attorney James Hahn, and $2,421 apiece for City Controller Rick Tuttle and the 15 council members.

"Justice has been done," said a satisfied Dorothy Green, the community activist who filed the lawsuit.

Councilwoman Joy Picus said there is little chance the council will appeal. "It's really an issue we want to get behind us," said Picus. "I can't imagine anybody who would want to appeal this."

In another blow to the politicians, attorneys for Green claimed the charter might also prevent city officials from enacting another salary measure this year.

That would mean they wouldn't get a raise at all, even the 5 percent the charter allows.

Cardenas said he intends to void the council-adopted pay ordinance entirely, meaning the council members and the mayor apparently would have to enact a new salary measure in order to take advantage of the first-year 5 percent pay hike for the period ending June 30, 1986.

City attorneys say they are confident the charter allows a second pay measure to replace the one invalidated.

Under Cardenas' ruling, the city's 18 elected officials at most will get a 5 percent raise this year and a maximum 5 percent increase next year. The council-approved measure would have given them 10

Pay/A-7

School birth control approved

By Joelle Cohen
Herald staff writer

The Los Angeles school board voted 6-1 yesterday to fight a rising tide of teen-age pregnancy with an on-campus health clinic dispensing contraceptives.

While 15-year-old mothers tended crying babies in the audience and 10 anti-clinic demonstrators picketed outside, the board for more than two hours considered whether access to birth control encourages sex or merely prevents pregnancy and disease among those already sexually active.

"I am 16 years old and I am pregnant," student Annette Carcaga told the board in the afternoon's most emotional moment. "I don't want anyone else to go through what I'm going through now."

She said she knew about birth control but that waiting lists at clinics she knew of were too long.

"It wasn't because I was ignorant," she said. "The information just wasn't around. I see my girlfriends becoming pregnant and I

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Pay

Continued from page A-1

percent this year and no raise next year.

The City Council also "failed to comply with the spirit" of the state's open meetings act when it quietly approved the 10 percent raises June 5 with no public notice, Cardenas said.

But the judge found that the council's action nevertheless "met the minimum requirements of the letter of the (state) law."

The court decision is the second blow in as many weeks to the council's public prestige, although council members generally discounted its impact. Last week, the council without realizing it adopted a motion criticizing several county supervisors and later voted amid some embarrassment to rescind its action.

In his 10-page written ruling, Cardenas chided city officials for promoting "strained interpretations of the present Charter provision in an attempt to obtain a salary that was not voted by the electorate."

And, if city officials believe they are underpaid, the judge said they should instead devise a ballot measure amending the language of Proposition T, the November 1972 Charter amendment approved by city voters that enacted the pay-hike limit.

The Charter language states, "No increase in the annual salary for an elected official shall thereafter be greater than 5 percent for each calendar year following the operative date of the most recent change for the salary for that office."

The city had argued that the Charter language is ambiguous enough to allow the council to take a 10 percent raise this year and no increase next year.

But Cardenas said, "Although the court recognizes that the Charter provision as set forth above is capable of several interpretations ... (the court) adopts a common-sense interpretation consistent with what the voters had before them when Proposition T was submitted for a vote."

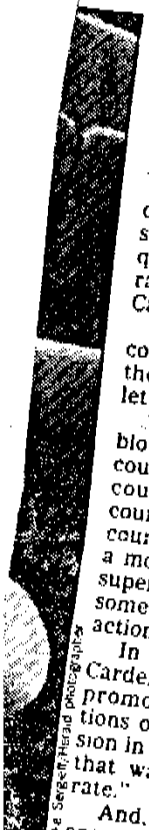
The judge's ruling is not expected to take effect for several weeks. But the original 10 percent pay hike already had been blocked by a prior, temporary court ruling in the case. As a result, the city officials only have been getting 5 percent higher salaries since the new rates took effect July 1.

Despite the decision on salaries, the Judge's ruling that the city had not violated the state Brown Act's provisions on open government was a major disappointment to Green, president of the Los Angeles League of Conservation Voters.

"I'm glad justice is being done there (on salaries). But secrecy in government was really my concern," said Green, who said she and her attorneys will consider whether they want to appeal the ruling.

Under the judge's ruling, the maximum salaries for the city's elected officials this year would be $84,743 for Bradley, $72,030 for Hahn, and $50,845 apiece for Tuttle and the council members.

Herald City Hall bureau chief John Schwada contributed to this story.



Mike Sergent/Herald photographer

Council accused of pay hike cover-up

By John Chandler
Herald staff writer

The Los Angeles City Council yesterday was accused of "speaking in code" in June to conceal its approval of a disputed 10 percent pay hike for the 15 council members and the city's three other elected officials.

During the first day of trial in community activist Dorothy Green's lawsuit aimed at overturning the controversial pay hike, her attorney, Jeffrey S. Cohen, claimed city officials probably handled the matter intending "intentionally to keep it secret."

The secrecy allegation was the focus of a three-hour hearing in which Superior Court Judge Raymond Cardenas repeatedly asked city attorneys how the public could have known council members were giving themselves a pay hike when they voted June 5 on a proposal announced only as "Item 53."

"If a person is sitting there, how would he know what 53 is?" Cardenas asked Senior Assistant City Attorney Frederick Merkin. "How would a person know the subject matter of the

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Raise

Continued from page A-1

motion or its effect?"

Later in the hearing, Merkin replied, "You wouldn't know from the information alone. Granted, it was not on the council calendar. It was not orally described. But we submit to the court the law does not require that."

Cohen urged the judge nevertheless to force city officials to clearly describe matters coming before the council for a vote. "If they're speaking in code, no one can know what is happening," he said. "What you've got is a secret action, even though it's happening in a public room."

Before continuing the trial to Monday afternoon, Cardenas told attorneys for both sides to be prepared to argue then whether the judge has legal authority to issue an order of that kind.

Pending a final decision in Green's lawsuit, a preliminary order by Superior Court Judge Irving Shimer has permitted only a 5 percent pay hike this year, rather than the council-adopted 10 percent raise, for the 15 council members, Mayor Tom Bradley, City Attorney James Hahn and City Controller Rick Tuttle.

"If a person is sitting there, how would he know what 53 is? How would a person know the subject matter of the motion or its effect?"

Superior Court Judge Raymond Cardenas

In a lawsuit filed June 28, Green, president of the League of Conservation Voters, claimed the 10 percent pay raise should be invalidated because it was adopted in violation of the Ralph M. Brown Act, the state's so-called open meeting law.

But city officials have denied that allegation. Shimer, during a July 10 hearing, agreed with the city's position on that issue. However, the judge also called the council's action "bizarre" and said the meeting "was conducted in code, and no intelligent human being could have understood it."

But in at least temporarily reducing the amount of the pay increase, Shimer said he agreed with Green's position that the city's 18 elected officials are entitled under the City Charter to a maximum 5 percent annual pay hike for each two-year period.

That issue was barely discussed during yesterday's court session. City officials claim, however, that the charter language is ambiguous enough to allow the city's elected officials to receive a 10 percent pay hike during the first year and no raise in the second year.

That method would net the elected officials thousands of dollars in extra salary over the current two-year salary period that began July 1. The difference amounts $3,833 extra for the mayor $3,259 for the city attorney, and $2,300 each for the city controller and 15 council members.

The disputed council vote came June 5 during a hectic session on the morning after the city's general election. The salary increase motion did not appear on the council's agenda and was not distributed to City Hall reporters, as is customary.

The motion, announced only as "Item 53," also was taken out of order from the rest of the council's special motions and adopted without discussion by a 12-0 vote. Bradley signed the measure the next day.

WAVE NEWSPAPERS — Inglewood — Southwest Wave — Angeles Mesa — Topics-Wave -

1985

Wednesday, July 17

Judge Cuts Officials Raises In Half

(CNS) Los Angeles' top city officials will be getting only half of the 10 percent salary increase the City Council approved in June because of a Los Angeles Superior Court Judge's ruling.

Judge Irving A. Shimer found the increase violated a city charter provision he interpreted to limit salary raises to only 5 percent for the City Council, Mayor Tom Bradley, City Controller Rick Tuttle and City Attorney James Hahn.

1985-86

Shimer therefore enjoined the city from disbursing more than a 5 percent increase to those officials during the 1985-86 fiscal year.

But Shimer found no violation of the Brown Act. The plaintiff in the case, Dorothy Green, alleges in her lawsuit that the council violated that public meetings act because the matter was not listed on the published agenda.

Diligent citizen

"I agree that a diligent citizen couldn't have known what was going on," he said. 'But that doesn't mean they the council) couldn't have done what they did under the law. It's not a violation of the law just because of the bizarre way in which it was done."

He added there is no evidence the increase would not have been approved if such a citizen had realized what was happening.

"I am not condemning them (the council)," he said. "There was an insensitivity in their handling of the matter . . . because of this lawsuit, people get to laugh at what the City Council did. And anyone who has read the transcript (of the meeting) has to be amused," said the judge.

City attorney

Assistant City Attorney Frederick Merkin argued a "diligent citizen" attending the meeting could have approached the council clerk and asked to review the numbered item. He also contended that "only a microcosm of the population" attends the meetings and that most of the public learned of the increase through the news media.

The raise, he noted, was reported in a Los Angeles newspaper the next day.

"It was an open session and acted upon in the customary way," he said.

Attorney Jeffrey S. Cohen, however, maintained the council's procedure on the item was like meeting in secret, in violation of the Brown Act and the city charter.

But Shimer said that the penalty for a Brown Act violation is a misdemeanor charge, not a voiding of the action taken.

RHODE ISLAND was the state to enact an anti-slavery in America on May 18, 165

LA Times Thurs. July 11, 1985
Page 1 Metro

Judge Cuts Pay Raise Voted by L.A. City Council From 10% to 5%

By DOROTHY TOWNSEND, *Times Staff Writer*

A Los Angeles Superior Court judge Wednesday reduced by half, at least temporarily, the 10% pay raise the City Council gave itself and other officials June 5 in what a taxpayer suit claims was a "secret meeting."

In granting a preliminary injunction limiting the raise to the 5% a year permitted by the City Charter, Judge Irving A. Shimer declined to invalidate the ordinance authorizing the pay raise, saying he found the manner in which it was passed was "bizarre" but not illegal.

Shimer left the suit's charges that the Brown Act and City Charter were violated for resolution at trial or by an appellate court.

"I am not making a judgment (on the suit)," Shimer said. "I am not trying the case. A trial judge may agree with (the city's) position" that the actions of the council were lawful and the matter accomplished in "customary" procedure.

"But for provisional relief purposes," the judge said, "rather than set the stage for refund . . . I would rather have the affected employees and officers be the creditors if the 10% approach is upheld (in later adjudication)" than the other way around.

The taxpayer and citizen activist who brought the suit, Dorothy Green, expressed mild disappointment after the hearing, even though her action did halt, for the time being at least, the 10% pay raise from becoming effective Wednesday, which it was timed to do.

She said she was "hoping the judge would not slap a Brown Act misdemeanor on the city, but I was hoping that he would enjoin them from acting this way in the future."

The Brown Act bans closed-door meetings by local public agencies except when personnel matters or pending litigation are being discussed.

Green, 56, of West Los Angeles is head of the Los Angeles chapter of the League of Conservation Voters.

Her suit challenged not only the amount of the raise but also the legitimacy of the council meeting at which the measure—which was not on the agenda—was unanimously approved by the 12 members present, without discussion before or during the meeting.

"The item was not on the agenda, the ordinance was not posted or placed before the public prior to enactment, there was no way to tell from the council file that a 10% increase was contemplated, the subject matter . . . was not identified in any manner . . . and it was rushed through a vote in less than a minute," papers filed with Green's suit stated.

As an addition to the day's agenda, "Item 53" merely was called by its number and the vote taken.

Please see RAISE, Page 6

DA is merely Directory

Guey A (cont)

RAISE: Judge Cuts Contested Salary Increase From 10% to 5%

Continued from Page 1

"Why the rush?" the court was asked in the documents. "How did Mr. (City Councilman Arthur K.) Snyder know that the 12 votes would all be in support of the ordinance unless the matter had been previously discussed by the council members present, which is a clear violation of the Brown Act and indicative of a secret meeting?."

"I don't know," Shimer said, "and you will never know if they had stood up and announced to the room (what they were voting on) whether the vote would have been one iota different."

Senior Assistant City Atty. Frederick Merkin argued that the council's approval of the ordinance and Mayor Tom Bradley's signing of it were entirely lawful, adding that it was customary at the end of a session to have add-on items taken up by number only.

Shimer said the council's action was not a Brown Act violation and was not illegal. But, he termed the manner of passage "insensitive" and "not worth it to them to handle it the way they did."

"They brought on themselves a lot of heat unnecessarily," he said.

He cited a legal precedent that held that the court "can't invalidate legislation even when the Brown Act has been violated" and further held that a misdemeanor charge is the only remedy for a Brown Act violation.

Talking to reporters after the hearing, Merkin explained the council's rationale for its action. The City Charter permits a pay raise of 5% a year for each calendar year following the operative date of the most recent change of salary for a particular office, he said. Since the council may only vote on increases every other year and the last operative date was 1983, the feeling was that council members were entitled to 5% for each of two years and they voted the whole 10% at once.

Green's attorney, Jeffrey S. Cohen, said, "Nobody is trying to keep anybody from getting a pay raise that they have earned and are entitled to, but not illegally."

He disagreed with the judge's view that it was not illegal. He said he and Green must now decide whether to appeal the ruling or wait until the case comes to trial.

Snyder, who initiated the salary increase, could not be reached for comment, and his press aide, Paul Michael Neuman, declined to discuss the judge's action.

"We feel (it would be) inappropriate given pending litigation," Neuman said.

Council President Pat Russell, who seconded Snyder's pay raise motion, declined comment on the specifics of the judge's action. The city attorney's office will advise the council shortly of its alternatives, she said.

"They will present what happened, and we will decide (what steps to take)," Russell said.

Councilwomen Joan Milke Flores and Joy Picus said they would not support a council move to appeal the judge's decision.

"We were completely comfortable in voting for it. We felt it was allowable," said Flores, but she added: "I'm not a judge. I have to go along with what the judge ruled."

Picus hinted that council members would be hard pressed to publicly fight for their raise, given possible negative publicity.

"It's a very insignificant amount of money involved and there's a *lot* of public opinion involved," she said.

Councilman Ernani Bernardi, who was absent when the raise was approved and objected to the manner in which it was passed, called the judge's decision "absolutely right."

Councilman Howard Finn, who did not take part in the vote, reacted jokingly to the judge's order, his press aide Joan Kradin said.

"I wasn't there when they decided I was worth that much more and now that I'm back they thought they gave me too much," Kradin quoted Finn as saying.

Times staff writer Cathleen Decker contributed to this story.

KBIG EDITORIAL RESPONSE -- July 26, 1985

The Los Angeles City Council routinely excludes the public from participating in the public's business -- the running of city government. Its does this with walk-on agenda items.

Without notice to the public, these items are added on at the end of an already full council meeting, or sometimes just in time to appear on the printed agenda of the day. Either way, people following specific issues are frozen out of participating unless they attend every council meeting to the bitter end -- an impossibility for most volunteers.

This technique was used by the city council when it brought up agenda item 53 with no notice, suspended the rules, and, in code, voted itself a secret pay raise.

My law suit against the city was brought to expose this abuse of the public trust and to put an end to public business done in secret.

If the City Council has nothing to hide, it should put an end to walk-on agenda items.

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KBIG FM 104

EDITORIAL

Titled: Item 53: The Arrogance of Power
Aired: July 17, 1985

This is Rob Edwards with a KBIG editorial.

Last month, with no advance notice, discussion, or debate, the L.A. City Council quietly passed "item 53"--a 10% salary increase for elected city officials, twice what the City Charter would seem to allow. Their behavior was high-handed at best--and illegal at worst.

In response to a taxpayer lawsuit, a Superior Court judge has now cut the raise back to 5%, as the Charter specifies. But he failed to address the sneaky way it was handled; and to the plaintiffs, that--not the money--was the heart of the matter.

The Brown Act, the state's "sunshine" law, requires open hearings on public policy issues. Meetings we can attend --but not understand--certainly violate the spirit, if not the letter, of the law.

Ironically, a citizens' panel had earlier found that city officials did indeed deserve a raise. Maybe they did once--but by their arrogance, they have broken public trust. If they end up with nothing, it's more than they deserve now. That's KBIG's opinion--and we welcome contrasting views from responsible individuals.

July 13 1990

JOHN SCHWADA

Tell us, Art, are you in or out?

Mallorie as Snyder's successor even though her boss, Bradley, has said he prefers an election to pick Snyder's successor. Davis' comments prompted some to call on the mayor to muzzle her on the appointment issue. But Davis said yesterday Bradley has not yet cautioned her along these lines. Not the least of those riled up are Steve Rodriguez and Antonio Rodriguez (not related), who expect to be candidates in an election to replace Snyder.

■

Dorothy Green, the woman who fought City Hall and won last Wednesday, is actually "ambivalent" (her own words) about Superior Court Judge Irving Shimer's decision to cut in half the pay raises the council and Bradley approved for themselves and the city's two other elected officials.

Why? Because Green's real interest in filing her lawsuit was to have Shimer find that the council approved the pay hikes during what amounted to a secret meeting. Green was appalled by the council's failure to notify the public that the pay hike issue would surface at its June 5 meeting. She also was appalled that the council would pass the pay increase in a manner so cloaked in secret legislative code that no outsider at the meeting could have known that little ol' "item 53" was a pay raise.

But Shimer saw no evidence that the council violated the state's open-meeting law, though he termed the proceedings "bizarre." Instead, the judge ruled that the 10 percent raise for a two-year period the council passed and Bradley signed into law violated the City Charter, at least as far as this year is concerned. The charter, Shimer ruled, limits the raises to 5 percent per year.

Green was asked if she would defend her lawsuit if the city appeals Shimer's decision and the future litigation revolved around the question of a charter violation rather than the secret meeting issue. "I'll have to sit down and evaluate it," she said.

■

Odds and ends:
It was hard not to notice that City

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Sneaky Pay Raise

The Los Angeles City Council surely turned some skeptics into cynics by sneaking through a pay raise for itself, the city controller, the city attorney and the mayor without warning or debate.

Mayor Tom Bradley cooperated with the conniv-ers by quickly signing the 10% pay increase. As of July 1, he will receive $88,778; the city attorney, $75,460; the controller and council members, $53,266. The salaries do not include the value of the trips, cars, gas, telephones, citizens' band radios and other perquisites provided at public expense.

Competitive salaries attract better candidates to public service, at least in theory, so it is hard to begrudge the raises, even as the council scrounges money to pay for more street cops or complains of anticipated federal budget cuts. A citizens advisory panel said those officials were entitled to the largest pay increases allowed by the City Charter. What bother voters is that they did it on the sly.

The deception began when the council bypassed the normal procedure. Any proposed change in law is typically sent to committee where merits and demerits are openly discussed before it reaches the full council. But the motion for the pay raises was not on the regular written agenda nor was it given to the press.

Timing contributed to the subterfuge. The council voted the day after the municipal election while attention was focused on ballot results. Councilman Ernani Bernardi, who is known for his opposition in these matters, was on vacation. Any dissent would have forced a second vote this week.

Also, the motion, which was referred to by number rather than by subject, was brought up only after 12 members were present so that action could be completed in one day. A vote of less than 12—council members Bernardi, Howard Finn and Joy Picus were absent—would have also forced a second vote and allowed time for public consideration.

The Los Angeles City Council broke no rules by approving the pay raises quickly and quietly. All it broke was faith.

Council Members Quietly Raise Their Own Pay 10%

By FRANK CLIFFORD, *Times Staff Writer* 6/7/85

Quickly and quietly, Los Angeles City Council members voted 12 to 0 Wednesday to give themselves and other elected city officials 10% pay raises. Mayor Tom Bradley, who also gets more money, signed the raises into law on Thursday.

With attention focused on results of a just-completed election that gave the city its first Asian council member, the council, without discussing the issue or placing it on its written agenda, approved raises that will increase members' annual salaries from $48,424 to $53,266.

Under the new pay schedules, which take effect July 1, the mayor's salary will increase from $80,708 to $88,778. Two other salaries also were affected: the city attorney's, which goes from $68,600 to $75,460, and the controller's, from $48,244 to $53,266.

Ernani Bernardi, one of three council members absent during Wednesday's session, said he was not surprised by the way his colleagues handled the matter.

"It's not the first time the salary increases have been approved this way, bypassing committee hearings," Bernardi said. He was referring to the council's Personnel and Labor Relations Committee, of which he is a member, which normally handles salary matters before they reach the full council.

Bernardi said the matter did not come up in the committee.

"The reason it happens the way it does is because the council gets away with it," Bernardi said. "They hope that no one is watching and they quietly get it approved."

Besides Bernardi, council members Joy Picus and Howard Finn were absent Wednesday.

Councilman-elect Michael Woo, who will be the first Asian council member, was not present and does not take office until July. He defeated 10-year incumbent Peggy Stevenson, who was present for the vote Wednesday.

Councilman Arthur K. Snyder, who chairs the Personnel and Labor Relations Committee, brought up the pay raise item for a vote Wednesday. His motion for approval was seconded by Council President Pat Russell. Efforts to reach Snyder and Russell on Thursday were not successful.

The pay raises followed the recommendations of a citizens' panel, set up under the City Charter, to evaluate the salaries of city officials, said Chief Legislative Analyst William McCarley, who worked with the panel.

According to McCarley, the panel found that for the last 10 years pay raises for city elected officials have lagged behind those for non-elected employees.

Since 1974, McCarley said, salaries of elected officials have gone up by 51%, while other city salaries have increased 75% to 80%.

Moreover, McCarley said, the panel found that the salaries of elected officials in Los Angeles are significantly lower than those of their counterparts in the county and in other cities.

For example, he said, while council members here receive $48,424 a year, members of the Los Angeles County Board of Supervisors receive about $72,000. And while the mayor of Los Angeles is paid $80,708, the mayor of San Francisco is paid $93,000 and the mayor of New York $110,000.

Under the Los Angeles City Charter, McCarley said,

Please see PAY RAISE, Page 5

PAY RAISE

Continued from Page 1

elected officials can vote themselves pay raises of up to 5% per year, or up to 10% for a two-year period. The council last approved a 10% raise for the period 1983-1984.

Between 1983 and July of this year, when the pay increases take effect, council salaries will have risen from $43,923 to $53,266, and the mayor's salary from $73,205 to $88,778.

Despite those increases, the citizens' panel that recommended the raises—called the Official Salaries Authority—also urged the council to initiate efforts to amend the City Charter to allow for larger annual raises. Such a change would have to be approved by a public vote, McCarley said.

McCarley said that recommendation was not considered by the council on Wednesday. He said he assumed it would be taken up later by the Personnel and Labor Relations Committee.

How L.A. officials sneaked raise

Council votes itself a 10% pay increase

By John Chandler and John Schwada
Herald staff writers

6/7/85

Without any public notice or discussion, the Los Angeles City Council has approved a 10 percent pay raise for its 15 members, as well as the city's mayor, attorney and controller.

Mayor Tom Bradley yesterday signed into law the council ordinance, passed Wednesday in a manner that hid its content. The pay hikes take effect July 1.

The total cost to taxpayers of the raise — effective for the next two years — is $184,804.

The 10 percent raise resurrects questions about whether city officials legally can receive that much at one time. A City Charter provision says that "no increase in the annual salary for an office shall ... be greater than 5 percent for each calendar year."

City attorneys in the past have claimed the charter language is ambiguous enough to permit the 10 percent raise the first year and no increase next July. The lawyers repeated that position yesterday.

The council's 12-0 vote Wednesday morning approving the pay raises came while many City Hall officials and reporters were focusing on the results of Tuesday's municipal election.

The salary increase proposal did not appear on any council agenda or receive advance public notice. In a departure from typical council procedures, the pay-raise motion was not distributed to reporters covering the council session.

The raises mean the mayor's salary will increase to $88,778 from $80,708; City Attorney-elect James Hahn's salary will be $75,460 instead of $68,600; and the salaries of

Salaries/A-14, Col.

A - 456b

With no notice, council OKs 10% pay raise for city officials

Salaries/Continued from A-1

Controller-elect Rick Tuttle and the council members will be $53,266 instead of $48,424.

The furtive nature of the council action did not escape the notice of other city officials.

"They brought it in on the sneak," said one mid-level bureaucrat. "The reason it's so confused is that's what they (the council) wanted it to be."

While claiming he knew of no organized effort by the council to intentionally conceal the vote, Councilman Hal Bernson acknowledged, "If someone were trying to make a case out of it, they could argue the way it was being brought in looked suspicious."

Councilman Marvin Braude conceded that the handling of the matter made the council look bad. But he explained his support for the action by saying, "Some of us have an obligation to cooperate with our colleagues. That's the way the majority wanted it and I didn't have any strong objections to it."

The pay-raise motion was authored by Councilman Art Snyder, who could not be reached for comment yesterday, and was seconded by City Council President Pat Russell.

Russell said she had no problems with the lack of public notice surrounding the vote.

Snyder and Russell did not broach the motion until 12 council members were present, meaning the council could finish action on it in one day. Had there been a dissenting vote or less than 12 members present, the measure would have faced a second vote and public airing next week.

Instead, the council acted in a pair of rapid-fire 12-0 votes on the pay raises, identified by Snyder and Russell only as "Motion 50."

Council staffers yesterday said the motion was not distributed to reporters because there were only enough copies for council members. Staffers said they did not have time to make additional copies.

Absent from the meeting were council members Ernani Bernardi, Howard Finn and Joy Picus.

Enacting a 10 percent pay raise as of July 1 rather than taking 5 percent increases in each of the next two years nets the elected officials a total of $43,892 in extra salary over the period. That amounts to $3,833 for Bradley, $3,259 for the city attorney and $2,300 apiece for the city controller and council members.

Setting the stage for the pay raises was a report by a nine-member citizens panel that recommended the elected officials get the maximum pay increases allowed by the City Charter. But the panel did not specify whether that meant an immediate 10 percent increase rather than two 5 percent raises.

The mayor and council president are required to appoint a panel of citizens to recommend salary levels for the elected officials. The council can vote for any salary package as long as it does not exceed either the panel's recommendations or the charter limits.

Russell referred to the existence of the citizens' panel in defending the council's handling of the pay raises.

"The public review is through that citizens' committee," she said. "My view ... is that the public's intersection (with the issue) is through that committee."

The 5 percent salary limit in the charter has been in place since 1973-1974. In 1981 the lawmakers opted to take the full 10 percent raise in the first of their two-year pay periods, setting the precedent for this week's vote.

What the big city mayors earn

New York	$110,000
San Francisco	$93,840
Los Angeles	$88,778
Houston	$81,255
Detroit	$79,683
Philadelphia	$70,000
Chicago	$60,000
San Diego	$46,000
Atlanta	$50,000
Miami	No salary $2,500 for expense account

Council size and salaries

Los Angeles	15	$53,266
New York	43	$47,500
Detroit	9	$43,218
Philadelphia	17	$40,000
San Diego	8	$32,500
Chicago*	50	$27,600
Houston*	14	$25,480
San Fran.*	11	$23,928
Atlanta*		$12,000
Miami*		$5,000

*part time

Source: L.A. City Administrative Office

"They brought it in on the sneak. The reason it's so confused is that's what they (the council) wanted it to be."

A mid-level bureaucrat

LA Times Editorial
Wednesday, September 15, 1955

Something to Hide

California has an open-meeting law that is sound in theory only. The Bagley-Keene Open Meetings Act prohibits secret discussions of government business by state boards, commissions and agencies. That should protect the public's right to know, and be good for democracy—but the law has no teeth.

It is not mandatory but only directory, according to a 1984 opinion by the attorney general's office. As a result, a government action taken in violation of the act can remain valid. Also, public servants who scheme to keep the public eye off the public business face a minor penalty—misdemeanor charges—that only the most zealous prosecutor would file.

AB 214, sponsored by Assemblyman Lloyd G. Connelly (D-Sacramento), would fix the flaws. It is on Gov. George Deukmejian's desk awaiting his signature. The bill would require open meetings of all state bodies unless there was specific authorization for a closed session. It also would require advance public notice of at least 10 days, and advance publication of the agenda. Any business not on the advance agenda would be prohibited.

AB 214 would also provide a mechanism for voiding an improper action. Citizens or groups could challenge any improper decision within 30 days. Those court challenges could be avoided if state agencies were to correct improper actions at a second meeting.

The California Assembly approved the bill without dissent, and the Senate has concurred. The proposal has the support of the attorney general's office, the Sierra Club, Common Cause, the Police Officers Research Assn. of California and other groups.

Opponents argue that the requirements would hurt government efficiency. That is ridiculous. Provisions in the bill would protect against frivolous challenges and challenges to actions involving notes and bonds, tax collection and certain contracts. Yes, it does take time to post specific agendas, to give advance notice of meetings and to allow public airings of controversial issues. More work might get done quickly behind closed doors. But that is not what responsible government is about.

California is one of 17 states, among them Florida and New York, with open-meeting laws. The laws are a recognition that secret meetings do not serve the public interest. They help only those with something to hide.

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JOHN SCHWADA 6/14/85

City Hall pay hike looks even shadier

From a public relations standpoint, the way City Hall lawmakers sneaked through that 10 percent pay hike for themselves last week was unseemly. And to make matters worse, it appears the citizens committee whose recommendations opened the door for the pay boost included a member who should have been forbidden from serving on it.

The City Charter establishes a fairly rigid process for raising the salaries of the city's 18 elected officials. An indispensable player in this process is the Official Salaries Authority, a nine-person citizens committee that must first recommend pay hikes before the City Council and the mayor can legislate the raises into law.

The charter also wisely states that no person who has had financial links with the city — such as a contract — within the past five years can serve on the authority. This conflict-of-interest provision is supposed to safeguard against "you scratch my back, I'll scratch yours" type of situations arising. Yet attorney Melanie Lomax slipped through this proviso.

Lomax, who was appointed to the salary panel by Council President Pat Russell, had a personal services contract with the city's Community Development Department between July 1981 and December 1983 to perform work as a hearing officer. On two occasions, the council approved Lomax's contract. Granted, city records show Lomax made only $600 off the contract. But still, there's that old City Charter, casting a jaundiced eye on such situations.

A much more egregious example of this type of conflict of interest occurred two years ago, when a senior partner in the Gibson, Dunn & Crutcher law firm was named to the salary authority shortly after his firm got a $1 million-plus legal contract with the city. The attorney resigned after reporters questioned the propriety of his appointment.

The odd part about Lomax's appointment was that her hearing officer work was listed on the resume she submitted to Russell's office.

"It was never raised with me (by city officials), and it was disclosed (on the resume)," Lomax, a first vice president of the Los Angeles NAACP, said this week.

The good old charter also requires that members of the authority not only be city residents but also registered voters. Makes sense. After all, why should someone who lives, for example, in Pasadena decide what Los Angeles taxpayers pay their elected officials?

Again, we turn to Lomax, whose appointment to the authority was confirmed March 8 by the council. According to county records, she was registered to vote in Pasadena until March 19, when she switched to a Los Angeles registration. And on April 8, when she contributed $1,000 to Mayor Tom Bradley's re-election campaign, she again gave her address as Pasadena.

So where does she live? Despite evidence to the contrary, Lomax says she has lived in Los Angeles all her life except for about a two-year period ending in December, when her official residence was Pasadena.

Finally, does the Lomax snafu make any difference? If she was improperly impaneled as a member of the salaries authority, would that kill the legitimacy of its recommendations that City Hall's elected officials get a pay hike?

George Buchanan, managing assistant city attorney, says he doesn't think so. He notes that she was only one of nine members recommending the raises.

At the least, however, the Lomax case makes one wonder who's minding the City Hall store.

Los Angeles Times

Saturday, June 29, 1985

Suit to Void City Officials' Pay Hike Filed

By DOROTHY TOWNSEND, *Times Staff Writer*

A disgruntled Los Angeles property owner filed suit Friday seeking to overturn the 10% pay raise that the City Council gave itself, the mayor and other city officials on June 5 by what the suit called a "secret vote."

In her Los Angeles Superior Court suit, Dorothy Green, who is the head of the Los Angeles chapter of the League of Conservation Voters, claims that the ordinance was slipped through the council surreptitiously, without previous notice or public discussion, in violation of the City Charter and state statute.

"(It) did not appear on the day's agenda. It was referred to in council merely as Item 53. Neither the motion nor the ordinance was read by the clerk (and) there was no discussion about the subject matter the motion contained," papers filed with the suit state.

"The council voted on the motion, passed it unanimously and sent it 'forthwith to the mayor' without any prior or contemporaneous notice to the public," the suit alleged.

Green's suit further contends that "as a result of the lack of prior notice, the lack of availability of the public record and the failure of the clerk to read the ordinance or of the council to in any way identify Item 53, the vote taken was a secret vote."

Superior Court Judge Irving A. Shimer denied Green's request for

Please see COUNCIL, Page 3

COUNCIL: Resident Sues Over Salary Raises

Continued from Page 1

a temporary restraining order to stop implementation of the salary ordinance before it could become effective Monday, but Shimer did set a hearing for the matter on July 10 in his court.

Senior Assistant City Atty. Frederick Merkin argued successfully against a temporary order, stating that the ordinance does not actually become effective until conclusion of a referendum period of 30 days after its publication, which was June 10.

"We believe that the actions of the council and the mayor were lawful," Merkin told The Times, but he added that, in any event, no money would be disbursed for the salary hikes before July 10.

Green's attorney, Barbara Blinderman, had argued that "the matter of public knowledge of the content of the proceedings of its elected officials is so fundamental that a restraining order to prevent any further secret actions . . . is essential to the city's legislative process.

"The petitioner/plaintiff seeks the aid of this court to prevent the City of Los Angeles from succeeding in its efforts to legitimize secret government."

According to Green's suit, giving the city officials a 10% pay raise is also in violation of a City Charter section that limits yearly increases to 5%.

"Most people jump to the conclusion that my concern is the pay raise," Green told The Times late Friday. "I believe all of our public servants should be paid adequate salaries. My real concern is the process here that was, in essence, a secret meeting."

Green, who lives in West Los Angeles, also is a coordinator of the Working Alliance to Equalize Rates (WATER), a group concerned with statewide water problems.

The suit names the City of Los Angeles, the City Council and the city Controller as defendants.

AGENDAS

FROM B1

opment Council, the county's official anti-poverty agency.

State agencies are governed by the Bagley-Keene Open Meeting Act.

Various state regulations require local agencies to give advance notice and hold public hearings only on certain types of actions, such as zoning changes, certification of environmental reviews and the filing of tract maps, Santa Ana City Attorney Ed Cooper said.

But there is no state law — including the Brown Act — that prevents those agencies from voting on other measures, such as tentative approval of ordinances and passage of resolutions, without advance notice and a public hearing, Cooper said.

Under the proposed Brown Act amendments, local agencies would need a two-thirds vote to pass new measures that arise after their agendas are prepared, unless they could prove those items involve emergency matters, said Gene Erbin, legal advisor to Connelly. Those emergency matters include such areas as floods, fires and earthquakes under the existing provisions of the Brown Act.

Governmental agencies also would be required to make agendas available to the public 72 hours before each meeting, excluding weekends and holidays, he said. And citizens and groups could seek court rulings to nullify actions taken in violation of the Brown Act.

"Those kinds of off-agenda votes could still occur, but it would be much more difficult," Erbin said.

"We think this might be the first significant amendment to the Brown Act since it was first passed in the 1950s," he said. "It will let us know ahead of time what local agencies plan to do. And it will let us challenge afterward things they did without warning."

Although the Brown Act makes willful violations a misdemeanor, no one has ever been successfully prosecuted under the statute, he said.

The Brown Act amendment is strongly opposed by the League of California Cities, a lobbying and educational organization for municipal government officials, according to local league officials.

Restricting a legislative body's ability to approve items that do not appear on an agenda would slow down the decision-making process, the league charges. Allowing people to seek writs that would declare "null and void" actions taken in violation of the Brown Act would give rise to scores of expensive, frivolous lawsuits, the league says.

"It's nothing but overkill and doesn't appear to solve any problems," Tustin City Manager Bill Huston agreed. "They ought to clean up their act in Sacramento before they come tell us how to run ours."

"Too often the state imposes rules on local government," said Santa Ana Mayor Dan Griset. "There are times when urgent steps need to be taken and local decision-makers shouldn't have to be bogged down in bureaucratic red tape."

Those types of urgent steps, Griset said, include the Santa Ana council's move to count the estimated 7,000 signatures that Santa Ana Merged Society of Neighbors (SAMSON) had gathered to place its proposed governmental reforms before the voters.

The council had to move quickly because the city had less than a week to validate the signatures and inform the county that it was going to call a special June election, he said.

The surprise motion to give to the school district also was necessary, Griset said, because the council had been receiving a barrage of calls and letters from parents, business leaders and real estate leaders encouraging city officials to help school officials with overcrowding problems.

The vote helped stem animosity between city and education leaders, who had been at odds for months over who should take responsibility for crowding at local schools, he said after that meeting. "It seemed like the right time to introduce a new partnership concept that would include education in our economic development plans," Griset said at that time.

The council also had to act quickly on withdrawing its support on the Westdome site to give sports arena developers a head start on finding an alternate site, City Attorney Cooper said.

City councils and other legislative bodies need the option to act on issues that often crop up after agendas are prepared, Cooper said. "Sometimes things just can't wait another two weeks for the next council meeting."

But other local officials, including Santa Ana Councilman Acosta, believe the amendments are needed.

Even though he went along with the rest of council in approving the sudden moves to give the school district $8 million and withdraw support for the downtown sports arena site, Acosta said he wished he had had more time to study both issues. Acosta voted against a last-minute motion to pay the county registrar to check SAMSON's signatures.

Like Acosta, county Supervisor Bruce Nestande said he welcomed the legislation.

"I don't believe the agenda process in Orange County has been abused," Nestande said. "But I still believe any off-agenda item that is highly controversial should be public-noticed."

Like other bill proponents, including members of Common Cause and the League of Women Voters, Nestande argued that the amendments could prevent agencies from making sudden decisions without public study and comment.

"The bill would prevent councils and boards of supervisors from adding on things at the last minute and voting on things the public didn't know about ahead of time," said Walt Zelman, executive director of the California office of Common Cause, a national lobbying group.

"It would give the people a chance to witness and participate more in the decision-making process," he added.

Unlike Santa Ana, most city councils and other legislative agencies in the county rarely make major decisions on items not printed on their agendas, according to city clerks from San Clemente to Brea.

Some agencies, however, in the past have suddenly passed measures not on their agendas.

Placentia City Council members angered some community members on July 22, 1981, when they voted 3-2 to fire City Administrator Edwin Powell for reasons that never were specified. The off-agenda action led to the recall of council members Betty Mead, Dick Acton and Peter Laborde, who voted for the firing.

In Orange, then-Planning Commission member Joanne Coontz was surprised on Sept. 20, 1983, when the City Council unanimously agreed to an off-agenda proposal to ask her to resign. Coontz said she did not learn of the action until later that evening.

Several days later, Coontz gave up her job on the commission. The council never gave a reason for seeking her resignation.

That same type of sudden, off-agenda action by the Los Angeles City Council prompted the legislation, Erbin said.

"At first our opponents told us that the Los Angeles City Council example was unusual," he said. "But we have been getting copies of newspaper stories and editorials from throughout the state that show us otherwise."

Los Angeles City Council members gave themselves a 10 percent salary increase in June when they unanimously approved an off-agenda measure they identified at the meeting only as "item 53."

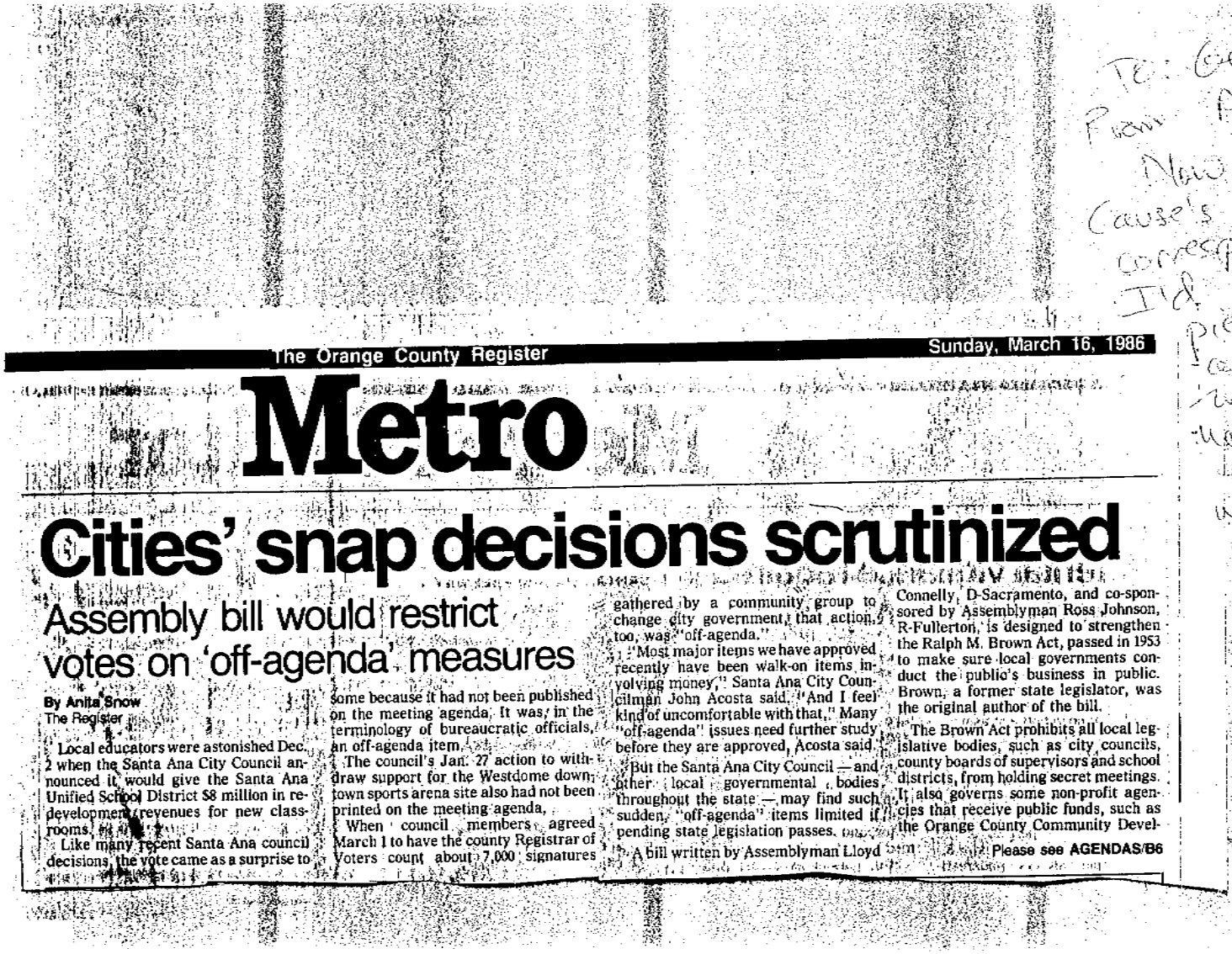
Los Angeles Superior Court Judge Raymond Cardenas later ruled the pay raise invalid because it exceeded the city charter's annual 5 percent pay raise limit. Though he said the action "violated the spirit of the Brown Act," Cardenas ruled there was no legal violation of the act.

Bill proponents hope the Brown Act amendments will prevent similiar actions by legislative bodies in the future.

The Assembly's Local Government Committee is scheduled to vote on the bill on April 1, Erbin said. From there it will go to the Ways and Means Committee and to the Assembly floor for a final vote. Then, if it passes the Assembly, it will go to the state Senate and the governor for approval.

"I think we have a pretty good shot at this bill," Erbin said. "I hope so. It's really needed."

the last word!



The Orange County Register Sunday, March 16, 1986

Metro

Cities' snap decisions scrutinized

Assembly bill would restrict votes on 'off-agenda' measures

By Anita Snow
The Register

Local educators were astonished Dec. 2 when the Santa Ana City Council announced it would give the Santa Ana Unified School District $8 million in redevelopment revenues for new classrooms.

Like many recent Santa Ana council decisions, the vote came as a surprise to some because it had not been published on the meeting agenda. It was, in the terminology of bureaucratic officials, an off-agenda item.

The council's Jan. 27 action to withdraw support for the Westdome downtown sports arena site also had not been printed on the meeting agenda.

When council members agreed March 1 to have the county Registrar of Voters count about 7,000 signatures gathered by a community group to change city government, that action, too, was "off-agenda."

"Most major items we have approved recently have been walk-on items involving money," Santa Ana City Councilman John Acosta said. "And I feel kind of uncomfortable with that." Many "off-agenda" issues need further study before they are approved, Acosta said.

But the Santa Ana City Council — and other local governmental bodies throughout the state — may find such sudden, "off-agenda" items limited if pending state legislation passes.

A bill written by Assemblyman Lloyd Connelly, D-Sacramento, and co-sponsored by Assemblyman Ross Johnson, R-Fullerton, is designed to strengthen the Ralph M. Brown Act, passed in 1953 to make sure local governments conduct the public's business in public. Brown, a former state legislator, was the original author of the bill.

The Brown Act prohibits all local legislative bodies, such as city councils, county boards of supervisors and school districts, from holding secret meetings. It also governs some non-profit agencies that receive public funds, such as the Orange County Community Devel-

Please see AGENDAS/B6

3/17/

To: Gene Erbin
From: Alan V Thaler
Now that I'm (ret
Cause's Orange County
correspondent, I thought
I'd pass along the
piece in which you
are prominently
mentioned (a thank
that as author of
the bill you
modest fellow!)
Best regards,
Alan

cc: Wally Zelman
Cynthia Goodman

will continue through the next two weeks, as Santa Barbara organizations host a variety of cultural events to recognize his promotion of civil rights in America.

"A lot of the people who supported Dr. King at the time (in the 1960s) still do, and want to carry on the tradition," said Isaac Garrett, president of the Santa Barbara chapter of the National Association for the Advancement of Colored People.

Monday, Jan. 20 marks the first observance of a federal holiday honoring King's birthday. "A national holiday has a tendency to make the whole nation stop and reflect," said Valencia King Nelson, director of Afro-American Community Services.

"It brings a oneness, a chance for everyone to reflect on a man of peace," King Nelson said.

A press conference Jan. 13 at De La Guerra Plaza, sponsored by the Martin Luther King Organizing Committee, an ad hoc group set up to organize holiday events,

WILL JENKINS/Nexus

Shirley Kennedy (left), Isaac Garrett and Valencia King Nelson helped organize tributes to Martin Luther King, Jr.

hallmarked the importance of King's achievements. The Amboseli Dance Troupe performed to an audience of about 25 people.

King, a Baptist minister, championed the civil rights

For his efforts to promote peace, King received the Nob Peace Prize in 1964, four years before his assassination. As result of the movement King headed, Congress approved t Civil Rights Act of 1964 and the Voting Rights Act of 1965.

Organized by the ad hoc committee and cosponsored Afro-American Community Services, activities to celebra King's birthday will continue through Jan. 29.

Events include a Children's Book Faire with profession storytelling Jan. 15 and Jan. 17-20, featuring noted auth and storyteller Lorenz Graham on Jan. 19.

A photography exhibition entitled, "Black Churches of th Civil Rights Movement," by UCLA graduate Carlto Wilkinson will be displayed Jan. 17. UCSB's Black Studie Center and Metropolitan Theatres will sponsor a speci showing of the film, "The Color Purple" at the Rivier Theater Jan. 24.

Nobel Peace Laureate Bishop Desmond Tutu will spea about civil rights and racial equality Jan. 21 at the UCS Events Center.

New Bill May Alter State Open Meetings Act

By Mariko Takayasu
Capital Correspondent

SACRAMENTO — Citizens would be allowed to take local governmental bodies to court if they are in violation of a state open meeting act under a new bill introduced on Wednesday.

Assemblymen Lloyd Connelly, D-Sacramento, and Ross Johnson, R-Fullerton, have introduced a bill which would amend the Brown Act.

The act requires that meetings of local bodies, including city councils and boards of supervisors, be open to the public.

In the bill, two provisions would be included in the Brown Act. The bill would require local entities to post specific agendas for their meetings so that citizens can know 30 days prior to the meeting what business will be conducted.

"Why shouldn't the people have some opportunity to invalidate the illegal action of their government?"

— Assemblyman Lloyd Connelly, D-Sacramento

Also, the bill would allow citizens to go to court to have actions that are in violation of the Brown Act declared "null and void" within 30 days of that action.

Currently, there is no law requiring specific agendas or permitting the invalidation of illegal actions, Connelly said.

"Right now under the act it states you must obey it, but if you don't there's no real recourse," Connelly said. "This is an important bill because it puts a sharp enforcement teeth into the act. Right now, the act is toothless."

The bill is similar to legislation passed last year which imposed the same provisions to state agencies and departments.

The measure is in response to an incident which occurred at a Los Angeles City Council meeting where members increased their own salaries but did not inform the public prior to the meeting that this ordinance would be on the agenda.

According to court documents, members did not identify the increase in pay during the discussion period. "The pay raise was only referred to as Item 53, and no description of the motion was given," Johnson said.

However, the judge ruled that the council's act was not in violation of the Brown Act, although it may have violated the spirit of the law.

"Why shouldn't people have some form of minimal notice of the meetings of their local government?" asked Connelly. "Why shouldn't the people have some opportunity to invalidate the illegal action of their government?"

There is expected to be some opposition to the bill, including the California League of Cities. "We're going to be ducking for cover," Johnson said.

The measure has been referred to the Assembly Local Government Committee and will be acted upon in the next several weeks.

Measure Seeks to Bring 'the Light of Day' to Government Meetings

By LEO C. WOLINSKY, *Times Staff Writer*

SACRAMENTO—When members of the Los Angeles City Council voted themselves a pay raise last year without discussion or public notice, the issue landed in Superior Court where a judge labeled the action "bizarre."

The raise ultimately was overturned because it was larger than what the City Charter allows, but the hasty, unannounced council procedure, it turned out, had been entirely legal.

Angered by such "secret decisions" on the part of local government officials, two state lawmakers Wednesday introduced legislation that would strengthen open meeting laws by empowering courts for the first time to strike down local government attempts to dodge public scrutiny.

"What we're interested in doing is bringing the light of day to the operations of government and have public hearings be precisely that," said Assemblyman Ross Johnson of La Habra, a conservative Republican who is co-authoring the measure with Assemblyman Lloyd G. Connelly of Sacramento, a liberal Democrat.

At issue is the 32-year-old Brown Act, which was enacted to end the once relatively common practice of government bodies meeting in secret on sensitive political issues. The law requires that the public be notified of meetings and that government officials not make any decisions in private.

But the Brown Act has gone largely unenforced because it does not include any penalties for violation except where criminal intent can be proven. Connelly said it is "virtually impossible" to bring a criminal case by invoking the law and that "there is no recorded history of a successful prosecution."

The legislative proposal would require local government bodies, both elected and appointed, to post written agendas 72 hours before any regular meeting. Items not listed on the agenda could not be taken up for action. Meetings concerning personnel decisions are already exempted under the Brown Act, and the authors of the new law are expected to exempt certain emergency actions as well. But all other decisions found by a court to have violated any provision of the law automatically would be struck down.

District attorneys, who often are called upon to enforce the Brown Act but find there is little they can do, are strongly backing the measure and have gathered examples of what they consider to be violations up and down the state, Connelly said. It also is backed by the League of Women Voters and Common Cause.

However, many local officials, fearful that their authority would be jeopardized, are expected to lobby heavily against any attempt to further restrict their activities.

Larry Naake, executive director of the County Supervisors Assn. of California, said his group has not reviewed the new proposal and "I don't know if we will support it or oppose it." But he said that while counties by and large agree with the open meeting law, "I think some of the Brown Act laws ought to apply to state officials as well. It's easy to pass laws that regulate others."

Last year the Legislature enacted a similar law that tightened up Brown Act requirements for state agencies, but it does not apply to the Legislature itself. The Assembly and Senate have their own open meeting rules, but many of them are routinely waived to speed action and often important decisions are made in private meetings.

Even as Johnson and Connelly unveiled their proposal, the Senate Local Government Committee in a hearing room down the hall in the Capitol building gave a practical demonstration of the problems their measure may encounter. The committee killed a bill that would have extended Brown Act requirements to private nonprofit groups that receive federal funds.

"History has indicated that we will have an arm-wrestling contest," Connelly acknowledged.

In the Los Angeles case, council members voted 12 to 0 without discussion last July at an open meeting to grant themselves a 10% pay raise. A copy of the ordinance enacting the raise was not available to citizens before the vote and was publicly referred to only as "Item 53."

The ordinance was ordered transmitted "forthwith" to Mayor Tom Bradley, who signed it the next day. The Superior Court overturned the raise because the City Charter allows no more than a 5% annual pay increase.

Santa Ana, CA
(Orange Co.)
Register
(Clr. D. 279,452)
(Clr. Sat. 246,128)
(Clr. Sun. 311,062)

JAN 16 1986

Allen's P. C. B Est. 1888

OC lawmaker sponsors bill to shore up open-meeting act

By Jeff Weir
The Register

SACRAMENTO — Fullerton Assemblyman Ross Johnson joined forces Wednesday with unlikely allies — Common Cause, the League of Women Voters and a liberal assemblyman — in sponsoring legislation to shore up the Brown Act, which prohibits local governmental agencies from holding secret meetings.

Co-written by Assemblyman Lloyd Connelly, D-Sacramento, Johnson's bill would strengthen the notice requirements and enforcement provisions of the act, which was designed to make sure that government meetings and decisions are conducted in an open and public forum.

The new bill would require lawmaking bodies to post specific agendas of business items 72 hours before their meetings and would allow the courts to nullify governmental actions that violate the open-meeting provisions of the act.

The 1953 Brown Act requires government agencies to post notices of upcoming meetings, but not of specific agendas. It also fails to provide pragmatic penalties for violations, such as invalidating votes taken during secret sessions.

Johnson, a Republican, said the amendments were prompted by the unorthodox manner in which Los Angeles City Council members approved 10 percent salary increases for themselves in June.

The pay-raise measure, identified only as "item 53," did not appear on the council agenda, was taken out of order and approved without discussion.

"The council brought up item 53 with no information or discussion whatsoever as to what item 53 was," Johnson said.

Five months later, the raises were invalidated because they exceeded ceilings imposed by the Los Angeles City Charter. The judge who threw out the raises ruled, however, that the council action was legal under the Brown Act.

"The important point is that it in no way violated the Brown Act and in no way was punishable with respect to the Brown Act," Johnson said. "This bill would make that impossible. ... We're interested in bringing the light of day to the operation of government at public hearings (to create) an opportunity for the public to hear what is being considered."

The Brown Act applies to all local legislative bodies, including city councils, school boards, county supervisors, water districts, special districts and some nonprofit, quasi-governmental organizations that receive public funds. Disclosure and public meeting rules for statewide agencies are covered by a different statute, the Bagley-Keene Open Meeting Act.

Even though willful violations of the act are misdemeanors, no one has ever been successfully prosecuted under the act, Connelly said.

Under the Johnson-Connelly amendments, citizens or groups could seek writs to nullify decisions that violate the act. The courts also would have authority to reimburse plaintiffs for their legal costs and attorney fees.

"This is an important bill because it puts sharp enforcement teeth into the act," Connelly said.

The measure was endorsed by representatives from Common Cause, a public-interest lobbying group, and the League of Women Voters.

"As a resident of Los Angeles, what struck me about that (pay-raise vote) was the public perception that the City Council had acted unaccountably," said Common Cause Executive Director Walter Zelman.

"People were astonished that kind of thing could happen ... and that the law tolerated it. The public was very angered by the fact (the council) had pushed something through without the public having any idea as to what was going on."

Johnson and Connelly, who successfully pushed a bill last year that imposes similar disclosure requirements on state agencies, said they expected the bill to receive bipartisan support. They conceded, though, that some cities and counties probably would oppose it.

In another part of the Capitol Wednesday, a Senate committee killed a related bill that would have compelled local economic development agencies to comply with the Brown Act.

Members of the Senate Local Government Committee, concerned that the measure would breach the confidentiality of some businesses' financial and tax records, rejected the measure.

RICK PEOPLES
MANAGING EDITOR

Sun City
news

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What we don't know

By RICK PEOPLES

On June 5, 1985, Los Angeles City Council members quietly approves "Item 53" on their agenda — a fat 10-percent pay raise for themselves, the mayor, city attorney and city controller — without any public discussion and, according to a later court decision, in violation of the city charter.

A reporter finally finds a full description of "Item 53" in the city clerk's files and the story runs the next day — after the pay raise is on the books.

On March 11, 1986, trustees for Mt. San Jacinto College meet to pick a site for a new satellite community college campus, an issue that has sparked strong controversy in the community and involves millions of dollars.

A motion to bring the issue to a vote fails to receive a second. The members leave the meeting room and enter closed session — barring the public and reporters. When they return, the vote is 3-2 for a site in Sun City.

These are examples of public agencies at work — in the first case a powerful city council in one of the nation's largest cities, and in the second instance the governing board of a small community college faced with a decision that involves a great deal of money.

More importantly, these are also examples of public business being conducted in private, and that's not right — the public has a right to know how and why public officials spend their time and taxpayers' money.

But even if it isn't right or even if it isn't legal, the results of closed door meetings and slight-of-hand pay raises can stand under California's current "open meeting law," better known as the Ralph M. Brown Act.

The Brown Act, on the books in California since 1953, simply says that the public is to be notified as to where and when public agencies meet — a week in advance of regularly scheduled meetings and 24 hours in advance of special meetings.

Left up to the interpretation of the courts, which may or may not be sympathetic to the "public's right to know," is the issue of if and how much a public agency must publish about what will be discussed at a meeting.

And, here's the real kicker, while public officials who violate the Brown Act face misdemeanor criminal charges, there is no language in the law to invalidate what they do in those closed door sessions or by slight-of-hand to sneak pay raises past nosy news-

(See Don't Know, on A-7)

Don't know . . .

(Continued from A-6)

paper reporters and the rest of the general public.

A new piece of legislation, AB 2674, sponsored by state Assemblyman Lloyd Connelly (D-Sacramento) is aimed at changing all that.

Like a piece of similar legislation authored by Connelly and passed last year to regulate state agencies, AB 2674 not only requires local governmental bodies to publish specific agendas 72 hours in advance of regular meetings and 24 hours ahead of special meetings, it also provides for the "judicial invalidation" of any decision made by such a group while in violation of the Brown Act.

For example, acting on a private taxpayer's lawsuit, the court found that the Los Angeles City Council acted within the current provisions of the Brown Act requiring prior public notice by simply including an "Official Salaries Authority Report" in the city clerk's files. The judge rejected the 10-percent pay raise not because it violated the Brown Act, but because the raise was twice as big as the city charter allowed.

In other words, the council legally could have given itself a 5-percent pay raise without telling the rest of us. The school board could have picked any site it wanted in private and avoided a lot of criticism.

AB 2674 comes up for review before the Assembly Local Government Committee on April 1 and then goes to the Assembly floor for discussion, and then will be sent to the Senate for review. Supporters are "cautiously optimistic" that the bill will make its way through the labyrinth in Sacramento and will some day become law.

AB 2674 is certainly a step in the right direction and deserves support. Closer to home, reporters can educate local officials about the current provisions of the Brown Act every chance they get.

They might begin with an excerpt from the preamble: "The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know."

KNBC EDITORIAL

KEEPING LOCAL GOVERNMENT OPEN

There's something incomplete about state government passing laws telling local levels how to hold open meetings.

The state, after all, has its own ways of making dark, back-room deals.

Still, somebody has to keep cities, counties, school and special districts open to the taxpayers, and that somebody might as well be the state. State lawmakers certainly know all the tricks.

What tricks? The slickest trick is acting on some controversial matter before anyone notices. Some cities have been known to vote council members big pay raises that way. And that's also how to make zone changes neighbors won't like.

All that would be outlawed under legislation moving through Sacramento. All agenda items would have to be posted 72 hours in advance, except for fires, floods or other defined emergencies.

The penalty would be that any action taken without proper notice would be null and void.

Good.

Now all we need is some way to keep Sacramento open, too.

#B-301
Broadcast times: 3/6-6:28PM; 3/6-Signoff; 3/7-6:27AM
Time: 1:00

As secrecy loopholes open up, meeting doors close

SD Union 3-3-86

By Daniel C. Carson
Staff Writer

California Watch

SACRAMENTO — Eighteenth-century poet David Everett noted that tall oaks from little acorns grow.

If Everett were observing the 1986 session of the California Legislature, he probably would observe that major holes in the public's right-to-know laws from little exemptions grow.

Once again, proposals to curb public access to meetings and records of government agencies, and to chill publication of damaging information, are sprouting in the Capitol.

One example is SB 1914 by Sen. Nicholas Petris, D-Oakland. The Petris bill, introduced last month, would provide for a huge new shroud of secrecy over the operations of the state's 67 public hospital districts.

The district boards are elected. Most of them run hospitals built with public money. A good chunk of their operating funds — like almost all medical institutions these days — ultimately comes from the taxpayers.

SB 1914 would exempt from the California Public Records Act, and therefore from public review for up to a year, any local hospital-district records that "relate to any contract for inpatient or outpatient services." Not only would the contract itself be off limits, it should be noted, but any documents that "relate" to it.

Furthermore, the bill provides for closed meetings by district boards, which ordinarily must be open to the public, of "hospital trade secrets."

The language probably will be narrowed later. However, it now defines those secrets as "information (that) in the opinion of the board has commercial value and would, if prematurely disclosed, deprive the hospital of a business advantage."

The measure is being sponsored by the Association of California Hospital Districts. Felice Tanenbaum, a Petris aide who herself is a former district board member, also helped craft it.

Tanenbaum said the bill is intended to fix "inequities" in requiring public hospitals to act openly while in competition with private, for-profit firms that can play their cards close to their vest.

"Because you're a district hospital, they (for-profit competitors) have the right to hear everything that's going on. This is the only kind of hospital where that happens," she said.

Ron Youngren, the hospital association's Sacramento lobbyist, said the restrictions are being sought because openness is costing them competitive opportunities. When word got out that a district hospital in Palm Springs was planning to go into the heart-surgery business in competition with another medical center, he said, it triggered an uproar and a campaign to block the move.

While the California Newspaper Publishers Association has yet to take a formal position on SB 1914, CNPA spokesman Terry Francke said: "Our people would not find the bill attractive and would be disposed to oppose it.

"It's part of a pattern that you find not just on these things but with almost everything having to do with the interface between the health-care industry and government," Francke said "It's increasingly difficult to get meaningful analytical information if you're a reporter or a member of the public."

That pattern emerged in 1982 when the Legislature overhauled the taxpayer-funded Medi-Cal health-care program for the poor. Instead of paying after-the-fact claims for medical services provided by hospitals, the state began to write advance contracts with each hospital limiting what they could charge the state.

There was scant discussion of a provision of the bill allowing the state's chief negotiator to keep secret any or all meetings and records. The stated purpose was to keep the state in a strong bargaining position and keep the hospitals in the dark as they bid for Medi-Cal contracts.

A flap ensued when the secrecy provisions were revealed. Lawmakers amended the law to say the contracts must be made public within a year.

Medi-Cal administrators won the next round. They got a bill passed last year saying that the all-important information in the $1 billion worth of contracts — the rate of payments to a hospital — could be held confidential for four years.

Now the hospital districts want the same kind of secrecy, said Youngren, because they also want to enter into lucrative new contracting ventures and don't want to lose out to private competitors.

The problem is that the new era of medical competition also increases on a grand scale the opportunities for favoritism, conflicts of interest and corruption in the awarding of contracts. "They are talking hundreds of millions of dollars here," acknowledged Youngren.

A scandal erupted in 1984 over allegations that a Palomar-Pomerado Hospital District board member tried to bribe a legislator to support a bill giving their medical center a lucrative trauma-care center. The board member denied the charge, however, and the district attorney has never acted on the matter.

Last year in Contra Costa County, a public furor followed an effort by directors of the Mount Diablo Hospital District to transfer $55 million worth of public assets to a non-profit corporation controlled by some of those same board members. The deal was done before angry voters and state lawmakers rebelled and overturned the transfer.

Everett offered another solution he considers politically unrealistic but meritorious: require every hospital — public, private and non-profit — to operate openly.

He makes a striking point. Some of the privately held medical centers are spending more public money than the public hospitals are.

Maybe a small move in favor of openness would help.

Hospital's operations go private

By Stephen C. Cook
OF THE EXAMINER STAFF

Can a local government turn its assets and operations over to a private corporation to avoid the state's public-meeting law?

A San Rafael couple says their local hospital district has done just that, and has asked the state Court of Appeal in San Francisco to declare it illegal.

Norwin and Sandra Yoffie sued when the publicly elected directors of Marin General Hospital engineered a corporate shuffle to move the institution beyond the reach of the open-meeting law known as the Ralph M. Brown Act.

The law requires that local governments operate in public so the people they represent will have the information needed "to retain control over the instruments they have created."

Marin General was built more than 30 years ago when county voters created the district and committed their tax dollars to good medical care.

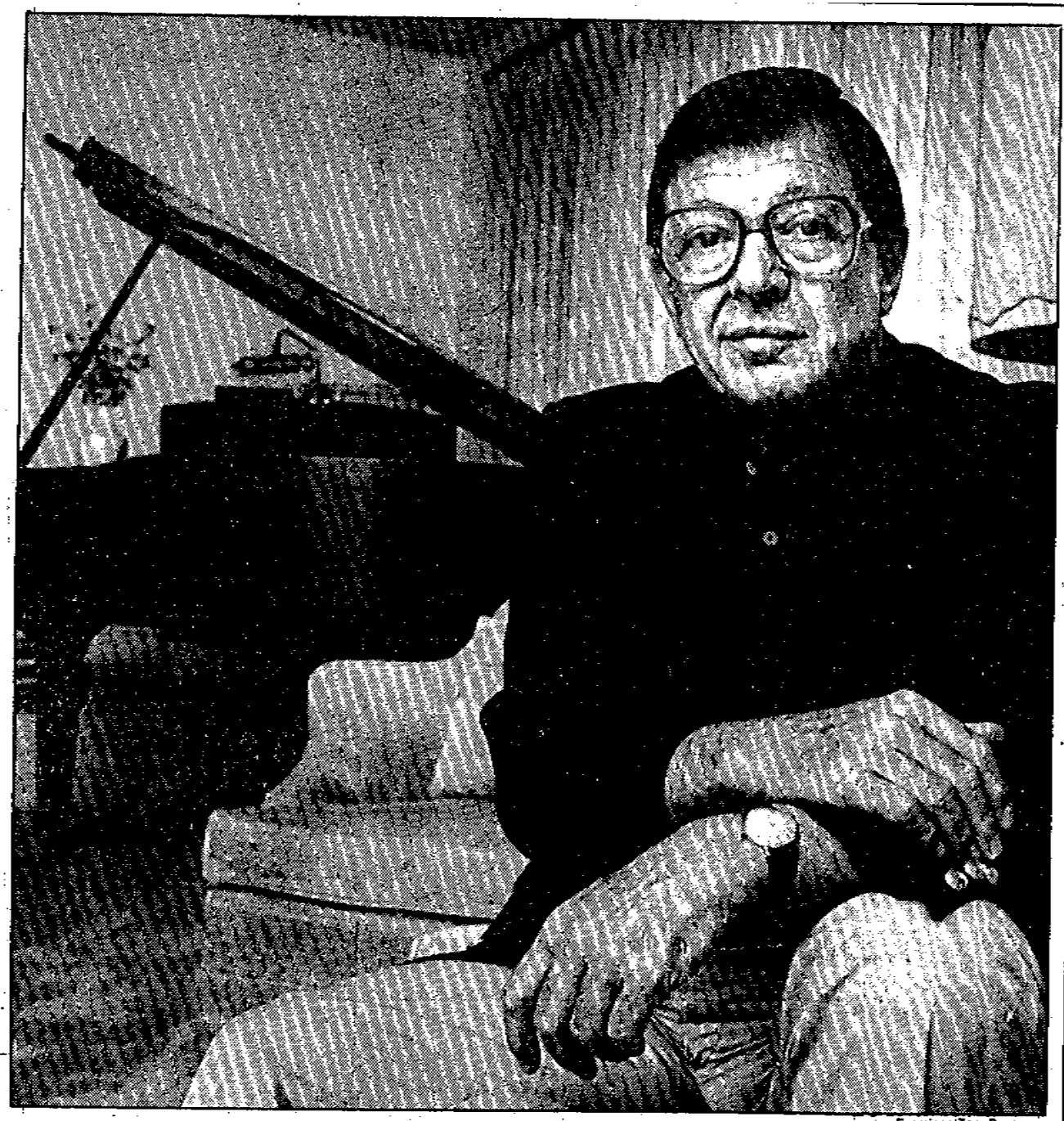
The primary purpose of the District Hospital Act, which allowed this, was to get hospitals built. It permitted local districts to lease the facilities to private corporations for actual operation.

No one ever said these private companies had to conduct their business in public, just because they were leasing a public facility.

But the Greenbrae hospital was run by the Marin Hospital District through an elected board of directors.

Annual reports show it was al-

— Please see HOSPITAL, B-2



Examiner/Tom Duncan

Norwin Yoffie and his wife, Sandra, sued to stop Marin General's move behind closed doors

CENTER FOR PUBLIC INTEREST LAW
1535 Mission Street
San Francisco, CA 94103

7 February 1986

Mr. Gene Erbin
Assembly Judiciary Committee
Subcomittee on the Administration of Justice
1100 J Street Suite 515
Sacramento, California

Re: Marin District Hospital

Dear Gene,

Enclosed are the key pleadings from the Marin District Hospital case. I believe the judge's decision is flatly wrong, and should be overturned on appeal. Indeed, parts of the decision are simply incomprehensible. For instance, if you can explain to me what he means in the section dealing with delegation, and why the Brown Act doesn't follow the delegation of authority, I'd appreciate it.

I have spoken at length with the clients, Mr.. and Mrs. Yoffie. They have a pretty hair-raising tale to tell. From their experiences, it appears there is very high level political interest in seeing to it that hospitals be unimpeded in their efforts to go private. I do not completely comprehend why the very big players should be interested in the ostensibly non-profit hospitals, but so far it seems that clout far out of proportion to the issue is being wielded here.

In addition, it seems that it is not only hospitals that are interested in shielding their activities from the cleansing glare of the public eye. A couple of water districts, community colleges, and others, are apparently watching this case with interest. As for hospitals, I enclose the memo authored by the attorney--Sheeks--who, along with one Quentin Cook, has been most active in urging hospitals to draw the blinds, and in showing them how to do it.

I am happy to keep you informed of the proceedings in this case, and to help you through testimony on AB 2674. Please keep me informed of the progress of the bill.

Cordially,

James Wheaton

Encl: as stated

Judith R. Epstein
George A. Markell
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Professional Corporation
1999 Harrison Street
Oakland, CA 94612
(415) 763-2000

Attorneys for Plaintiffs/Petitioners
Norwin Yoffie and Sandra Yoffie

SUPERIOR COURT OF CALIFORNIA - COUNTY OF MARIN

NORWIN YOFFIE and SANDRA YOFFIE,

Plaintiffs/Petitioners,

vs.

MARIN HOSPITAL DISTRICT, a public corporation, and its Board of Directors, MARY CARPOU, GRACE GOEBEL, DON McCREA-HENDRICK, and PETER EISENBERG; MARIN HEALTH SYSTEMS, INC., a California nonprofit corporation and its Board of Directors, Joane Berry, Roger Christie, Burt Kirchner, Art Latno, Jock McNutt, Niels Schulz and Jeannie Giswold; MARIN GENERAL HOSPITAL, a California nonprofit corporation, and its Board of Directors, John Cahill, Ed Cutler, John Grasham, Dale Luehring, Dennis O'Connell, Rex Silvernale, Mary Carpou, Grace Goebel, HENRY BUHRMANN; MARIN GENERAL HOSPITAL FOUNDATION, a California nonprofit corporation, MARIN HOME CARE, INC., a California nonprofit corporation and DOES I-XX.

Defendants/Respondents. /

No.

Date:
Time:
Dept: 6

COMPLAINT FOR DECLARATORY JUDGMENT, PETITION FOR WRIT OF MANDATE AND REQUEST FOR TEMPORARY STAY, ATTORNEYS' FEES AND FOR SUCH OTHER RELIEF AS MAY BE APPROPRIATE WITH SUPPORTING MEMORANDUM OF POINTS AUTHORITIES, AND EXHIBITS

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COMPLAINT/PETITION

Plaintiffs/Petitioners Norwin Yoffie and Sandra Yoffie petition this Court for a declaratory judgment, a writ of mandate and temporary stay directed to the Defendants/ Respondents Marin Hospital District, a public corporation and its Board of Directors, Mary Carpou, Grace Goebel, Don McCrea-Hendrick, and Peter Eisenberg; Marin General Hospital, a California non-profit public benefit corporation; Marin Health Systems, Inc., a California nonprofit public benefit corporation, and its Board of Directors, Joane Berry, Roger Christie, Burt Kirchner, Art Latno, Jock McNutt, Niels Schulz, and Jeannie Giswold; Marin General Hospital Foundation, a California nonprofit public benefit corporation, Marin Health Systems, Inc., a California non-profit public benefit corporation and its Board of Directors, John Cahill, Ed Cutler, John Grasham, Dale Luehring, Dennis O'Connell, Rex Silvernale, Mary Carpou, and Grace Goebel, and Harry Buhrmann; and Marin Home Health, Inc., and by this verified Complaint/Petition allege:

THE PARTIES

1. Plaintiffs/Petitioners Norwin Yoffie and Sandra Yoffie ("Petitioners") are at all times mentioned herein and continously have been residents, electors and taxpayers of Marin Hospital District during the past 18 years. As such, Petitioners are interested persons authorized under Government Code Section 54960 of the California open meetings act, The

Ralph M. Brown Act ("Brown Act"), to seek legal restraint of violations of the Brown Act in order to prevent secrecy in local government.

2. Defendant/Respondent, Marin Hospital District (the "District") is a public corporation organized on December 9, 1946 under the provisions of the Local Hospital District Law (Statutes 1945, Chapter 932, Health and Safety Code, Division 23) for the special purpose of establishing, owning and operating Marin General Hospital, located in San Rafael, Marin County, California (the "Hospital"). The powers, purposes and responsibilities of the District are set forth more fully in its Bylaws, a true and correct copy of which is attached hereto as Exhibit 1 and incorporated herein by this reference. The District is a local agency subject to the open meetings requirements of the Brown Act.

3. Defendants/Respondents, the Board of Directors of the District, Mary Carpou, Grace Goebel, Don McCrea-Hendrick, and Peter Eisenberg (collectively the "District Directors") are elected by the residents of the District and are vested with the administrative powers of the District pursuant to the District Bylaws. See, Exhibit 1. The District Directors are expressly empowered to establish and maintain the Hospital, and in connection therewith, to exercise complete charge, control, and management of the property, affairs and funds of the District,

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including control of the overall operations and affairs of the Hospital and delivery of health care services to residents of the District according to the best interests of their health needs. See, Exhibit 1. The District Directors comprise a legislative body subject to the open meetings requirements of the Brown Act.

4. Defendant/Respondent Marin Health Systems Inc., a California nonprofit public benefit corporation, ("Parent Corporation") is the parent corporation and sole member of each of the Defendants/Respondents subsidiary corporations identified in paragraphs 5 through 7 infra (collectively, the "Hospital Subsidiaries"). A true and correct copy of the Bylaws of Parent Corporation prepared by Respondents' attorney is attached as Exhibit 2 and incorporated by this reference. Parent Corporation through its Board of Directors Joane Berry, Roger Christie, Burt Kirchner, Art Latno, Jock McNutt, Niels Schulz, and Jeannie Giswold, exercises complete control of the Hospital Subsidiaries, which in turn are responsible for the management and operation of the District business and assets.

The District has no right to elect or appoint Parent Company's Board of Directors, which is self perpetuating, i.e., the members of the Board of Parent Corporation elect succeeding members. Accordingly, the District has agreed to delegate and yield control over the management and operation of the

District's business activities and strategic planning to Parent Company. It is the intention of Respondent Parent Corporation that it will not be subject to the open meetings requirements of the Brown Act, even though Parent Corporation, by virtue of the powers and authority delegated to it by the District Directors, is a legislative body subject to all requirements of the Brown Act. A true and correct copy of the statement describing Parent Corporation's policy regarding closed meetings given to Petitioner by Respondent Henry Buhrmann is attached hereto as Exhibit 3.

5. Defendant/Respondent Marin General Hospital, Inc., ("Hospital Corporation"), a California nonprofit public benefit corporation, is a wholly-owned subsidiary of Parent Company. A true and correct copy of the Bylaws of Hospital Corporation prepared by Respondents' attorney are attached hereto as Exhibit 4 and incorporated herein by this reference. The District has delegated its power and authority to the Hospital Corporation Board of Directors John Cahill, Ed Cutler, John Grasham, Dale Luehring, Dennis O'Connell, Rex Silvernale, Mary Carpou, Grace Goebel and Henry Buhrmann, to operate and manage the Hospital for the purpose of providing health care services to the District residents. Two District Directors simultaneously serve as members on the multimember Board of Directors of Hospital Corporation. The Bylaws of Hospital Corporation, which are a mirror image of the District's bylaws,

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empower Hospital Corporation with functions, purposes and authority that are virtually identical to the powers and functions of the District. The Bylaws also expressly provide that the Hospital Corporation's meetings will not be subject to the open meeting requirements of the Brown Act or the California Public Records Act, even though Hospital Corporation, by virtue of the powers and authority delegated to it by the District Directors, is a legislative body subject to all of the requirements of the Brown Act.

6. Defendant/Respondent Marin Home Care, Inc. is a California nonprofit public benefit corporation of which the District is the sole member. The District has agreed to transfer its membership in Marin Home Care, Inc. to Parent Corporation, and has delegated its authority to Marin Home Care, Inc. and its Board of Directors to provide home health services to residents of the District. It is the intention of Marin Home Care that it will not be subject to the open meetings requirements of the Brown Act, even though by virtue of the authority delegated to it by the District Directors is a legislative body subject to all of the requirements of the Brown Act. See, Exhibit 3.

7. Defendant/Respondent Marin General Hospital Foundation ("Foundation Corporation") is a California nonprofit public benefit corporation which is a wholly owned subsidiary of

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7. Defendant/Respondent Marin General Hospital Foundation ("Foundation Corporation") is a California nonprofit public benefit corporation which is a wholly owned subsidiary of Parent Corporation. The District has delegated its authority to Foundation Corporation and its Board of Directors to engage in private fund raising activities for the benefit of the Hospital. It is the intention of Foundation Corporation that it will not be subject to the open meeting requirements of the Brown Act. See, Exhibit 3. However, Foundation Corporation, by virtue of the authority delegated to it by the District Directors is a legislative body subject to all of the requirements of the Brown Act.

8. Petitioners are ignorant of the true names and capacities of Defendants/Respondents DOES I-XX and therefore sue these Defendants/Respondents by such fictitious names. Petitioners will amend this Complaint/Petition to allege their true names and capacities when ascertained.

9. All all times relevant hereto each of the Defendants/Respondents was the agent of the remaining Defendants/Respondents and was acting within the scope of such agency.

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JURISDICTION AND VENUE

10. The claims brought by Petitioners which are authorized by Governmental Code Section 54960 have arisen as the result of the acts of Respondents all of which have occurred in the County of Marin.

FACTS GIVING RISE TO CLAIMS

11. On March 27, 1985 a special meeting of the District Directors was held to discuss and evaluate the reorganization of the District. The custom and practice of the District had been to review all facets of the proposed reorganization during the previous year. A true and correct copy of the Minutes of the special meeting of March 27, 1985, provided by Respondent District is attached hereto as Exhibit 5 and incorporated herein by this reference. A task force committee was appointed by the District Directors and was instructed to research and make further recommendations regarding the form of the reorganization with the assistance of legal counsel for the District, Quentin Cook. Mr. Cook also is legal counsel to Respondent Parent Corporation and Respondents Hospital Subsidiaries. Id.

12. On April 10, 1985, the District again considered the reorganization with their attorney, Mr. Cook, present. The Brown Act requires that the District's business must be transacted in public; but, at this meeting, Mr. Cook stated

that avoidance of public disclosure of the District's business was a primary reason for the reorganization. A true and correct copy of the Minutes of the meeting of April 10, 1985 provided by Respondent District is attached hereto as Exhibit 6 and incorporated herein by this reference.

13. On several occasions thereafter, the District Directors met either at regular or special meetings or in special committee sessions to review, evaluate and endorse various aspects of the plan of reorganization, including the structure, function and powers of Parent Company and the Hospital Subsidiaries. True and correct copies of the Minutes of various meetings of the District and Minutes of the meetings of the Bylaws Committee as provided by Respondent District are attached hereto as Exhibits 7 and incorporated herein by this reference.

14. On September 30, 1985 Petitioner Norwin Yoffie and his legal counsel met with Respondent, Henry Buhrmann, and Quentin Cook, legal counsel for the District, the Parent Corporation and the Hospital Subsidiaries, to communicate Petitioners' objections to the reorganization. At this meeting, Mr. Cook and Mr. Buhrmann stated that it was the District's intention that the Parent Corporation and the Hospital Subsidiaries would not be bound by the public meeting requirements or any public records disclosure requirements of

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the Brown Act (Government Code Sections 54953 and 54957.5 et seq.) and that the transaction had been intentionally structured to avoid the Act. Mr. Cook admitted that the District in reorganizing was trying "to thread the eye of the needle as closely as possible" to avoid the Brown Act.

15. At a meeting of the District Directors on October 1, 1985, Petitioners, through their legal counsel, formally objected to the District Directors' contemplated intention to transfer its assets, liabilities and business to the Hospital Subsidiaries and Parent Corporation and their respective Boards of Directors for the expressed purpose of conducting the District's business in secret, in violation of the Brown Act. Nevertheless, the District Directors unanimously resolved that, subject to review of the final revisions of the reorganization documents, they would approve a reorganization at the next regular meeting of the District. A true and correct copy of the Resolution of October 1, 1985 as provided by Respondent District is attached hereto as Exhibit 8 and incorporated herein by this reference.

16. On November 12, 1985, at a meeting of the District Directors, said Directors unanimously approved the reorganization. A true and correct copy of the Lease and the Resolution approving the Lease between the District and Hospital Corporation as provided by Respondents' attorney is attached

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hereto as Exhibit 9. Under the terms of the reorganization, the District contractually delegated its authority, duties and responsibilities to Respondents Parent Corporation and Hospital Subsidiaries and to their respective Boards of Directors. In particular, the District agreed:

a. To lease its real property asset, Marin General Hospital, to Hospital Corporation for a term of thirty (30) years, and in connection therewith, to delegate to Hospital Corporation and its Directors the District's obligation to operate and maintain the Hospital for the benefit of the residents of the District. See Exhibit 9, paragraph 19.2 of Lease;

b. To transfer all of the District's "debts, liabilities, obligations, contracts, duties, and loss contingencies . . . of every kind, character or description, whether accrued, absolute, contingent or otherwise . . ." except those identified in Exhibit F to the Lease. Exhibit 9, paragraph 17.2 of Lease;

c. To transfer to Hospital Corporation and its Directors the responsibility for payment of principal and interest to the holders of 22 million dollars in bonds issued by the California Health Facilities

Authority. See, Exhibit 9, paragraph 16.7 of the Lease;

d. To transfer the license to operate the Hospital Corporation issued to the District by the State of California to the District. See, Exhibit 9, paragraph 16.7 of the Lease;

e. To transfer to Hospital Corporation and its Directors, for no consideration, certain tangible and intangible assets and rights such as bank accounts and receivables owned by the District and valued in excess of $11,000,000. A true and correct copy of the Agreement for Transfer of Assets provided by Respondents' attorney is attached hereto as Exhibit 10 and incorporated herein by this reference.

17. At the November 12 meeting of the District, the District Directors approved the appointment of the initial Board of Directors of the Hospital Corporation, which includes two District Directors serving simultaneously as Hospital Corporation directors and District Directors. See, Resolution approving appointment of Directors provided by Respondents' attorney and attached hereto as Exhibit 11. The Chairman of the District Board also was appointed as Director of the Parent Corporation, although she resigned as Chairman of the District

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upon confirmation of her appointment to the Parent Corporation. At the meeting, Chairman of the Nominating Committee, Frank Paganini stated on the record that the District Directors' presence on the Boards of the Hospital Corporation and the Parent Corporation was "essential for continuity purposes." At this same meeting Petitioners again objected to the District's intention to reorganize in order to avoid the Brown Act, and Petitioners asked the District to reconsider their decision to henceforth transact the District's business in secret.

18. In spite of Petitioners' objection, the District Directors agreed to finalize the transfer of the District's assets, liabilities and business to Respondent Parent Corporation and Respondent Hospital Subsidiaries and their respective Directors, with the intention that the business of the District will thereafter be conducted in secret meetings. This transaction thus constitutes an unlawful delegation of the District's powers and duties. Unless the voters approve the dissolution of the District pursuant to Government Code Sections 56368 and 56368.5, the District cannot avoid the open meetings requirements of the Brown Act whether by delegation or otherwise. (See, Appendix.)

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REASONS FOR GRANTING RELIEF

19. Petitioners have a clear, present and substantial right to attend all meetings of any board where the business of the District, which is a local agency, will be conducted as guaranteed by Government Code Sections 54952 and 54953. Petitioners also have a clear, present and substantial right to attend all meetings of any other multimember body, including the meetings of the Boards of Directors of Respondents Parent Corporation and Hospital Subsidiaries, which exercises any authority of the District that has been delegated to it by the District Board as guaranteed by Government Code Section 54952.2. Petitioners further have a clear, present and substantial right to all public records distributed to Respondents for consideration at a public meeting as guaranteed by Government Code Section 54957.5

20. Petitioners have a direct, beneficial interest in attending the meetings held by Respondents herein and by other bodies and entities to which the District delegates its authority, to assure that District through its delegated representatives is faithfully performing its legal duty to provide acute and continued health care to the residents of the District and to own and operate the Hospital for the benefit of all of the residents of the District.

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21. Notwithstanding the plain duty imposed on Respondents to perform their public business in compliance with the open meeting requirements of the Ralph M. Brown Act (Government Code Section 94950 et seq.), and notwithstanding the demand of Petitioners that Respondents perform such duty, as set forth above, Respondents have wrongfully failed and continue to fail and refuse to provide for open meetings of their Boards of Directors as required by the Brown Act. Unless compelled by this Court to so hold their meetings open to the public as required by law, Respondents will continue to fail and refuse to do so.

22. In spite of Petitioners' objection, the District Directors have directed and agreed to the reorganization described above and to the transfer of the District's business assets, duties, rights and responsibilities to Respondents Parent Corporation and Hospital Subsidiaries and their respective Boards of Directors even though Respondents have unequivocally stated that they will not be bound by the Brown Act.

23. As a result of Respondents' refusal to hold public meetings in full compliance with the Brown Act Petitioners have sustained and will continue to sustain irreparable damage and injury, in that Petitioners are and will be denied the right to attend and observe matters of fundamental

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public interest concerning the management and operation of public assets which have been entrusted to the District by Petitioners and other residents, electors and taxpayers of the District. Petitioners further will be unable to evaluate whether the District's facilities are being operated for the benefit of Petitioners' health care needs as well as the needs of all residents of the District. Pecuniary compensation will not compensate Petitioners for loss of these rights of access, because once the meetings have taken place in secret, the opportunity to attend them and to learn firsthand about the District's business and decisions that transpired at those meetings will be irretrievably lost.

24. Petitioners have no right to appeal or to any remedy other than this proceeding to enforce their rights under the Brown Act, and thus they have no plain, speedy or adequate remedy other than the relief sought in this Complaint and Petition. Moreover, mandate and declaratory relief are expressly authorized by Government Code Section 54960 to protect Petitioners' rights of access to the meetings here at issue.

25. The transfer of assets and liabilities from Respondent Hospital District to Respondents Parent Corporation and Hospital Subsidiaries presently is scheduled to occur on November 27, 1985. Thereafter, the reorganization will be completed and the business of the District will be conducted

secretly. Therefore, unless Respondents are compelled by this Court to immediately stay any secret meetings, the reorganization will be finalized and the public's business conducted behind closed doors before proper review of the issues presented by this Complaint and Petition takes place. Accordingly, a temporary stay of all secret meetings of Respondents should be granted pending a careful review by this Court.

26. An actual controversy exists between Petitioners and Respondents, in that Petitioners believe that the meetings of all of the Respondents are subject to the provisions of the Ralph M. Brown Open Meetings Act and should be held publicly. Yet Respondents have denied and continue to deny that they must comply with the Brown Act and therefore Petitioners and the general public are, and will continue to be unable to attend said meetings due to the actions of Respondents. Accordingly, Petitioners are entitled to a declaratory order pursuant to Government Code Section 54960, declaring Respondent's meetings are subject to the provisions of the Ralph M. Brown Open Meetings Act.

WHEREFORE, Plaintiffs/Petitioners pray for relief as hereafter set forth:

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1. That this Court immediately issue a temporary stay of any closed meetings of Respondents so that a careful review of this matter can take place, thereby best serving the interests of justice;

2. That this Court issue an alternative writ of mandate commanding Defendants/Respondents to hold all of their meetings in public and to comply with the public records disclosure requirements of Government Code §§ 54950 et seq. or to show cause before this Court at a time specified by Court Order why it should not be done so and why a peremptory writ should not be issued;

3. On the return of the alternative writ and hearing on the order to show cause, that a peremptory writ of mandate issue under seal of the Court commanding Defendants/Respondents to conduct all meetings in public and to comply with the public record disclosure requirements of Government Code § § 54950 et seq.;

4. For attorneys' fees and costs in this action according to proof pursuant to Government Code Section 54960.5 and Code of Civil Procedure 1021.5;

5. For a declaration that the Lease Agreement to Transfer Assets, Bylaws and actions of Respondents constitute a

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delegation of the District's authority to Respondent Parent Corporation and Hospital Subsidiaries and their respective Boards of Directors within the meaning of Government Code Sections 54952 and 54952.2;

6. For a declaration that the meetings of Respondent Parent Corporation and Respondents Hospital Subsidiaries are subject to the Brown Act.

7. That this Court grant such other relief as may be just and proper.

DATED: November 15, 1985.

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By _____
Judith R. Epstein
Attorneys for Plaintiff/Petitioner
Norwin Yoffie

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VERIFICATION

I, Norwin Yoffie, the undersigned, do hereby certify and declare as follows:

I am a Plaintiff/Petitioner in the above-entitled action and have read the foregoing Complaint and Petition and know the contents thereof and that the same is true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at OAKLAND, California on the 20th day of November, 1985.

Norwin Yoffie

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MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

Petitioners Norwin and Sandra Yoffie here challenge Marin Hospital District's avowed intention to conduct its business in secret. The District has determined that in order to operate Marin General Hospital more competitively, it must do so without public scrutiny. Accordingly, the District has agreed to "go private" by transferring complete control of its business and assets to several non-profit corporations.

The District's actions are tantamount to an abdication of its responsibility to its residents, who have an investment of many millions of dollars in the District's assets, as well as a vested interest in the availability of quality health care services. Moreover, the District's determination to conduct its business privately is an impermissible departure from the deep commitment by this State to public scrutiny of the government's business. Indeed, our Legislature has declared:

> The people of the State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give the public servants the right to decide what is good for the people to know and what is good for them to know. The people insist on remaining

informed so that they may retain control over the instruments they have created. Gov't Code § 54950.

The District cannot circumvent the open meetings requirements of the Ralph M. Brown Act under the guise of a "lease" of its assets. As a matter of law, this reorganization is a wholesale delegation of the powers, responsibilities and authority of the District to private corporations and their self-appointed boards of directors. The Brown Act requires that public accountability follow this delegation. Accordingly, Petitioners here ask this Court to declare that Respondents are subject to the Ralph M. Brown Act, and to command them to conduct their business publicly in accordance with this Act.

II

FACTUAL BACKGROUND

Respondent Marin Hospital District ("District") was formed in 1946 for one purpose: the financing, building, owning, maintaining and operating of Marin General Hospital in order to provide quality health care services to residents of the District. See Exhibit 1. It is for this reason alone that the District was granted protected governmental status and the powers of taxation and eminent domain.

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On November 27, 1985, the District will transfer complete control of the management and operations of Marin General Hospital (the "Hospital") to a new private corporation, Respondent Marin General Hospital, Inc. and its Board of Directors, pursuant to a thirty year lease. See, Exhibit 9. The District also has agreed to transfer, for no consideration, cash and other personal property valued in excess of 11 million dollars, under a separate Agreement for Transfer of Assets. See, Exhibit 10. Additional District responsibilities will be assumed by Respondents Marin Home Care, Inc., Marin General Hospital Foundation and their respective Boards of Directors. Ultimate responsibility for all of these corporations will be vested in a parent corporation, Marin Health Systems, Inc. See, Exhibit 1, 2, 4,.

The admitted purpose of the District's reorganization is to remove itself from the "fishbowl" of public scrutiny and to delegate its responsibilities to private corporations in order to avoid the public meeting requirements of the Ralph M. Brown Act (Gov't Code §§ 54950 et seq.). See, Petition, paragraphs 12 & 14; Exhibit 3. However, such a flagrant effort to avoid public accountability must fail, for the Brown Act applies not only to local agencies and their formal legislative bodies, but to any other multimember body which exercises the authority of the formal legislative body. Gov't Code § 54952.2.

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On November 12, the District unanimously agreed to delegate its responsibility and authority for the management and operation of the Hospital facility pursuant to a 30 year Lease and an Agreement for Transfer of Assets. See, Exhibits 9 and 10.

Under the terms of the Lease, the District agreed to the transfer of the Hospital facility and its license to operate this facility to the Hospital Corporation. See, Exhibit 9 at Paragraph 4.1. The District also contracted away its "debts, liabilities, obligations, contracts, duties, and loss contingencies . . . . of every kind, character of description . . ." except those set forth in Exhibit E to the Lease. See, Exhibit 9 at paragraph 17.1 and Exhibit E attached thereto. Hospital Corporation further agreed to assume the District's liability for payment of principal and interest to the holders of 22 million dollars in bonds issued by the California Health Facilities Authority. Id.

By a separate contract, the District agreed to assign to the Hospital Corporation its bank accounts, accounts receivables, inventories, prepaid expenses, and all of its other nondepreciable assets and properties, including trademarks, trade names, licenses, royalty rights and any claims to refunds the District might have. See, Exhibit 10.

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Having transferred its assets and delegated much of its authority, the District placed its "seal of approval" on its delegates by formally approving those to whom it had delegated its authority, the initial Board of Directors of Hospital Corporation at a meeting of the District on November 12, 1985. See, Resolution dated November 12, 1985 at Exhibit 11. However, the District has yielded its right to ongoing active involvement in or oversight of the management and operation of the Hospital, since the District has not required as a condition of the transfer of its assets and business to Hospital Corporation that the District retain the right to elect the Directors of either Parent Corporation or the Hospital Subsidiaries.

The District intends to consumate its reorganization at a closing, which presently is scheduled for November 27, 1985. Thereafter, the business of the District will be conducted by private corporations that are beholden only to their self-appointed Boards of Directors.[1] These same Board members have empowered themselves to determine when and if they will admit the public to their meetings.

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[1] The 30 year lease is authorized under Health and Safety Code Section 32121(p). (See, Appendix.)

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III

LEGAL ANALYSIS

A. Declaratory Relief And Mandate Are Expressly Authorized By The Brown Act

Petitioners are electors and taxpayers residing in Marin Hospital District and as such they are interested persons authorized by Government Code Section 54960 to seek mandate and declaratory relief to prevent violations or threatened violations of the Brown Act. "The right to disclosure is an attribute of citizenship . . . ." Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors, 263 Cal.App.2d 41, 46 (1968). Accordingly, "Section 54950's broad declaration of the public's right to disclosure should logically extend standing to any county elector." Id.

Governmental agencies and private individuals and corporations are subject to control by a writ of mandate (Code Civ. Proc. § 1085; Glendale City Employees Assn. v. City of Glendale, 15 Cal.3d 328, 344-345 (1975)). Mandate may also control individuals who intend not to comply in the future with their legal obligations when the time for performance arrives. Knoll v. Davidson, 12 Cal.3d 335, 343, n. 6 (1974). Accordingly, Petitioners are entitled to a writ of mandate directing Respondents to hold their meetings in compliance with the Brown Act. Petitioners also are entitled to a declaration by this Court that there has been a delegation of authority by

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the District within the meaning of Government Code Section 54952.2.

B. The Ralph M. Brown Act Requires Respondents To Hold Public Meetings

This State has long been committed to conducting the public's business in public, rather than behind closed doors. Section 54950 the Government Code is a clear and unequivocal statement of the Legislature's intent:

> [t]he public commissions, boards and councils and the other public agencies in this State exist to aide in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The Brown Act was enacted against a background of "widespread evasion of existing open meeting statutes through unannounced 'sneak' meetings and through indulgence in euphemisms. . . ." Sacramento Newspaper Guild v. Sacramento Bd. Of Suprs., 263 Cal.App.2d 41, 49-50 (1968). After investigating the matter the Assembly Committee reported:

> Legislative and administrative groups and officials through devious ways are depriving us, the public, of our inalienable right to be present and to be heard at all deliberations of governmental bodies wherein decisions affecting the public are being made. . . . [T]here is a genuine and compelling need for legislative action of a nature designed to curb this misuse of democratic process by public bodies who would legislate in secret. Id. at 50.

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The Brown Act was enacted to remedy such evasive tactics. Id. Nevertheless, Respondents have engaged in the very type of gamesmanship that the Legislature intended to prevent. Although Respondents maintain that the reorganization merely involved a "lease" of the District's hospital facility, the facts clearly demonstrate this reorganization involves far more than the transfer of an interest in real property. Rather, it involves a wholesale assignment of the duties, responsibilities, rights and obligations of the District to the Parent Corporation, the Hospital Subsidiaries and their Boards of Directors.

1. Respondents are "Legislative Bodies" as Defined by Government Code Section 54952.2

In 1981, Section 54952.2 of the Government Code was added to expand the scope of the Brown Act to include the kind of delegation that has occurred in this case. Section 54952.2 includes within the definition of legislative bodies:

> [A]ny board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body. (Emphasis added.)

The language of this provision is clear and unambiguous, and its application to the facts of this case is unmistakable. The intent of this section is to provide that:

> 'Legislative body' for purposes of the Act is not restricted to the actual governing board or body of a local agency. It includes as well . . . boards,

commissions or committees which 'exercise any [delegated] authority of a legislative body.' (Gov. Code Section 54952.2.) (Bracket in the original.) 66 Cal. Ops. Attny. Gen. 252 (1983). (See, Appendix.)

To the affairs of the District and of the Hospital Corporation are conducted and all corporate powers exercised by its multi-membered Boards of Directors. Cal.Corp. Code § 5210 Exhibits 1 and 4. The powers and authority of the Boards of Directors of both the District and Hospital Corporation are virtually coextensive. See, Exhibits 1 and 4. The District has agreed by formal resolution to assign to Hospital Corporation the vast majority of the District's "liabilities, obligations, contracts, duties . . . of every kind and character . . . " Exhibit 9, Para. 17.2 of Lease. The District further has agreed by formal resolution to transfer the vast majority of its real and personal property assets to Hospital Corporation which must be used and managed for the benefit of the District residents. Exhibit 9, Para. 19.2 of Lease and Exhibit 10, Para. of Agreement to Transfer Assets.

It would be difficult to imagine a more clear delegation of power and authority within the scope of Government Code Section 54952.2. This conclusion is reinforced by application of general principles of statutory construction. The primary rule in interpreting a statute is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." People v. Davis, 29 Cal.3d 814, 828 (1981). As noted supra, the legislative history of the Brown Act demonstrates

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that its very purpose was to prevent evasions of open meeting requirements by local governments. Sacramento Newspaper Guild v. Sacramento County Board of Suprs., supra, 263 Cal.App.2d 47-51.

The very language of the statute further confirms that Respondents are legislative bodies subject to the Act. In looking to the words of the statute the language must be given its usual and ordinary import. People v. Belleci, 24 Cal.3d 879, 884 (1979). The word "delegate" is defined as follows:

> To entrust to the care or management of another; to transfer; assign; permit; as power delegated by the people to the legislature. Webster's New International Dictionary, Second Edition (1934). (See, Appendix.)

The word "delegation" has been defined as the "transfer of authority from one person to another." Black's Law Dictionary, 5 Ed. (1979). (See, Appendix.)

Interpretation of the Brown Act also requires "inquiry into the Brown Act's objective and into the functional character of the gatherings or sessions to which the legislature intended it to apply." Sacramento Newspaper Guild v. Sacramento County Board of Suprs., supra, 263 Cal.App.2d at 471.

Thus, the courts have emphasized function over form in applying the Act. See, e.g., Joiner v. City of Sebastopol, 125 Cal.App.3d 799 (1980) (purpose of the meeting of an interview committee held to be controlling); Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs., supra, 263 Cal.App.2d at 47

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("functional character" of informal gathering held controlling); 66 Ops. Attny. Gen. 252, 253-254 (1983), (function of meetings academic senate held to be controlling); Stockton Newspapers, Inc. v. Redevelopment Agency, 171 Cal.App.3d 95, 103 (1985) (purpose of sequential telephone calls held to be controlling).

Under these rules of statutory interpretation it is evident that the scope of Section 54952.2 sweeps broadly enough to include Respondents' Parent Corporation and Hospital Subsidiaries. The California courts consistently have interpreted and applied the Brown Act broadly to preclude evasion of its requirements. Joiner v. City of Sebastopol, 125 Cal.App.3d 799, 805, n.5 (1981); Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs., supra., 263 Cal.App.2d at 50. Indeed, it has been held that the interpretation of the Act "may push beyond debatable limits in order to block evasive techniques." Id. Accordingly, the courts have shunned formalistic or technical constructions of the Brown Act, which "are alien to the law's design, exposing it to the very evasions it was designed to prevent." Id. at 50-51.

The function, responsibilities and duties of the Respondents coincide and overlap. The Lease, Agreement for Transfer of Assets, and the Resolutions of the District Directors approving these contracts collectively constitute the vehicle by which delegation of the District's rights and responsibilities has occurred. Accordingly, if this State's commitment to open meetings is to have meaning and substance,

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then Section 54952.2 must embrace Respondents or any multimember body, whatever its form of structure, so long as the function of that body is to conduct the public's business.

2. Hospital Corporation Is A "Legislative Body" Under Government Code Section 54952

The Hospital Corporation also is a "legislative body" within the meaning of Government Code Section 54952. This Section provides:

> '[L]egislative body' means the governing board, commission, directors or body of a local agency . . . and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other board is organized an operated by such local agency or by a private corporation.

The prerequisites to this definition include: (1) support of the board in whole or part by funds of the local agency; and (2) a board on which officers of a local agency serve in their official capacity. Govt. Code § 54952. The first requirement is easily met in this case, because the District has agreed to give and assign to Hospital Corporation assets in excess of $11,000,000 of which cash comprises approximately $5 million.

With respect to the second requirement, the facts disclose that the two District Directors who have been appointed to the Hospital Corporation are indeed serving in their official capacity, despite express disclaimers by Respondents to the

contrary. Again, one must look past form to function. Joiner v. City of Sepastopol, supra, 125 Cal.App.3d 799.

In a recent opinion, the Attorney General attempted to define "official capacity" as it is used in Section 54952:

> at least arguably . . . a supervisor or councilperson can never serve in a private capacity when he or she is appointed to an outside Board to represent the interests of his or her appointing entity. While so doing he or she is of necessity cloaked with the mantel of his or her official position, despite any unilateral disclaimer made by the private body . . . 67 Cal. Attny. Gen. Ops. 491 (1984) (See, Appendix.)

In the above cited Opinion, the Attorney General concluded that the Board of Directors of Solano Economic Development Corp. (SEDCORP) were not performing in their official capacity because, inter alia, the members of the board did not represent the interest of a particular constituency, and no public functions had been delegated to SEDCORP. In sharp contrast, the Directors of Hospital Corporation must also represent the interests of the District, because these interests are at least co-extensive, if not identical. If the District Directors do not represent the interests of the District when sitting on the Board of Hospital Corporation, then a conflict of interest exists precluding simultaneous membership on the two Boards of Directors.

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The continuity of interest between the District and Hospital Corporation was expressly acknowledged at the public meeting of the District when the Chairman of the Nominating Committee explained on the record that the two District Directors presence on the Hospital Corporation's Board was essential for purposes of "continuity." Accordingly, under the broad rules of statutory construction applied to the Brown Act, one must conclude that Hospital Corporation is a "legislative body" within the meeting of Government Code Section 54952.

III

CONCLUSION

Many argue, as Respondents do here, that the government can function more efficiently and competitively in private and that voters and taxpayers should judge the end result and not the means used to obtain that end. However, "efficiency" and "competitive advantage" are not the only criteria by which one measures the public's business. The bottom line and the public good do not necessarily coincide. Public accountability may indeed result in inefficiencies, but nevertheless serve important social policies.

Marin Hospital District was created for the sole purpose of providing its residents with an acute care hospital and related health care services. On November 27, 1985, control of the District's health care business will be placed in the hands of a few self-appointed people.

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Respondents have improperly decided that they may determine when and if the public may view their business. Such usurption of the public's right to know is expressly prohibited by the Ralph M. Brown Act. The requested relief should accordingly be granted so that the public may continue to be assured that their assets are being managed for the public's benefit.

DATED: November , 1985.

Respectfully Submitted,

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By _____
Judith R. Epstein
Attorneys for Petitioners
Norwin Yoffie and Sandra Yoffie

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FILED
DEC 30 1985
HOWARD HANSON
MARIN COUNTY CLERK
BY Marilyn Ashley
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

NORWIN YUFFIE, et al., Plaintiffs, -vs- MARIN HOSPITAL DISTRICT, et al., Defendants.	No. 125897 STATEMENT OF TENTATIVE DECISION

On December 20, 1985, this matter came regularly before the Court for hearing on the Petition for Writ of Mandate and Complaint for Declaratory Relief. The facts being not in substantial dispute, the matter was argued and submitted to the Court for decision.

The Legislature has specifically approved the gratuitous transfer of a hospital district's assets to a nonprofit corporation for operation and management for periods up to thirty years. Health and Safety Code Section 32121(p).

In 1985, this enabling legislation was amended to permit such transfers to nonprofit corporations, the initial board of directors of which must be approved by the board of the district. Previously, the transfer could be made only to a nonprofit corporation whose board of directors had been appointed by the

board of the district.

This previously existing appointing requirement brought the nonprofit corporation transferee squarely within the definition of "local agency" found in Government Code Section 54951.7, and thus subject to the Brown Act. By changing the requirement from "appointing" to "approving", the Legislature withdrew the non-profit corporation transferee from the converage of Government Code Section 54951.7. While it would have been appropriate and helpful for the Legislature to have made a more direct statement to that effect, given the object of the amendment, which was to enhance the competitive posture of district hospitals, and the acknowledged advantage to such hospitals stemming from private discussions of certain business operations, there is not other rational explanation for this change in language.

It is the purpose of the Brown Act to require that public commissions, boards, and councils, and other public agencies of this state deliberate and act openly so that the people of the state remain informed and retain control over them. Government Code Section 54950. Where, as here, a public agency has lawfully relinquished control over public assets and transferred the responsibility for a governmental activity into the hands of the recipient of those assets, the Brown Act issue becomes the nature and extent of the retained control. If the retained control is too great, the activity remains a public one and public scrutiny is essential. If the activity has truly passed into private operation, the Brown Act has no application to the private operator. That the private operator is utilizing public assets is not a controlling consideration for, as here, the governmental activity

leading to the transfer of the assets and responsibilities has been entirely open to Brown Act scrutiny. Once the transfer occurs, the asset and responsibility pass into the private domain except as the public agency may retain control through the terms of the transfer documents, or exercise influence through the approval of the initial board of directors.

If the district, over the next thirty years, will truly be out of the business of operating and managing a hospital, the operation and management during the period of the lease will no longer be a public activity. Recognition of this concept gives further support to the perceived effect of the amendment of subsection 32121(p) from "appoint" to "approve". Clearly, a non-profit corporation governed by a board which was appointed by the district board would be nothing more than an alter ego of the district board and thus must be kept within the scrutiny of the Brown Act. The Legislature having now permitted transfers to a nonprofit corporation whose initial board is only approved by the district board, and which can be controlled only to the extent permitted by the terms of the transfer agreement, has permitted a significant diminution of the district's power and dominion over a formerly public activity. Legislative authority to abandon, without consideration, public control over millions of dollars worth of assets can only be rationalized by the obvious Legislative intention to protect district hospitals from extinction through improvement in their competitive position by allowing private discussions of competitively sensitive material.

Petitioner's efforts to bring the Defendant nonprofit corporations with Government Code Section 54952.2 are not

supportable. This section deals not with local agencies delegating their authority, but rather with the legislative bodies of local agencies doing so. The transfer of the assets and responsibilities involved here is not a delegation of the authority of the governing body of the district, rather it is the delegation of the authority of the district itself. Government Code Section 54952.2 was not intended to reach delegations of authority such as has occurred here.

Finally, Petitioner argues that because Respondents Mary Carpou and Grace B. Goebel serve on the board of directors of the district as well as upon the board of directors of Marin General Hospital, the nonprofit corporation transferee, the latter board becomes a legislative body and within the Brown Act by reason of the definition of legislative bodies set forth in Government Code Section 54952. For this section to apply, these two respondents must be serving on the nonprofit corporation board in their official capacity as members of the district board. At a minimum, to act in an official capacity as a member of a board or a committee, the official must have been appointed to that board or committee by the local agency which he or she purportedly represents. The reasoning of the Attorney General in the Solano Economic Development Corporation case, 67 Cal. Atty. Gen. Ops. 491 (1984) is to the same effect. These two directors were not thus appointed, they were simply approved by the district for a single term following which they must resign from one board or the other. (Resolution 85-331). Thus, their position on the nonprofit corporation board cannot fairly be said to be in their official capacity.

From the evidence before the Court, it satisfactorily appears that the Respondent, Marin Hospital District, has lawfully transferred substantial assets to the Respondent nonprofit corporation and has essentially withdrawn from the business of operating and maintaining its hospital. Such control of this activity as the district retains is not so great as to constitute future hospital operations as public activities within the scope of any Brown Act provision. Accordingly, it is the intended ruling of the Court that the petition for Writ of Mandate be denied. Should either side desire a statement of decision, the Respondent shall prepare and submit the same in accordance with California Rules of Court Number 232.

DATED: December 30, 1995

HENRY J. BRODERICK
Judge of the Superior Court

STATE OF CALIFORNIA)
COUNTY OF MARIN) ss.

NORWIN YOFFIE et al vs. MARIN HOSPITAL DISTRICT et al

ACTION No. 125897

(PROOF OF SERVICE BY MAIL – 1013A, 2015.5 C.C.P.)

I AM A CITIZEN OF THE UNITED STATES AND A RESIDENT OF THE COUNTY AFORESAID; I AM OVER THE AGE OF EIGHTEEN YEARS AND NOT A PARTY TO THE WITHIN ABOVE ENTITLED ACTION; MY BUSINESS ~~RESIDENCE~~ ADDRESS IS:

P.O. Box E, San Rafael, CA. 94913-3904

ON December 31, , 1985, I SERVED THE WITHIN Statement of Tentative Decision

ON THE interested parties IN SAID ACTION, BY PLACING A TRUE COPY THEREOF ENCLOSED IN A SEALED ENVELOPE WITH POSTAGE THEREON FULLY PREPAID, IN THE UNITED STATES POST OFFICE MAIL BOX AT San Rafael, CA. , ADDRESSED AS FOLLOWS:

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Oakland, CA 94612

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Carr, McClellan, Ingersoll,
Thompson & Horn
P.O. Box 513
Burlingame, CA. 94011-0513

I CERTIFY (OR DECLARE), UNDER PENALTY OF PERJURY * THAT THE FOREGOING IS TRUE AND CORRECT.

DATE December 31, 1985 Marilyn J. Ashley

* NOTARIZATION NOT REQUIRED

200S-1 (11-68)

JOSEPH E. SHEEKS
PETER J. BASSING
DEAN L. JOHNSON
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SAVE

TO: ALL DISTRICT HOSPITAL ADMINISTRATORS AND BOARD PRESIDENTS

FROM: JOSEPH E. SHEEKS

DATE: MAY 29, 1985

SUBJECT: RESTRUCTURING AND THE DISTRICT HOSPITAL

So much has been written and said in the past two or three years about restructuring that it seemed desirable to set the record straight on a number of issues affecting district hospitals and restructuring.

Much of what has been published has been produced by individuals and/or organizations interested in selling a package of restructuring services. As a result, it tends to be heavily slanted toward the advantages of restructuring, by glossing over whatever advantages exist in district operation and heavily weighting the scale with negatives, some of which are not even correct.

In this memo, we have attempted to state the issues with a reasonable degree of objectivity. However, we trust we may be forgiven if on occasion we lapse into advocacy.

BASIC PREMISES

In discussing the subject of restructuring, we proceed on several fundamental premises.

First, restructuring is a process of fragmenting the restructuring entity into separate entities for functional, economic, or geographic purposes.

Second, restructuring may be altogether appropriate for district hospitals, where clearly defined, carefully thought out objectives have been established by the board and the administration.

Third, reorganization does not necessarily have to be done as a single major operation.

Fourth, restructuring is not necessarily all that complicated, and needn't cost you an arm and a leg.

Let's look at the comparative advantages and disadvantages of the district as a hospital owner and operator, and then look at the actual process of restructuring.

ADVANTAGES

1. Antitrust. As units and groups in the health care business grow in size, violation of federal and state antitrust laws becomes more of a threat. But how many of your restructuring advisors have pointed out to you that in 1984, Congress adopted the Local Government Antitrust Act, which exempts agencies of local government from the damages provisions of the Sherman Antitrust Law? A significant advantage indeed in this day of a growing pattern of HMOs and PPOs, joint ventures, etc.

2. Labor Relations. The district hospital has an advantage in labor relations. It is not subject to the National Labor Relations Act, nor to State wage and hour orders. A recent United States Supreme Court decision apparently will subject hospital districts to federal wage and hour rules, although uncertainty exists as to when. Commentators on the recent decision in Garcia v. San Antonio Municipal Transit Authority are already saying that the case is ripe for reversal.

Local government labor relations in California are governed by the Meyers-Milias-Brown Act, which only requires the board of directors to "meet and confer." We know that as a practical matter many aspects of governmental labor relations are becoming more nearly parallel to those of the private sector. However, within limits, the district hospital may make its own ground rules for the conduct of labor negotiations and elections, by simply adopting a board resolution.

3. Financing. Both district and nonprofit hospitals are at a distinct disadvantage in financing capital improvements and replacements. This is because the for-profit institutions, and especially those constituting large chain operations, are able to raise needed capital by sale of equity securities - a luxury not afforded districts or nonprofits. Consequently,

both the latter are reduced to utilizing debt securities, or relying upon philanthropy.

District hospitals, as local government agencies may issue debt securities, the interest on which is free from federal income taxes for both corporations and individuals, and free from State income tax for individuals. The same is true for nonprofit corporations. However, no longer ago than last year, Congress dallied with the idea of removing the tax exempt feature from nonprofit corporation bonds, while leaving government bonds untouched. (Some of you have received misinformation on this point.) The fact that Congress did not do so last year is not necessarily assurance that it may turn its attention to the subject again, and if so, this would provide a marked financing advantage for district hospitals vis-a-vis nonprofits.

4. Self-Insurance. The power of local political subdivisions to carry on insurance programs free of regulation by the Insurance Commissioner is possibly one of the most valuable and significant advantages under the district form of operation. Two or more governmental entities may contract to exercise jointly any power or powers they possess in common. Since the Government Code permits local agencies to self-insure, they can therefore join together to self-insure, and the law specifically provides that even though such activities essentially operate like an insurance company, such a program does not constitute the doing of an insurance business.

Consider workers' compensation. Government entities have only two alternatives - either to self-insure or to insure with the State Compensation Insurance Fund. (The latter is a State-owned and operated insurance company.) Government agencies may not obtain their workers' compensation insurance from private carriers.

Consequently, many local government agencies have put together workers' compensation self-insurance pools in which the entities combine their workers' compensation risks. The Association of California Hospital Districts, Inc., has, with marked success, operated such a program since 1976. Its success is evidenced by the fact that district hospitals participating in the Program are obtaining coverage at a net

cost roughly 30%-35% less than the manual rates set by the Insurance Commissioner (California Inspection Rating Bureau).

The law prohibits private entities from joining together to self-insure, unless a stock company or reciprocal exchange is formed. Single-entity self-insurance is possible only for very large institutions or chains.

5. Liability. Under the California Tort Claims Act, officers, directors, and employees of government entities are exempt from personal liability for matters occuring in the performance of their duties. This is so even though such acts may be done negligently. On the other hand, directors of nonprofit corporations and private stock corporations are subject to personal liability in comparable circumstances.

There is nothing to prevent suits from being filed against a district hospital director despite this exemption from liability. However, the director's principal risk is the cost of defense, rather than any personal exposure. The district may indemnify the individual against such expense. However, for that reason, the cost to the hospital of providing insurance protection for officers and directors should be less for the district than for that of the nonprofit hospital.

6. Eminent Domain. District hospitals, as political subdivisions, are granted the power of eminent domain. This is seldom used - possibly because it may be politically unpalatable. However, the fact that it is not used as a practical tool is either a reflection of the lack of imaginative planning, or an inability to pay for the property being condemned. Not the least of its advantages is its intimidating force in negotiating with reluctant sellers. Some nonprofit corporations possess the same power.

7. Income Taxes. District hospitals are not subject to State or federal income taxes. However, nothing in the law prevents the Internal Revenue Service from assessing income tax against local government when the latter engages in non-governmental activities. Hence, the district hospital may well be in the same position as any nonprofit hospital corporation which chooses to undertake non-health-related activities. The one advantage that a district hospital does have in this field is that its exemption from income tax does

not depend upon a 501(c)(3) status with all its accompanying regulation and paperwork.

8. Right of First Refusal. Another seldom used power is the right of first refusal on surplus government property. With school districts having to close down schools for lack of enrollment, existing school properties are becoming surplus. Such buildings are convertible to other uses. No reason exists why a hospital district could not utilize this power should desirable property become available.

9. Community Participation. One possible psychological advantage of the district hospital is, or may be, a sense of community participation. However, it is also possible that this factor may be more apparent than real. It surfaces only every couple of years, and in many instances actually constitutes a disadvantage. Special interest groups can create a variety of problems, and often do.

In truth, the real determinant in the hospital's community acceptance is how well it works at projecting a favorable image to the community. But this is true irrespective of its ownership. Much is made of the community participation aspect of nonprofit hospitals, whose larger boards allegedly constitute a cross-section of the community life. In reality, such boards have a real tendency to become self-perpetuating clubs. Each of us has seen numerous examples in volunteer activities. Thus each form - districts and nonprofit - tends to have advantages and disadvantages in this area.

DISADVANTAGES

Disadvantages of the district hospital form of operation tend to fall into two major categories - political and regulatory.

1. Political. A politically chosen board of directors has a number of drawbacks. For example:

(a) The district hospital has no control over the knowledge base of an incoming director. Hence, the director may have no skills or training which would qualify such person for serving as a director of a sophisticated business organization. By the same token

however, a look at nonprofit boards discloses the presence of many community leaders, who are chosen more for economic or political reasons than any expertise in making hospital policy.. To the credit of most hospital district directors, having run for public office, the majority tend to be conscientious and hardworking.

(b) Since the term is limited to four years, there is a constant possibility of change every two years. Thus, the management of the district hospital operates on the supposition that it must not only deliver good health care, it is required to do what is politically acceptable to its constituency. The two may not always coincide.

Lest this disadvantage be deemed the exclusive detriment of the district hospital, be advised that in one state of the Union, the legislature has provided that 40% of the membership of the board of any hospital, public or private, must be made up of members of the public, i.e., consumers. The problems generated by such an arrangement need no elaboration.

(c) We are seeing a number of single-issue trustees being elected in district hospitals. Not too infrequently, such directors sing a different tune after learning something about the hospital business, although they may do appreciable damage in the meantime.

However, the boards of nonprofit institutions are not infrequently selected with a few to the individual's expertise in a given field. This also has its disadvantages since such people sometimes are so wedded to their own specialty, that they are constantly pressing a single point of view upon their fellow board members. If such persons are sufficiently forceful, they are able to seriously distort the board's decision-making process.

(d) There is at times an impression that there is a greater rate of turnover in the administrator positions of district hospitals than elsewhere. However, knowledgeable observers see the same kinds of political struggles unseating administrators of nonprofit institutions. The only difference is that such clashes tend to be internal and not aired in public. Either way, health care is bound to suffer.

2. Government Regulation. In addition to the manifold regulations to which all hospitals have become subject, district hospitals have an overlay of regulations applicable to local government entities.

(a) The difficulty most often referred to in this context is the fishbowl effect brought on by the Brown Act.

Here, also, coming events may be casting their shadows before. For the second year, the Legislature has before it a measure which would require open meetings by the Board of any nonprofit organization utilizing federal funds. The measure may not pass this year or at all, but the fact is that someone perceives the need. Can action be forever forestalled?

(b) The Public Disclosure Act goes hand in hand with the Brown Act. Heretofore, virtually any document produced in the hospital, excepting a medical record or a quality assurance record, has been subject to disclosure at the request of any member of the public. However, the effect of that statute has been considerably reduced by legislative action taken in 1984.

(c) The district hospital administration has to keep an eye on the mechanics of the electoral process, since the calendar for such events starts many months ahead of the election. The election itself is, of course, an added expense to the district.

(d) District hospital directors and management personnel are subject to the conflict of interest laws, and are required to file annual disclosure statements. This tends to discourage potential candidates for the board. However, the increased number of candidates running for hospital district boards in recent years seems to indicate that it is not necessarily a serious deterrent.

(e) The district hospital is subject to public bidding requirements. As in the labor relations field, the district hospital, however, may make its own rules by the adoption of a resolution setting forth the procedure. Contrary to statements we have encountered, the process need not be "cumbersome," and may actually be a healthy

one. A number of items have been removed from bidding requirements in recent years.

RESTRUCTURING THE DISTRICT HOSPITAL

Restructuring a district hospital is not materially different in concept than the same process applied to a nonprofit institution. Basically, restructuring is a fragmenting of the single existing entity into lesser separate entities, usually for functional, geographic or economic purposes. It necessitates the creating of subsidiary and/or affiliated corporations to perform functions now being performed by the restructuring entity, or to perform other functions which may be deemed desirable either because they relate to the health care mission of the institution, or help to produce revenues to supplement declining patient revenues.

The motivations which prompt district hospitals to restructure seem to be primarily to the political and regulatory factors mentioned above. In a competitive environment such as is becoming increasingly prevalent, the publicity attaching to a governmental entity poses problems which are not necessarily insoluble, but complicate the mission. Restructuring, therefore, offers a possible means of reducing the political and regulatory factors in order to put the institution on a more competitive footing.

It is ironic indeed that a community which has permitted its district hospital to be used as a political football, finds it objectionable to have the institution removed from the political arena, either by a total restructuring, or by sale or lease to a private chain operator. There can be no argument but that restructuring at least leaves some measure of local control as opposed to removing it totally by lease or sale.

WHAT DOES RESTRUCTURING ENTAIL?

Basically, restructuring involves nothing more than creation of one or more nonprofit corporations to perform functions now being handled by the district hospital. It may also entail either currently or at a later date, the creation of one or more related for-profit entities to carry out specified economic functions.

The mechanics may be fairly complex. Initially, an examination must be made of district documents such as those pertaining to the form and establishment of the district, materials pertaining to financing, and all aspects of the operation. Bylaws of the hospital and the medical staff, contracts with consultants, equipment manufacturers, etc., need to be reviewed. Labor contracts, physician contracts, vendor contracts - all of the relationships tying the hospital to its surroundings must be examined. Once such review is completed, the board should receive a preliminary report summarizing the work done, and making specific recommendations based upon the goals of the board of directors and the hospital management. A work plan should be prepared outlining the methods for achieving the agreed upon ends.

As an aside, let it be noted that virtually anything by way of restructuring which may be accomplished with a nonprofit hospital may also be accomplished with a district hospital. Corporate transformations and manipulations are a novelty to the health care field, but are old hat to the real world. Some of the problems encountered in restructuring have resulted from lawyers skilled in reimbursement, medical staff work, and other health care specialties attempting to educate themselves at the client's expense in methods of rearranging corporate structures.

Typically, restructurings tend to boil down to a single model or pattern, consisting of a parent holding company and one or more subsidiaries. An almost infinite number of variations may be woven from this basic concept, depending upon the individual goals and needs of the institution in question. A few examples may be outlined.

First, the district itself might serve as the parent entity. It could create or cause to be created one or more nonprofit corporations to perform various functions relating to the health care business. The number of such functions is limited only by the imagination of the creators.

One drawback to the district as a parent is the fact that because of a constitutional prohibition against the ownership of corporate stock, the district may not create a direct for-profit subsidiary. Parenthetically, let it be noted that at least one law firm has opined that even this is not prohibited so long as the district owns 100% of the stock.

However, even the constitutional restriction should be no major obstacle, since one or more of the nonprofit corporations created as subsidiaries of the district can be empowered to own corporate stock so that the for-profit becomes a second level subsidiary of the district.

A second form of restructuring involves the creation of a nonprofit corporation to act as a parent. One or more nonprofit or for-profit corporations are created as subsidiaries of the first corporation. The hospital itself is transferred to one of the nonprofit subsidiaries. The parent is then in a position to control operations of the hospital along with other activities established in one or more nonprofit or for-profit corporations.

A third possibility is to lease the district hospital to a nonprofit corporation created for the purpose. Control of the lessee corporation could be retained by the district or vested in another entity or group. In short, there are endless methods for shifting the corporate pieces, depending upon the goals.

Contrary to prevailing practice, district hospitals should also recognize that restructuring does not have to occur overnight. In some respects and in certain instances, an overnight restructuring has proven to be politically inflammatory. By taking one step at a time, the public may be educated to the drastic changes on a gradual basis with a greater likelihood of acceptance.

Furthermore, by restructuring as the needs become apparent, the hospital is less likely to rush into an inappropriate structure which may be difficult to live with, and ultimately necessitate a complete or partial reversal of previous actions. For example, irrespective of what other plans the district may have, it should almost certainly create a separate charitable foundation for purposes of fundraising and financial development. Should a profitable venture then appear, that activity could be undertaken by a corporation subsidiary to the foundation. Or at the very least, the foundation could assist in financing a profit making enterprise. As time passes, other corporations may be added as necessary and the structure rearranged to suit the circumstances.

Before launching into any kind of restructuring, the board must recognize that restructuring is not the key to salvation. A few years ago, it was touted as the means of maximizing reimbursement, whereupon the federal government and the State of California totally changed the reimbursement systems. So much for reorganization based on maximizing reimbursement. Currently, the motto is "Get out of the fishbowl," i.e., avoid the Brown Act. However, as pointed out earlier, restructuring may not be a permanent solution to that. With health care costs having become so much a subject of public discussion, we may expect that hospital operations are likely to become more a subject of public scrutiny, not less. Another complaint is, "We need to get a more stable board, a more professional group." We find it fascinating that some district hospitals have nothing but stability and professionalism on their boards. Perhaps they know something.

With respect to the fishbowl effect, boards must recognize that two conflicting elements are at work. In order to avoid the Brown Act problem, control must be relinquished, and those functions intended to be free from Brown Act interference must be placed outside the control of the district. On the other hand, if relinquishment of control is unacceptable, then the Brown Act must continue to be a factor in the operation of the organization. And let no one tell you that you may surely avoid the Brown Act by placing fewer than a majority of your board as board members of a subsidiary. The trick is to retain ultimate or final control, while seeming to give up control. This is not easy, but it may be accomplished.

A final consideration is that in restructuring, the hospital should not charge full bore into unknown territory. A hospital simply does not have the management to run a supermarket nor a shopping center. Start with health care-related activities, and don't bite off more than you can chew.

(A-32)

referred by J. Epstein

CSNOE - Mel Optowsky -
Tony Franke -
Bay Area Guardian Bruce [redacted] - 415-824-7660
818-986-5264 → John Kotler - [redacted]

1/24/86

Gene –

I just received this letter & article from one of our Board members, Maryann O'Sullivan. Take a look & let me know what you think.

You can reach her at Public Advocates in SF at (415) 431 7430

Roy (415) 3969927

Judy Epstein

Crosby, Healey Roach +
May

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Law Fellow
James R. Wheaton

1/17/86

Dear Roy,

I'm enclosing an ~~San~~ Guardian article about a law suit. The suit lost in Superior Court and, for reasons I don't know about, the attorneys is unable to appeal the case although she is confident it would be successful on appeal.

The attorney phoned Angela Blackwell to see if she was interested in taking ~~it~~ the case over. Angela does not want to ~~do~~ do it ~~but~~ and it seems to me its a real Common Cause type issue.

I'm also going to tell Carl Oshins at Consumers Union about it. If it sounds interesting to you + you have more questions you should call Angela or me.

Take care,

Margo

P.S. Roy, something to keep in mind is that the ge[illegible]

1535 Mission Street San Francisco, CA 94103 Telephone (415) 431-7430

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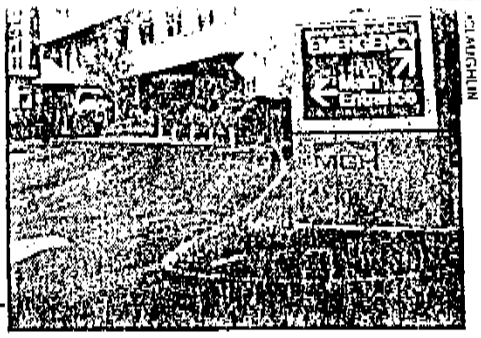
hospital may have a valid ~~complaint~~ in that it has to make business strategic decisions in public is therefore placed at a disadvantage relative to its private hospital competitors. It may be that the better solution would be a narrow amendment to the Brown Act to cover this problem.

Also, would we have a problem here as an organization since the plaintiffs, I think, are individuals?

-M.

Across California, public hospital districts are transferring their assets to private corporations to avoid the state's open meeting requirement. But here in the Bay Area, a retired publisher is suing to stop Marin General's move to go private.



Marin General Hospital

BY TIM REDMOND

On Friday, Dec. 20th, a Marin County Superior Court judge will hear the arguments of two Marin residents, the former publisher of the Independent Journal and his wife, who want to stop a county agency from holding its meetings behind closed doors. The case is hardly an ordinary "government in the sunshine" matter, though. If the plaintiffs are successful, they will block an attempt by the Marin County Hospital District's board of directors to hand over to a private corporation the right to operate a public hospital that has served Marin residents since 1946.

The suit by Norwin and Sandra Yoffie could also set a precedent that would halt a growing trend in California: the transfer of the ownership of public hospitals to private corporations. Since 1983, almost 30% of the public hospital districts in the state — 20 of 68 — have transferred some or all of their assets to private companies.

In some areas — Contra Costa County and Oceanside, for example — transfer proposals have been met with strong opposition from community activists who argued that what the districts called a "reorganization" amounted in fact to an outright give-away of a multi-million public asset.

But in most cases, the transfers have occurred with little controversy. In defending such moves, hospital directors argue that increasing competition in the health care field and post-Prop. 13 revenue losses have made it difficult to operate public hospitals.

In many cases, however, the hospitals' chief complaint is not about financial hardships, but about the effect of public scrutiny. They complain that, as public bodies, they are forced to make their business decisions in public meetings, open to anyone, be they citizens or competitors. By transferring the hospitals to private companies, they so far have been able to decide policy matters in private — and avoid the open meeting provisions of the state's Ralph M. Brown Act.

In the Marin case, the hospital wants to merge with two partners, Mills Peninsula Corp. In San Mateo and Pacific Presbyterian Medical Center in San Francisco, and officials of both those private institutions have said they will refuse to deal with a partner who is subject to the Brown Act.

Religion and health care

The Marin County Hospital District was established in 1946, a year after the California Legislature approved the Local Hospital District Law. That law authorized the establishment of a new type of public hospital, devoted not to serving the indigent alone but rather to providing full-service health care for all residents.

"District hospitals are not like county hospitals," explains Dion Aroner, a consultant to the Legislature's Human Services Committee. "When the Legislature authorized them, most of the major hospitals in the state were sectarian — Catholic, Presbyterian, Jewish, etc. District hospitals were supposed to provide top-quality care for people whose religion or race prevented them from entering the private hospitals."

The law gave hospital districts the right to sell tax-exempt bonds, seize land by eminent domain and, if necessary, levy direct sales or property taxes.

Although race and religion are not a factor in admissions at most private hospitals today, in many areas — Marin County, for example — district hospitals still provide crucial services. Unlike some private hospitals, which have eliminated unprofitable sectors of medical care, most district facilities have retained a full range of services, from pediatrics to pathology.

"The private hospitals zero in on the most profitable areas," said Nancy Nickel, community relations director at Marin General. "We are the only hospital in Marin that hasn't cut off at least some less-profitable services altogether."

The bottom line

But the health care industry gets more competitive every day, and district hospitals are beginning to feel the squeeze. Marin General is nowhere near bankruptcy — it operates, Nickel said, "very much in the black." In fact, she told the Bay Guardian, the hospital's revenues have been strong enough that the district stopped collecting taxes in 1976. "We don't rely on the public for any financial support," she said. "Our revenues cover 100% of our budget, with a small buffer left over for emergencies."

The hospital's annual revenues amount to $52 million, she said. That leaves room, Nickel added, for a "buffer" of between $500,000 and $1 million a year.

Nevertheless, the hospital's administrators say they

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HOSPITALS

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fear the growth of giant health care corporations and hospital "chains" will soon make it impossible to continue providing a full range of services at competitive prices. "We're surrounded by chain hospitals like Kaiser," Nickel said. "They are starting to pull away all the profitable practices, and it's harder and harder for us to compete without cutting into the less-profitable areas, like pediatrics."

Chain hospitals enjoy a number of financial advantages. According to Elaine Kirkoff, executive director of the California District Hospitals Association, large organizations can negotiate better deals with insurance carriers and can offer attractive "integrated" health care programs to both individuals and large employers. Further, hospital chains can centralize administration and distribute the costs of expensive medical equipment among their members.

Increasingly, smaller private hospitals are attempting to establish joint ventures with either existing corporations or with others in a similar position. According to the Marin County district board, such strategies are essential if Marin General is to survive. For prospective partners, however, Marin General is not terribly attractive. The drawback isn't it's location — in Greenbrae, near San Rafael, in the heart of wealthy Marin County — or its physical plant and facilities, which Nickel acknowledged to be in top condition. The problem, they say, is simple: it's the Ralph M. Brown Act.

"Because of the Brown Act requirement of open

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ON GUARD

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make one point quite clear: job growth in SF is slowing down right now and has been slow for the past four years. EDD says there were some 14,000 net new jobs 1980-84; Birch says 4,874. EDD's figures, though, are often said to be 'optimistic' (even the Chamber of Commerce agrees with this assessment). And even if EDD is right, we're talking only 3,500 new jobs a year — at a time when the office growth rate has been the highest in the city's history. That looks like a 'trend' to me.

While we're on the topic of trends, real estate analysts seem to agree that the vacancy rate for downtown office space in SF is rising fast. That fits in quite well with our interpretation of the Birch data — we think it's crystal clear that the job growth in the city is occurring almost entirely in businesses that can't afford new first-class office space. (Again, you don't have to take our word for it — ask Ken MacDonald, who writes

fice space users are the Fortune 500 firms in the sectors that are losing jobs.) Which raises two major public policy questions: If new office buildings aren't doing anything to help the businesses that are creating all the new jobs, why do we keep on allowing developers to build them? And if both the mayor and the city planning department are operating on the basis of information that is five years out of date and has little correspondence with reality, why are we trusting their Downtown Plan for the future of San Francisco?

You are the first person who has suggested to me that the basic hard data in the Birch report wasn't reliable enough to cite in a "responsible" news story. Even Dean Macris, who disagrees completely with our interpretations of the study, says he found no reason to doubt the accuracy of Birch's numbers.

For a journalist, a healthy dose of skepticism is always a good thing. I trust wher finally write about this i you'll give the City Plan Dept.'s data the same hard

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meetings," a district legal brief filed in response to the Yoffies' suit states, "the hospital districts must develop their business and marketing strategies in public, in front of their competitors." That, the brief states, makes Marin General "an unattractive partner for affiliations with other hospitals, which could provide centralized purchasing, marketing and administration."

The district's solution, approved Nov. 12th, was to lease the hospital for 30 years to Marin Health Systems Inc., a private nonprofit corporation formed for that purpose. Under the terms of the lease, the district transferred to Marin Health Systems $11 million in cash and securities as well as all operating rights and obligations for Marin General Hospital. In exchange, the county hospital district received nothing.

Threading needles

Legally, the transfer of a district hospital to a private corporation is a complex procedure. Quentin Cook, a Burlingame lawyer who is representing the Marin hospital district, acknowledged that complexity at a Sept. 30th board meeting. He stated, according to minutes of the meeting, that the board was attempting to "thread the eye of the needle as closely as possible."

Joseph Sheeks, attorney for the Association of California Hospital Districts, explained the issues in a May 29, 1985 memo prepared for district hospital administrators around the state. The memo, which was reprinted in full by the Blade-Tribune, an Oceanside newspaper, states that the motto of districts considering conversion appears to be "Get out of the fishbowl, i.e. avoid the Brown Act." However, the memo explains, "with respect to the fishbowl effect, board must recognize that two conflicting elements are at work. In order to avoid the Brown act problem, control [of the hospital] must be relinquished . . . The trick is to retain ultimate or final control, while seeming to give up control. This is not easy."

The Brown Act states that "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meetings of the legislative body of a local agency," except in certain specific circumstances. Hospital districts that have transferred their assets to private corporations say those corporations are no longer "legislative bodies," and thus are exempt from the law. The Yoffies take issue with that, arguing the district directors have delegated their authority to another body which should be subject to the Act.

Dissolution and dissent

The trend to conversion of public hospitals in California began in 1983, when the directors of the Pleasant Valley Hospital District in Camarillo voted to transfer the district's $20 million, 81-bed hospital to a private corporation. They then continued meeting, although they had no real authority and no assets to manage.

In Concord, the district directors made no pretensions of retaining authority. In March 1985, the Mt. Diablo Hospital District Board voted to dissolve the district altogether and hand over its $55 million in assets to a private non-profit firm.

The proposal created a furor of citizen protest. Area residents challenged the legality of the move, saying it would amount to a gift of public funds and that state law did not allow existing hospital districts to dissolve. Eventually, Sen. Dan Boatright (D-Concord) entered

HOSPITALS

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the fray, introducing a bill that would allow the district to dissolve, but only if the voters approved the move in a referendum. The referendum was soundly defeated.

In Oceanside, the Tri-City Hospital District's board began studying conversion plans this summer, but abandoned those plans in the face of a storm of protest, generated largely by the Blade Tribune. The hospital district directors, the newspaper charged, were determined to keep the plans secret until the move was all-but-complete.

"Keeping the public ignorant about this is part of the game plan," the Blade-Tribune editorialized July 21st. "To prevent a private corporation from being handed the public's $20 million investment in Tri-City Hospital, the public must become involved in this process."

The Contra Costa Times opposed the Mt. Diablo dissolution and ran numerous articles on the controversy. In Marin, the Independent Journal also has covered the issue extensively in its news columns, and written several editorials about the conversion. But although the editorials took issue with some technical points of the agreement, the paper hasn't taken a stand against the conversion. Norwin Yoffie, who was the I-J's general manager from 1966 to 1980 and its publisher from 1980 until 1982, told the Bay Guardian that his former paper has been less than zealous in its approach to the issue. "As far as the Brown Act issue goes, I would say they have not followed it very vigorously," he said. "They seem to be saying that the deal is okay as long as some of the meetings are held in public."

Except for the Mt. Diablo amendments, the state Legislature has not yet addressed the issue, Aroner told the Bay Guardian. "I don't argue with the idea that we ought to take a look at the [1945 statute]," she said. "It's clearly a bit outdated. But these transfers raise a lot of important questions. These hospitals are major public assets — once they are gone, they are gone for good."

Legislators participating in discussions last year around the Mt. Diablo issue made one thing quite clear, Aroner noted: "They said the Legislature has no intention of exempting these district from the Brown Act."

New associations

If that's the case, then the Yoffies' suit potentially could be the downfall of the 20 existing hospital transfers and could forestall any further such moves for the immediate future. The Yoffies don't challenge the legality of the lease agreement itself — they argue, rather, that the deal should have been discussed and voted on in public meetings, and that the new nonprofit Marin Health Systems Corp. should be bound by the same Brown Act requirements that applied to the district board.

"I have a long-time commitment to keeping the public's business in public," Yoffie told the Bay Guardian. "I think it's fair to say we're concerned with other issues, but it's the Brown Act that brought us into it."

The district is fighting back vigorously. Shortly after the lease agreement won approval, Marin Health Systems already had reached tentative agreements to merge with two other Bay Area medical facilities, Pacific Presbyterian Medical Center [illegible]

'Hospital transfers raise a lot of important questions. These hospitals are public assets — once they are gone, they are gone forever.'

— Legislative Analyst Dion Aroner

whole affair is forced into the light of day, those problems will all come out in the open."

Because the negotiations with the two other health care agencies are secret, Epstein explained, the public doesn't know how the deal will effect health care at Marin General. "After the merger," she told the Bay Guardian, "Marin General will become one component of a larger business system. Does that mean the partnership will centralize some of its facilities, so that some services that were available in San Rafael are now available only in San Mateo?"

Who profits from nonprofits?

According to the bylaws of Marin Health Services, the hospital must be operated not for profit but for "the public good." And the assets must be "maintained consistent with [the hospital's original] purposes."

Nevertheless, under private control, the allocation of health care funds might well change at Marin General. "There won't be any profits, of course," Epstein explained. "But on the other hand, administrative salaries won't be open to public inspection any more, and if people don't like the way resources are allocated or decisions are made, they won't be able to do anything about it."

Under the lease arrangement, the hospital district will continue to exist, but it will become almost entirely a symbolic agency, with no control over the operations of the hospital or the corporation. The corporation's board will be self-perpetuating — that is, existing directors will appoint new members in the event of a vacancy.

According to Aroner, the transfer issue raises a further question. "You have to remember," she told the Bay Guardian, "in many cases these are not failing hospitals. They aren't going to go under without these deals."

Nickel acknowledges the accuracy of that statement. If Yoffie wins, she said, Marin General will not face a fiscal crisis. "What will happens is that eventually our level of service may decline. We won't be on a pa private hospitals any more — we'll start to b more like a county hospital. In the worst case, we [illegible]

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The district is fighting back vigorously. Shortly after the lease agreement won approval, Marin Health Systems already had reached tentative agreements to merge with two other Bay Area medical facilities, Pacific Presbyterian Medical Center in San Francisco and Mills-Peninsula Corp. in San Mateo. And, in an affidavit supporting the district suit, officials of both organizations state that they will back out of the deal if the partnership is forced to comply with the Brown Act.

The light of day

The Yoffies' attorney is Judy Epstein, a partner in the Oakland law firm Crosby, Heafey Roach & May, which operates the Freedom of Information Hotline service for the California Society of Newspaper Editors. Epstein told the Bay Guardian the Yoffies' action is the first in the state challenging a district hospital transfer under the Brown Act.

The suit alleges that the district board undertook its "reorganization" primarily for the purpose of avoiding the Brown Act. Since the board of directors of the nonprofit corporation that will take over the hospital includes three members of the hospital district board, the plaintiffs' complaint states, the district has simply delegated its authority and responsibilities to the corporation.

"Mr. Yoffie is also concerned with the question of simply giving away $11 million in public funds and probably $200 million worth of property to a private company," Epstein said. "But he's confident that [illegible]

[illegible] has the deal will affect health care at Marin General. "After the merger," she told the Bay Guardian, "Marin General will become one component of a larger business system. Does that mean the partnership will centralize some of its facilities, so that some services that were available in San Rafael are now available only in San Mateo?"

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Aroner said it's entirely possible that district hospitals may no longer be able to provide their services without significant taxpayer subsidies. And, she said, selling or leasing them may not always be a bad idea. "But we're talking about a huge amount of money that belongs to the public," she said. "We shouldn't be doing this piecemeal — and whatever else is involved, every transfer should probably require a vote of the people."

Ends and means

Yoffie said he is financing the suit out of his own pocket. "He's not asking for any damages, and he has no financial stake in the outcome," Epstein added. "He's just a long-time journalist who is furious at what's happening." For Yoffie, the decision of the Marin Hospital District, however fiscally prudent, runs counter to the fundamental concepts of democratic government. "Many argue," his lawsuit states, "that the government can function more efficiently and competitively in private, and that voters and taxpayers should judge the end result and not the means used to obtain that end. However, the bottom line and the public good do not necessarily coincide. Public accountability may indeed result in inefficiencies, but it [illegible]

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Something to Hide

California has an open-meeting law that is sound in theory only. The Bagley-Keene Open Meetings Act prohibits secret discussions of government business by state boards, commissions and agencies. That should protect the public's right to know, and be good for democracy—but the law has no teeth.

It is not mandatory but only directory, according to a 1984 opinion by the attorney general's office. As a result, a government action taken in violation of the act can remain valid. Also, public servants who scheme to keep the public eye off the public business face a minor penalty—misdemeanor charges—that only the most zealous prosecutor would file.

AB 214, sponsored by Assemblyman Lloyd G. Connelly (D-Sacramento), would fix the flaws. It is on Gov. George Deukmejian's desk awaiting his signature. The bill would require open meetings of all state bodies unless there was specific authorization for a closed session. It also would require advance public notice of at least 10 days, and advance publication of the agenda. Any business not on the advance agenda would be prohibited.

AB 214 would also provide a mechanism for voiding an improper action. Citizens or groups could challenge any improper decision within 30 days. Those court challenges could be avoided if state agencies were to correct improper actions at a second meeting.

The California Assembly approved the bill without dissent, and the Senate has concurred. The proposal has the support of the attorney general's office, the Sierra Club, Common Cause, the Police Officers Research Assn. of California and other groups.

Opponents argue that the requirements would hurt government efficiency. That is ridiculous. Provisions in the bill would protect against frivolous challenges and challenges to actions involving notes and bonds, tax collection and certain contracts. Yes, it does take time to post specific agendas, to give advance notice of meetings and to allow public airings of controversial issues. More work might get done quickly behind closed doors. But that is not what responsible government is about.

California is one of 17 states, among them Florida and New York, with open-meeting laws. The laws are a recognition that secret meetings do not serve the public interest. They help only those with something to hide.

AUGUST 27, 1985

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PRESS-TELEGRAM
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An open window on state agencies

Deukmejian should choose openness in state government.

California has separate laws requiring local and state government bodies to open most of their meetings to the public. But the laws are relatively toothless.

Violation of them is a misdemeanor, but no criminal case has ever been brought under the laws — and unless there are outrageous and repeated violations, criminal sanctions would generally be inappropriate. Unfortunately, though, actions taken at illegal meetings are themselves legal. Favors can be exchanged behind closed doors with little risk.

To correct that where state boards and commissions are concerned, Sacramento Assemblyman Lloyd Connelly introduced AB 214, which would allow citizens to go to court to challenge secret decisions of state agencies. If the bill becomes law, similar legislation covering local agencies will be introduced next year.

The Connelly bill makes an exception for trivial violations and for the issuance of bonds, to avoid any financial instability. And of course the state agency could make the same decision all over again with no legal problems — so long as it went through the decision-making process in full view of the public.

Gov. Deukmejian has expressed reservations about the bill. His concern is that the thrust of legislative and court activities should be to uphold government actions and invest them with "finality." That is a legitimate concern, but it ought to be overridden by the need to encourage openness in government. Seventeen other states with similar legislation report no adverse effects. Indeed, Michigan Attorney General Frank J. Kelley advised the Center for Public Interest Law at the University of San Diego law school that "the invalidation provision (has) . . . improved government accountability to the citizens of the state."

The similar California legislation is widely supported by newspapers and broadcasters, as might be expected. It also has the endorsement of the Center for Public Interest Law, of the Police Officers Research Association, of the Sierra Club, of Common Cause and of Consumers Union. The law passed the Assembly 71-0 and the Senate 21-15. After the Assembly votes to concur in Senate amendments, the governor should sign the bill into law.

A - 536b

The San Diego Union

Col. Ira C. Copley, 1864 - 1947
James S. Copley, 1916 - 1973

Editorials/Opinion

Helen K. Copley, Publisher
Gerald L. Warren, Editor

A Copley Newspaper

Public business

SD Union 8/20/85

A bill that would close a gaping loophole in the state's Open Meetings Act has passed the Assembly and Senate and soon should be ready for Gov. Deukmejian's signature. Unfortunately, the word from Sacramento is that the governor intends to veto this bill. We hope he reconsiders.

The purpose of the Open Meetings Act is to remind public officials that their business is the public's business. The act does so by requiring state agencies to conduct open meetings and to provide specific agendas in advance. Some agencies, however, have found that they can violate the law with impunity because it does not invalidate decisions made during illegal, closed-door meetings.

Assembly Bill 214 would cure that defect by permitting a court to void most actions taken in violation of the Open Meetings Act. The governor and some of his appointees believe this would wreak havoc in state government. To ease their anxiety, several safeguards have been built into the legislation. The judge could act only on a citizen complaint, would have to make a ruling within 30 days of the meeting, and could not invalidate certain actions, such as the sale of bonds or the signing of contracts.

Nevertheless, several state agencies that would be affected by the change in the law are urging Gov. Deukmejian to veto the bill. They claim that the need for what they call "finality of government action" is more important that strict enforcement of the Open Meetings Act. We strongly disagree. What can be more important than the proper conduct of the public's business?

There is no justification for Gov. Deukmejian to veto this measure. We urge him to sign AB 214 and to encourage his appointees to comply with both the spirit and the letter of the open-meeting law.

The Sacramento Union
THE OLDEST DAILY IN THE WEST
FOUNDED • MARCH 19, 1851

Richard M. Scalfe Publisher
John D. Bates General Manager
Bruce Winters Editor

Editorials

Keep open meetings open

Suppose you feel strongly about a certain public policy issue. A state agency meets and takes a position on the issue that is counter to yours, but its wording of the agenda item was so vague that you and like-minded citizens didn't attend the meeting to have your say. The state attorney general says that by acting on such a misleading agenda item, the state agency clearly violated the state open meeting law.

However, there's nothing you can do about it because, the attorney general ruled, the law only *directs* the agency to take certain action; it does not *mandate* the action. The ruling, delivered earlier this year, means that the longstanding Bagley-Keene open meeting law covering state agencies, and presumably the Brown Act covering local government meetings, are toothless tigers.

To plug this hole in the law, Assemblyman Lloyd G. Connelly introduced a bill (AB 214) at the request of the University of San Diego Center for Public Interest Law mandating that meetings of state agencies be open unless specifically excluded by law, and requiring 10-day notices of meetings, specific agendas for meetings, and a ban on action on off-agenda items. Citizens or organizations can challenge in Superior Court any violation within 30 days in efforts to have it invalidated.

Both houses of the Legislature have approved this corrective legislation, but unfortunately Gov. Deukmejian reportedly intends to veto it. He is said to feel that the need for "finality of government action" is more important than invalidating illegal actions by state agencies.

However, this objection would seem to be adequately addressed by a provision in the bill that agencies can convene a second meeting and do legally what they did illegally at the first meeting.

We urge the governor to sign AB 214 in order to assure the public that California's open meetings are just that—open.

Sacramento, CA
(Sacramento Co.)
Union
(Cir. D. 93,501)
(Cir. S. 92,680)
AUG 9 - 1985
AB 214
Allen's P. C. B Est. 1888

Putting teeth in open meeting law

There are a couple of laws on the California books that news people support with misty-eyed zeal. Both deal with making sure our elected officials do public business in public and not in closed door "study sessions" or in a member's living room on Saturday morning. One, the original state open meeting law, is the Brown Act covering local agencies; the other is the Bagley-Keene Act covering state bodies.

Both statutes contain one of the most eloquent statements you'll ever read on the importance of letting the sun shine on deliberations of public policy:

"The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

But state Attorney General John Van de Kamp earlier this year pointed to a flaw in the Bagley-Keene Act in a ruling that concluded that it is merely "directory," not mandatory. Thus, even though a state body is found to have violated the act, the actions it took are immune from challenge; they must stand.

The attorney general's opinion came in the course of a ruling that the state Board of Food and Agriculture had clearly violated the Open Meetings Act when it included in its agenda for a 1983 meeting an item reading "Tuolumne River; San Joaquin River Flood Control Problem." Actually, the item referred to a controversial resolution opposing the inclusion of the Tuolumne River in federal wilderness legislation. As a result of that misleading label, no one showed up to speak against the resolution.

But even though Van De Kamp said "a member of the public would have to have been clairvoyant," to know what the Food and Agriculture Board was planning to do, the resolution stayed on the books because the law is directory, not mandatory.

To put teeth in the law, both houses of the Legislature have passed AB 214, introduced by Assemblyman Lloyd Connelly, D-Sacramento, and sponsored by the University of San Diego Center for Public Interest Law. The measure mandates that meetings of state agencies be open unless specifically excluded by law, and requires 10-day notice of meetings, specific agendas for meetings, and bans state bodies from taking action on off-agenda items. If the agency violates either provision, AB 214 allows citizens or organizations to challenge the action within 30 days in efforts to have it declared null and void.

The measure specifies that agencies can convene a second meeting and do legally what it did illegally at the first meeting.

Approximately 17 states have laws similar to that proposed by AB 214. However, the Deukmejian administration indicates it will be vetoed because the need for "finality of government action" is more important than invalidating the illegal actions of state agencies. But as the sponsors say, the finality of all government action should not be purchased at the cost of affirming unlawful action.

"As originally enacted, the open meetings act sought to insure public access to state agency activities," said Gene Erbin of the Center for Public Interest Law in Sacramento. "AB 214 simply guarantees that public bodies seriously regard their responsibilities, as defined under California law."

It should be added that the Brown Act is also only directory. So if Gov. Deukmejian vetoes AB 214, it will rule out any chance of strengthening the open meeting law covering local agencies. Public officials would be tempted to fudge on open meetings, leaving the public in the dark.

Peter J. Hayes is editorial page editor of The Sacramento Union.

San Francisco Chronicle
THE VOICE OF THE WEST

EDITORIALS

Needed Teeth

A KEY BIT of legislation to strengthen California's law that requires open meetings of state agencies is due for consideration later this month and deserves full legislative approval and the governor's signature.

The law now says such meetings must be open to the public and include specific agenda, but it is only "directory" in nature, which means that actions taken in violation of the law are still valid. An amendment by Assemblyman Lloyd Connelly of Sacramento would allow citizens to go to court and have the action declared null and void.

Some 17 states, including New York, New Jersey, Michigan, Arizona and Nevada, have requirements similar to what Connelly has proposed. Significantly, these states report that the existence of "null and void" provisions has not adversely affected the efficient operation of their governments.

ASSEMBLY BILL 214 is supported by the attorney general and a broad coalition of organizations. It would put some much-needed teeth in the open meetings law and create improved government accountability.

AB 214

San Jose Mercury News

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Disqualify secrecy

GOVERNOR George Deukmejian should rethink his threat to pull the few short, dull teeth the Legislature has just inserted in one of California's two principal open-meeting laws.

At the request of the State and Consumer Services Agency, the governor has promised to veto Assembly Bill 214, by Sacramento Democrat Lloyd Connelly. His measure, which has passed both the Senate and Assembly, would allow Californians to go to court to nullify decisions taken by state agencies in secret.

The Bagley-Keene Open Meeting Act requires state agencies to do their work in public, but Attorney General John Van de Kamp has ruled that the Bagley-Keene Act and the far broader Brown Act, which covers local government, are directory rather than mandatory. Effectively, this says that actions taken in secret can't be overturned if they are otherwise legal.

Connelly wants to close this loophole. So do Van de Kamp, the Peace Officers Research Association of California, the California Newspaper Publishers Association and the University of San Diego's Center for Public Interest law. So do we.

The 11 assorted regulatory bodies that constitute the State and Consumer Services Agency complain that AB 214 could leave their handiwork forever in limbo. It is essential, they say, for the state to ensure "the finality of government action."

They fret unduly. Connelly's bill imposes a 30-day statute of limitations. If nobody complains of a secret action within a month of its having been taken, it can't be challenged after that. A delay of 30 days in "the finality of government action" seems a small price to pay for the ability to challenge secret decisions.

AB 214 is, in fact, a relatively modest enhancement of the people's ability to compel their government to do its work in public. It shouldn't be vetoed.

The San Diego Union

Col. Ira C. Copley, 1864 - 1947
James S. Copley, 1916 - 1973

Editorials/Opinion

Helen K. Copley, Publisher
Gerald L. Warren, Editor

Page B-6 — A Copley Newspaper — Monday, February 25, 1985

The public's business

California's Open Meetings Act requires state boards and commissions to conduct open meetings and to provide specific agendas in advance.

Such a law is necessary because some officials have to be reminded that their business is really the public's business. But agencies can violate this law with impunity because it does not invalidate actions that are taken illegally. This is a serious flaw.

For example, the state Board of Food and Agriculture included a vague, misleading item in its agenda for a 1983 meeting when it adopted a resolution opposing inclusion of the Tuolumne River in federal wilderness legislation. Most environmentalists felt that the river should have been included. But because the board intentionally mislabeled the agenda item, no one was there to speak against the proposal.

An attorney general's investigation last year concluded that the board clearly violated the Open Meetings Act. But it also ruled that, because the act was "directory" and not "mandatory," the resolution was valid even though adopted in violation of the law.

Assembly Bill 214 would prevent such abuses by making the Open Meeting Act's agenda requirements more specific. It would enable interested parties to request a judicial review of alleged violations and would permit a judge to void decisions made in violation of the act.

The public has a right to see how its business is being conducted and to know that state agencies cannot ignore the open-meeting law whenever it suits them. The amendments to the Open Meetings Act included in AB 214 are needed to ensure those rights.

THE TRIBUNE

An independent newspaper serving the Greater Bay Area from Oakland since 1874

62

3-21-85

Shore up open meetings law

Jan 14 to 3-21-85

Last year's fight to include 83 miles of the irreplaceable Tuolumne River under the protection of the National Wild and Scenic Rivers system was one of the hottest environmental battles California has ever hosted.

The bill's eclectic supporters included almost all national and state environmentalists, whitewater rafting groups, actor Richard Chamberlain and the makers of "Cornnuts." Ranged on the other side were powerful Central Valley congressmen, farmers and irrigation officials who wanted to dam part of the river long-regarded as prime recreational territory. The bill's outcome was uncertain right up until its triumphant passage by Congress last September.

While the public debate was as wild, open and free as the river, one state board took a position on the controversy without any prior notice. The state attorney general's office later ruled the board in violation of state law governing open meetings of state agencies.

Now, an amendment to the Bagley-Keene Open Meetings Act has been introduced in the Legislature that would tighten state regulations to prevent agencies from taking such votes without prior public notification. The amendment deserves passage and inclusion in the act.

It was the State Board of Food and Agriculture that published an agenda item for its meeting on July 14, 1983, the attorney general later ruled was misleading. Although the item indicated it would be a discussion of flood control problems on the Tuolumne and San Joaquin rivers, the board then voted during the meeting to oppose inclusion of the river in federal wilderness legislation. Since the item gave no clue that a vote on the legislation would be taken, interested members of the public were not alerted of the board's intent.

But even though the law says meetings of state bodies must be open to the public and include specific agendas, it merely "directs" state bodies to follow these provisions. Agencies that violate the rules can only be slapped on the wrist, as was the agricultural board.

To strengthen the act, the amendment, proposed by Democratic Assemblyman Lloyd Connelly of Sacramento, will further clarify what a specific agenda requires, allow an interested party to request judicial review of a state body's action within 60 days of an alleged violation and allow an action taken in violation of the Open Meetings Act to be declared null and void. Over one-fourth of the states enforce similar null-and-void clauses.

"As originally enacted, the open meetings act sought to insure public access to state agency activities," says the amendment's sponsor, Gene Erbin of the University of San Diego's Center for Public Interest Law in Sacramento. "AB-214 simply guarantees that public bodies seriously regard their responsibilities, as defined under California law."

Not all public debates are as exciting and polarizing as the struggle to save the Tuolumne River. State agencies can take quiet votes on many issues without the public noticing much one way or the other. By putting teeth in the Open Meetings Act, AB-214 reduces the temptation of public bodies to fudge the law.

A - 543b

San Francisco Examiner
FOUNDED 1865

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Editorials

The people's right to know

SF Examiner 3-10-85

A HALLMARK of democratic government is that, with a few legitimate exceptions, the public's business is conducted publicly. That is why California requires both local and state agencies to hold open meetings and to publish in advance the subjects of such meetings.

These provisions are not always honored, however, and the public interest suffers from the lapses. The Begley-Keene Open Meetings Act mandates open meetings at the state level, but, according to a 1984 opinion from the attorney general, the act is flawed. Legislation pending in Sacramento would correct that flaw.

In its current form, Begley-Keene is well-intentioned but lacking in bite. The act allows for misdemeanor charges to be filed against officials who meet secretly in violation of its guidelines, but that provision is unlikely to be enforced. What's worse is that there exists no means of invalidating actions taken by agencies illegally meeting in secret. Thus state officials who would like to sidestep the Begley-Keene requirement have little to fear, and the public's right to open meetings is jeopardized.

Assemblyman Lloyd Connelly, D-Sacramento, and state Sen. Barry Keene, D-Mendocino, have introduced legislation, AB 214, to reform the act. The law would clarify what sort of "specific agenda" state agencies must publish. It also would allow citizens 60 days to request judicial review of alleged violations of the Open Meetings Act, and empower judges to nullify actions taken during illegal meetings.

There are still public officials who have not gotten into the open-meeting spirit; AB214 would give them a push in the right direction.

AB 214

Fresno, CA
(Fresno Co.)
Bee
(Cir. D. 129,955)
(Cir. S. 152,301)

MAR 3 1985

Allen's P. C. B. Est. 1888

Deciding in the dark

160

A year and a half ago, when Congress was considering whether to designate the Tuolumne River as a wild and scenic river, the state Board of Food and Agriculture decided to register its opposition. Under the state's open-meeting law, the board should have let the interested public know that such action was in the wind; that way, the pros and cons could have been fully aired. But the board, reluctant to invite controversy, played it close to the vest. The pertinent agenda item read "Tuolumne River: San Joaquin River Flood Control Problem."

As Attorney General John Van de Kamp declared, in assessing whether that statement was sufficiently specific to satisfy the law, "a member of the public would have to have been clairvoyant" to know what the Food and Agriculture Board had in mind. The board's view didn't ultimately prevail in Congress. But despite the board's plainly illegal behavior, its resolution remained on the books. Indeed, the only penalty that might conceivably have been imposed was to have carted board members off to jail, since deliberate violation of the open-meetings act is a misdemeanor. But jailing in such circumstances is neither likely nor appropriate.

AB 214, authored by Sacramento Assemblyman Lloyd Connelly, tries to put some punch behind the open-meeting requirements. It would allow citizens to go to court to challenge otherwise proper but secretly made decisions of state agencies. If a court upheld the claim, the decision would be void and the agency would have to begin again, in full view of the public. There are exceptions for trivial violations, to avoid frivolous litigation, and for decisions about the issuing of bonds and other public indebtedness, to avoid fiscal uncertainty.

That's how things should be — not only for state agencies, provided for by AB 214, but for local government, too. In the 17 states including New York, Florida and Arizona with similar laws on the books, great openness in doing the public's business is the order of the day.

That is why the attorney general and a broad coalition of organizations, including the Consumers Union, the Sierra Club, and the Police Officers Research Association of California, back the bill. The well-financed special interests won't approve, for it's much easier to trade favors in the dark — all the more reason for the Legislature to act promptly.

Gilroy, CA
(Santa Clara Co.)
Dispatch
(Cir. 5xW. 23,218)

AB 214

MAR 13 1985

Public must be told what's up

A year and a half ago, when Congress was considering whether to designate the Tuolumne River as a wild and scenic river, the State Board of Food and Agriculture decided to register its opposition. Under the state's open meeting law, the board should have let the interested public know what was in the wind; that way, the pros and cons could have been fully aired. But the board, reluctant to invite controversy, played it close to the vest. The pertinent agenda item read "Tuolumne River: San Joaquin River Flood Control Problem:"

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Modesto, CA
(Stanislaus Co.)
Bee
(Cir. D. 69,994)
(Cir. S. 75,820)

FEB 26 1985

Allen's P. C. S. Est. 1888

Deciding in the dark

A YEAR AND a half ago, when Congress was considering whether to designate the Tuolumne River as a wild and scenic river, the State Board of Food and Agriculture decided to register its opposition. Under the state's open meeting law, the board should have let the interested public know that such action was in the wind; that way, the pros and cons could have been fully aired. But the board, reluctant to invite controversy, played it close to the vest. The pertinent agenda item read "Tuolumne River: San Joaquin River Flood Control Problem."

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Assembly Bill 214, authored by Sacramento Assemblyman Lloyd Connelly, tries to put some punch behind the open meeting requirements. It would allow citizens to go to court in order to challenge otherwise proper but secretly made decisions of state agencies. If a court upheld the claim, the decision would be void and the agency would have to begin again, this time in full view of the public. There are exceptions for trivial violations, to avoid frivolous litigation, and for decisions about the issuing of bonds and other public indebtedness, to avoid fiscal uncertainty.

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EDITORIAL

KCST-TV 8330 Engineer Rd. San Diego, CA 92111-2493 (619)279-3939

Tim Chelling
Editorial Director

GOVERNMENT'S OPEN DOORS

The State Legislature recently passed Assembly Bill 214, a bill designed to strengthen California's Open Meetings Act. Public agencies in the state are supposed to conduct their business in full view of the public which they serve. But some agencies have continued ignoring the open meetings law.

The problem is, any decisions made behind closed doors are as final as if they had been made in public. Assembly Bill 214 is designed to plug the loophole by making decisions made behind closed doors invalid. The public's right to know is essential if democracy is to remain the foundation of our society. The current loophole in the open meetings law needs to be plugged.

39 Alive calls on the Governor to sign AB 214 so the Open Meetings Act can function as it was intended in California.

I'm Bill Fox. We welcome your views.

Broadcast over KCST-TV by Bill Fox, V.P. &
General Manager
August 21 and 22, 1985

39Alive

STORER COMMUNICATIONS, INC.

A - 548b

AUGUST 7, 1985

The Times

SAN MATEO TIMES AND DAILY NEWS LEADER
THE ADVANCE STAR

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To give our readers the widest scope of information, The Times prints the informed and varying opinions of many leading columnists. Their opinions are not necessarily those of The Times.

AB214 reinforces open meeting law for state agencies

The State Senate and the Assembly have overwhelmingly approved slightly different versions of a bill (AB214) by Assemblyman Lloyd Connelly of Sacramento to strengthen California's open meeting law that directs state agencies to conduct their business in public sessions.

Later this month, the Assembly is expected to concur in Senate amendments to AB214 and send the legislation to the governor. We hope Gov. Deukmejian will lose no time in adding his approval.

Two changes would make key provisions of the Bagley-Keene Open Meeting Act mandatory for state agencies. These are the provisions that require meetings of state bodies to be open unless specifically authorized to be closed, and a section that requires 10-day notice of meetings, along with specific agendas, and prohibits state agencies from taking action on items of business not appearing on the agenda.

If a state body insists on taking action in violation of the provisions mentioned above, the Connelly legislation for the first time permits private citizens or organizations to challenge such action in court within 30 days and to have the agency action declared null and void.

The Connelly bill specifies, however, that an agency may correct or "cure" contested actions by convening a second, public meeting to do correctly what it did improperly at the first meeting.

Approximately 17 states, including New York, New Jersey, Michigan, Arizona and Nevada, already have laws in effect similar to those proposed in AB214.

The Connelly legislation has been endorsed by many organizations, including the Police Officers Research Association of California, the Center for Public Interest Law at the University of San Diego, California Newspaper Publishers Association, the Newspaper Guild, Sierra Club, Common Cause and Consumers Union.

Certainly the public has a right and a need to be adequately informed about how the public's business is being conducted by state agencies. AB214 would help assure that such agencies cannot simply ignore the requirement to hold open meetings — as they can at present — or furnish inaccurate and ambiguous agenda notices, whenever it happens to suit their purposes.

AB214 deserves the support of the Legislature and the governor. It should be promptly enacted.

Bakersfield, CA
(Kern Co.)
Californian
(Cir. D. 66,567)
(Cir. S. 74,543)

AUG 13 1985

Allen's P. C. S. Est. 1888

Snapping trap on secrecy

60

The Bagley-Keene Open Meeting Act requires state agencies to conduct their business in public, but Attorney General John Van de Kamp has ruled that the act and the far broader Brown Act, which covers local government, are directory rather than mandatory.

Shed of its legal phraseology, it means that actions taken in secret can't be overturned if they are otherwise legal.

Assemblyman Lloyd Connelly, D-Sacramento, wants to close this loophole. So do Van de Kamp, the Peace Officers Research Association of California and the California Newspaper Publishers Association. So do we.

Connelly's bill, AB214, which has passed both the Senate and Assembly, would allow Californians to go to court to nullify decisions taken by state agencies in secret.

Gov. Deukmejian has indicated he will veto the measure at the urging of the State and Consumer Services Agency.

The 11 regulatory bodies that make up the State and Consumer Services Agency contend that AB214 could leave their rulings with less than enforceable status. It is essential, they contend, to ensure "the finality of government action."

They fail to consider — at least in their pitch to the governor — that Connelly's bill imposes a 30-day statute of limitations. If nobody complains of a secret action within a month of its having been taken, it can't be challenged after that.

Connelly's measure, it seems to us, is a modest step toward the people's ability to compel their government to do its work in public. We trust the governor has considered this in the same light and when the time comes, he will concur with legislators and not veto the bill.

Editorial Page

Tuesday, Aug. 13, 1985 CC SANTA BARBARA NEWS-PRESS

Sign it, Governor

Bill would fit open-meeting law with teeth

Rather than take for granted the protection against government tyranny that the laws of a democratic society "guarantee" individuals, citizens ought to take for granted that a constant vigil is their only guarantee against government's natural inclination to usurp their powers. State Sen. Barry Keene, for one, persistently reminds California citizens of this reality.

The Democrat from Mendocino is co-author of the state Open Meeting Act, which requires state boards and commissions to hold open meetings and to provide specific agendas in advance. Keene is also responsible for a law passed last year to strengthen the state Brown Act, which holds local public agencies to the same open-meetings standards. Now he is sponsoring in the Senate another piece of "sunshine" legislation written by Assemblyman Lloyd Connelly, D-Sacramento. Assembly Bill 214 would put teeth in the law that governs state-level agency meetings.

As currently written, the law directs state boards to conduct properly publicized public meetings and make decisions openly, but it does not provide for remedy if a board takes an action in violation of the law. If the public finds out, it can complain, but the illegally taken action stands. Assembly Bill 214 would prevent such abuses by prohibiting fuzzy statements on agendas designed to mislead the public and by permitting actions taken in secret or through subterfuge to be challenged.

In effect, the bill tells members of state agencies that they will no longer be able to get away with breaking the open-meeting law. If they take an action illegally — and this happens often enough to warrant Connelly's bill — the action may be declared null and void.

Both chambers of the Legislature have approved the measure and it is expected to reach the governor's desk late this month. But Gov. Deukmejian sees the bill as a threat to efficiency — to the "finality of government action."

The News-Press hopes the governor will reconsider. In a contest between expediency and integrity in government, integrity will accomplish a lot more in the long run.

LODI NEWS-SENTINEL

LODI, CALIFORNIA MONDAY, SEPTEMBER 16, 1985 PAGE 4

Let's keep the public out of the dark

To protect the public interest in free discussion and open government, California's Open Meetings Act prohibits state government bodies from making public policy in secrecy. Unfortunately, the law, as currently written, lacks real teeth to keep officials from defying its provisions.

That would change under AB 214, sponsored by Assemblyman Lloyd Connely of Sacramento and supported by Attorney General John Van de Kamp, along with a broad coalition of public-interest, consumer and environmental groups. The bill would amend the Open Meetings Act to allow citizens to sue to have decisions made in the dark declared null and void. Faced with the possibility of having their actions overturned in court, state bodies would be effectively deterred from acting with insufficient public notice or behind closed doors.

But this necessary reform has run into resistance. Passed unanimously by the Assembly, it encountered opposition in the Senate from the Deukmejian administration, which said the reform interfered with the finality of government action.

To meet such objections, Senate amendments to the bill, in which the Assembly will be asked to concur, shortened from 60 days to 30 days the period in which suits to invalidate secret actions would be permitted. Moreover, supporters of the legislation have gathered impressive testimony from attorneys general in states with similar laws that the null-and-void clause does not harm the operation of government and does increase public accountability.

With the administration's concerns now addressed, the way should be clear for the Assembly and the governor to approve this important protection for an open and accountable state government.

Roseville, CA
(Placer Co.)
Press-Tribune
(Cir. 5xW. 12,788)

OCT 8 - 1985

Allen's P. C. B Est. 1888

Our view

Open-meeting law gets needed teeth

It's nice to see the public's representatives finally putting some teeth into the public's right to watch its government in action.

With his recent signing of Assembly Bill 214, Gov. Deukmejian has strengthened the state's Open Meetings Act and made state agencies more accountable.

It is an unfortunate aspect of government that officials often forget that public business is really the public's business. That's why the Meetings Act, approved in 1967, requires state boards and commissions to conduct open meetings and to provide specific agendas in advance.

But the act had a gaping loophole. It did not allow for the invalidation of actions taken during illegal, closed-door meetings.

AB 214, authored by Assemblyman Lloyd Connelly, D-Sacramento, prevents such abuses by permitting a court to void actions taken in violation of the Open Meetings Act.

But the measure, wisely, precludes frivolous suits. Complaints against illegal acts would have to be made within 60 days of the act.

The governor signed the bill despite the objections of Shirley Chilton, the state's Consumer Services secretary. She argued that the need for "finality of government action" precluded strict enforcement of the Open Meetings Act.

We disagree. The public has a right to see how its business is being conducted and to know that state agencies cannot arbitrarily ignore the open-meetings law.

With the signing of AB 214, Gov. Deukmejian ensures those rights.

Santa Maria, CA
(Santa Barbara Co)
Santa Maria Times
(Cir. D 18,683)

OCT 14 1985

Allen's P. C. B Est. 1882

Editorial

Closing a big loophole

60

With his recent signing of Assembly Bill 214, Gov. Deukmejian has strengthened the state's Open Meeting Act and made state agencies more accountable to the public.

It is an unfortunate aspect of government that officials often forget that public business is really the public's business. That's why the Meeting Act, approved in 1967, requires state boards and commissions to conduct open meetings and to provide specific agendas in advance.

That is similar to the Brown Act's provisions that requires school, local and county governmental agencies to conduct their business in the open and with public access.

But the Open Meeting Act of 1967 had a gaping loophole. It did not allow for the invalidation of actions taken during illegal, closed-door meetings.

AB 214, authored by Assemblyman Lloyd Connelly, D-Sacramento, prevents such abuses by permitting a court to void actions taken in violation of the Open Meeting Act. But the measure, wisely, precludes frivolous suits. Comcplaints against illegal acts would have to be made within 60 days of the act.

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Los Angeles Daily Journal 9-30-85

48

Governor Signs Bills to Ensure Public Meetings, Records Privacy

By CHARLEY ROBERTS

SACRAMENTO — Two legislative proposals — one to ensure open government meetings and another requiring that certain drivers' records be kept confidential — have been signed into law by Gov. George Deukmejian.

The first measure, according to its legislative sponsor, puts "real teeth" into the state's Open Meeting Act. The other authorizes the state to withhold certain information on motorists' driving records from insurance companies.

The "sunshine" bill, AB 214 by Assemblyman Lloyd Connelly, D-Sacramento, enables private citizens and organizations to have state-agency decisions made in violation of the Open Meetings Act declared null and void in court. Previously, no mechanism existed for persons to challenge state-agency actions that violated provisions re-

State News

quiring advance notice of an agency's agenda and public decision-making.

Under Connelly's bill, a legal challenge may be brought within 30 days of the agency's action. The new law exempts three types of action from challenge: a good-faith contractual obligation; any action connected with the sale or issuance of notes, bonds, indebtedness, or any contract, instrument, or agreement; and any action connected to the collection of taxes.

The bill was sponsored by the Center for Public Interest Law, a San Diego-based organization that monitors the state's regulatory agencies. Seventeen other states, including New York, New Jersey, Michigan, Arizona, and Nevada, have similar laws.

The drivers privacy bill, AB 896 by Assemblyman Thomas Hannigan, D-Fairfield, authorizes the Department of Motor Vehicles to limit public access to individual driving records to official citations and accident reports in which the individual was found to be at fault.

The bill is intended to reduce insurance companies' access to accident information. Its supporters claim that blameless accident victims have had their insurance premiums increased and, in some cases, their policies cancelled.

Insurance companies opposed the bill. The Farmers Insurance Co. said that good drivers practice defensive driving and those who do not could, under Hannigan's bill, have a series of accidents that would escape insurers' notice. The result, opponents argued, could be higher premiums for all drivers to subsidize the higher-risk drivers that insurers are currently able to detect and bill accordingly.

The measure was backed by the American Civil Liberties Union and the Teamsters Union.

Other Measures Approved

Other bills signed into law include:

- SB 421 by Sen. Nicholas Petris, D-Oakland, states that a person is not mentally competent to make a will if, at the time the will is made, he or she is unable to understand the nature of the testamentary act, does not recollect the nature and status of the property, or does not remember his or her relations to living descendants, spouse, or parents, and those whose interests the will affects. The bill declares that persons suffering hallucinations or delusions are not mentally competent to make a will.
- AB 2055 by Assemblyman Richard Katz, D-Sepulveda, makes it an alternative misdemeanor or felony for a person convicted of a violent felony to threaten his victim, or other specified persons, with violence.
- SB 1297 by Sen. Edward Royce, R-Santa Ana, amends the Administrative Procedures Act to require, in mandamus actions where a state agency prevails, that petitioners pay the cost of services and preparing the administrative record.
- AB 762 By Assemblywoman Gwen Moore, D-Los Angeles, allows for a two-year sentence enhancement for primary care providers convicted of specific sex crimes against minors entrusted to to the offender's care.
- SB 889 by Sen. John Seymour, R-Anaheim, increases the criminal penalties for persons convicted of committing sex offenses against persons with a mental disorder or physical or developmental disability.
- AB 1718 by Assemblyman Charles Calderon, D-Montebello, makes the sentence recommendation of a probation report available to the crime victim, or the victim's next of kin, through the district attorney's office.

Alameda, CA
(Alameda Co.)
Alameda Times Star
(Cir. 6xW. 8,465)

OCT 4 - 1985

Allen's P. C. B. Est. 1888

AB 214

Open meetings

With his recent signing of Assembly Bill 214, Gov. Deukmejian has strengthened the state's Open Meetings Act and made state agencies more accountable to the public.

It is an unfortunate aspect of government that officials often forget that public business is really the public's business. That's why the Meetings Act, approved in 1967, requires state boards and commissions to conduct open meetings and to provide specific agendas in advance.

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The governor signed the bill despite the objections of Shirley Chilton, the state's Consumer Services Secretary. She argued that the need for "finality of government action" precluded strict enforcement of the Open Meetings Act.

We disagree. The public has a right to see how its business is being conducted and to know that state agencies cannot arbitrarily ignore the open-meetings law.

With the signing of AB 214, Gov. Deukmejian ensures those rights.

Lompoc, CA
(Santa Barbara Co.)
Lompoc Record
(Cir. D. 9,336)

OCT 4 1985

Allen's P. C. B Est. 1888

Editorial

Open meetings

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Santa Ana, CA
(Orange Co.)
Register
(Clr. D. 279,452)
(Cir. Sat. 246,128)
(Cir. Sun. 311,062)

OCT 17 1985

Allen's P. C. B Est. 1888

Out in the open

60

The California Legislature — with Gov. George Deukmejian's signature — has at last put some teeth into the open-meeting law covering state agencies. The law governing local governments, however, remains mostly toothless. That's something that should be near the top of next year's agenda.

The problem with the 1967 Bagley-Keene Open Meeting Act was that, while it required state boards and commissions to conduct open meetings and provide specific agendas in advance, it also contained a large loophole — there was no effective penalty for violations.

Earlier this year state Attorney General John Van de Kamp ruled that the law did not permit invalidation of actions taken during closed-door sessions. Obviously, that made the law somewhat meaningless. In effect, the boards and commissions could take actions in secret and, if caught, simply say, "Sorry. We'll try to do better next time."

This year's correction, written by Assemblyman Lloyd Connelly, D-Sacramento, allows a judge to void actions taken during meetings that violated the open-meeting act. But it, too, leaves state agencies a little room to maneuver since the court action must be taken within 30 days of the infraction — and only for what the court determines are "serious violations."

Still, that's better than it was.

It's disappointing that some government officials seem to need constant reminding that the business they conduct is, after all, the public's business. For a free society to have a hope of remaining free, however, it is essential that people be fully aware of actions supposedly taken on their behalf. A public that allows its government to operate in secret is subject to all kinds of abuse.

There may be no foolproof method of ensuring that government business is conducted in the open. And operating in the open is hardly a substitute for a more widespread conviction that certain activities are none of the government's business at all, whether it operates openly or secretly.

But if governments continue to arrogate power to themselves, they should at least have some incentive to do so in public rather than behind closed doors.

The principle applies, of course, to local governments. That's why the Brown Act, which requires local officials to conduct their business in the open, needs similar penalties for violators. The sooner the better.

Antioch Daily Ledger 10-30-85

Legislature acts to strengthen the Brown Act

Ray Tessler

Ray Tessler covers the state government in Sacramento for California Delta Newspapers and LCI News Service. His column appears weekly.

Among life's pathetic li tle scenes is an aging newspaper reporter vainly trying to amuse actual grownups with odd duck stories about the old days. But indulge me for a few paragraphs anyway.

One night about 10 years ago, the board of commissioners of a public housing agency I covered met behind closed doors to discuss something in what's rather grandiloquently called an "executive session."

A goofy but well-intentioned handful of community activists, regarded as the peanut gallery and the lunatic fringe by local politicians, decided there was nothing the commissioners were talking about that the public wasn't entitled to hear.

So they crept into the bathroom next to the office where commissioners were meeting and quietly pressed their ears against the wall. They heard everything that was being spoken in confidence until one of the eavesdroppers slipped and accidentally flushed the toilet.

The echoing roar of rampaging water (and recriminations for the spastic conspirator) alerted a suspicious commissioner, who darted into the chamber of derring-do and foiled this perfidy against local government.

I say there's a lesson in participatory democracy here.

State law says local government meetings must be open to the public except when confidential matters like personnel and litigation beg attention. In such cases, city council members, county supervisors, and members of boards and commissions are allowed to bar the press and the public.

But since that law, the Ralph M. Brown Act, went on the books in 1953, it's become obvious that any public body so inclined can and does easily abuse the open meeting law.

Officials who don't care to include the public in the public's own business simply have declared an executive session and met privately to discuss anything they bloody well pleased. Sometimes, the term "litigation" has been loosely applied to include anything being discussed with the governing body's lawyer.

The law makes that a misdemeanor, but violations have been hard to prove. After all, if the public isn't there, who's to know the law is being bent unless one of the participants squeals?

But in the last few years, both the Brown Act and the Bagley-Keene Open Meeting Act, the latter dealing with state agencies, have begun tightening up on errant public officials. And some of those officials aren't happy about it.

Since last January, amendments to the Brown Act have required more specific information about what's going to be discussed regarding litigation and negotiations involving property acquisitions before the public can be excluded.

It's now clear that a governing body can privately mull "pending litigation," but only if a discussion before the public would jeopardize that body's legal position.

Although that amendment clamped down on a big area of abuse at the local level, the state Legislature this year passed, and Gov. George Deukmejian signed, a bill that went far beyond anything in the Brown Act.

AB214 by Assemblyman Lloyd Connelly, D-Sacramento, pertains to state agencies. It raised a few government eyebrows during legislative consideration because the measure actually voids many decisions made in secret.

The bill was suggested by the Center for Public Interest Law and supported by the state attorney general and Common Cause.

Supporters offered a case in point. In 1983, the state Board of Food and Agriculture adopted a resolution that opposed including the Tuolumne River in federal wilderness legislation.

Infuriated environmentalists claimed the board's business agenda that was given to the public was so vague and misleading that nobody knew the river was up for grabs. Thus, the board took action without anyone there to protest.

The attorney general later ruled that the board violated the open meeting law, and Connelly argued a tougher law was needed to solve that problem by making agenda requirements more specific and allowing a judicial review of alleged violations with a judge permitted to void certain decisions.

In the Legislature, it's rare when a hearing is much more than a demonstration of posturing and polemics. True, compromises on bills are frequently worked out in public, and debate sometimes changes a few minds.

But it's more typically the case that deals are cut in confidence and a lawmaker lobbies his or her colleagues — and pretty well knows what the vote will be — before the public hearing.

That means a truly open democracy is an illusion. It also means the public has to pay close attention and not let cynicism cause inaction — words that apply doubly to reporters, editors and publishers.

62

Fresno, CA
(Fresno Co.)
Fresno Daily Legal
(Clr. 5xW. 1,000)

27

OCT 11 1985

Allen's P. C. B Est. 1888

OPEN MEETING LAW

Legislation designed to strengthen the state's Open Meeting Act has been signed into law by the governor. The measure, by Assemblyman Lloyd Connelly (D-Sacramento), would enable private citizens and organizations to go to court and have actions of state agencies which are in violation of the Open Meeting Act declared null and void. Connelly said no mechanism currently exists to permit private citizens to challenge the illegal actions of state agencies. His AB 214 was supported by consumer, environmental and peace officer organizations, and the Calif. Newspaper Publishers Assn. The Open Meeting Act prohibits state agencies from holding non-public meetings involving public matters.

Ontario, CA
(San Bernardino Co)
Ontario Daily Report
(Clr. D 33,235)
(Clr. S 34,331)

OCT 2 1985

Allen's P. C. B Est. 1888

60

EDITORIALS

Public wins with signing of meeting act

With his recent signing of Assembly Bill 214, Gov. Deukmejian has strengthened the state's Open Meetings Act and made state agencies more accountable to the public.

It is an unfortunate aspect of government that officials often forget that public business is really the public's business. That's why the Meetings Act, approved in 1967, requires state boards and commissions to conduct open meetings and to provide specific agendas in advance.

But the act had a gaping loophole. It did not allow for the invalidation of actions taken during illegal, closed-door meetings.

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The governor signed the bill despite the objections of Shirley Chilton, the state's Consumer Services Secretary. She argued that the need for "finality of government action" precluded strict enforcement of the Open Meetings Act.

We disagree. The public has a right to see how its business is being conducted and to know that state agencies cannot arbitrarily ignore the open-meetings law.

With the signing of AB 214, Gov. Deukmejian ensures those rights.

Los Angeles, CA
(Los Angeles Co.)
Belvedere Citizen
(Cir. W. 18,750)

OCT 2 1985

Allen's P. C. B Est. 1888

16

Out of the dark

To protect the public interest in free discussion and open government, California's Open Meetings Act prohibits state government bodies from making public policy in secrecy. Unfortunately, the law, as currently written, lacks real teeth to keep officials from defying its provisions.

That would change under AB 214, sponsored by Assemblyman Lloyd Connelly of Sacramento and supported by Attorney General John Van de Kamp, along with a broad coalition of public-interest, consumer and environmental groups. The bill would amend the Open Meetings Act to allow citizens to sue to have decisions made in the dark declared null and void. Faced with the possibility of having their actions overturned in court, state bodies would be effectively deterred from acting with insufficient public notice or behind closed doors.

But this necessary reform has run into resistance. Passed unanimously by the Assembly, it encountered opposition in the Senate from the Deukmejian administration, which said the reform interfered with the finality of government action.

To meet such objections, Senate amendments to the bill, in which the Assembly will be asked to concur, shorten from 60 days to 30 days the period in which suits to invalidate secret actions would be permitted. Moreover, supporters of the legislation have gathered impressive testimony from attorneys general in states with similar laws that the null-and-void clause does not harm the operation of government and does increase public accountability.

With the administration's concerns now addressed, the way should be clear for the Assembly and the governor to approve this important protection for an open and accountable state government.

Sent to Dan Carson at San Diego Union #1190, 925 L St. Sac. CA 95814

...te officials expand — and restrict — public's right to know

San Diego Union 10-7-85

...el C. Carson

...CRAMENTO — The 1985 legis... ...on turned out to be a ...essing for the public's right ...

The lawmakers passed, and Gov. Deukmejian signed, a landmark measure that for the first time will allow citizen lawsuits to nullify actions made during illegal secret meeting of state agencies. It is likely to set the stage for efforts by the University of San Diego's Center for Public Interest Law and other government watchdog groups to extend similar provisions to localities in 1986.

But state officials also put on the books several new laws that further erode public access to meetings and records of their government, including one that makes it harder for the public to keep track of what is being spent on Medi-Cal health-care contracts with hospitals. The contracts are worth roughly $1 billion.

The session just concluded saw a continuation of the guerrilla war between the consumer, public-interest and publishing interests who want to pry open the doors of government, and representatives of particular industries and public agencies fighting for privacy.

Just who came out ahead is a toss-up.

The governor's signature of AB 214 by Assemblyman Lloyd Connelly, D-Sacramento, puts sharp new teeth into the state agency open-meeting law. Now, if an agency acts in secret or even fails to give the public proper notice of what it intends to do in a meeting, it risks a lawsuit that would invalidate its action.

In theory, the punishment for lawbreakers was supposed to be criminal penalties. But the tough standard of proof required to make a criminal case meant there was no effective penalty. Significantly, the governor signed the bill over the objections of one of his own Cabinet officers, who worried it would create an administrative nightmare.

Right-to-know advocates won other battles.

Lawmakers did not advance AB 2111, authored by Assemblyman Larry Stirling, R-San Diego, to give law enforcement authorities broad discretion to close public records when disclosure would "create a life-threatening situation."

A bill by Assemblyman Bill Bradley, R-Escondido, allowing a county to withhold property tax and voter registration records for the purpose of protecting witnesses in criminal cases, also went nowhere.

Deukmejian vetoed a bill to allow individuals to close felony records of crimes committed before they reached age 21. "This type of law cannot change what happened by permitting a person to state an untruth," the governor said.

Lawmakers killed a bill that would have made it a misdemeanor for a grand jury member to leak information to outsiders. And they ensured the removal of provisions in SB 301 by Sen. Bill Lockyer, D-San Leandro, that would have allowed judges to exclude the press and public from courtrooms in child-abuse cases.

California Watch

Likewise, a bill to make technical changes in local water district laws was stripped of its provisions deleting public meeting requirements for them.

SB 42 by Sen. Wadie Deddeh, D-Bonita, to prevent public scrutiny of financial data submitted by companies seeking public bond financing from the state's Industrial Development Financing Advisory Committee passed the Senate, but stalled in an Assembly committee.

But some efforts to bolster public access to information went awry in 1985.

Chief among these was AB 2001 by Assemblyman Alister McAlister, D-Fremont, to put the burden of proof on state agencies to justify decisions to withhold their records. It passed the Assembly but stalled in the Senate Governmental Organization Committee.

A bill to require notification of news agencies of the release of state prisoners never got past the Senate Judiciary Committee. And a bill to force the release of inactive police files on persons placed under surveillance never advanced from the Assembly Public Safety Committee.

Two bills to force the State Bar to improve notice to the public of bar meetings, to require explanation of closed sessions, and to allow open hearings and records on disciplinary hearings involving errant lawyers failed.

A measure to curb college censorship of editorials in campus newspapers was hung up in a two-house conference committee late in the session and never quite made it to the governor's desk.

And some approved measures put some information off-limits or made it more difficult to obtain.

One restores a provision of a law allowing victims of sex crimes and child abuse to have their names withheld from disclosure.

Another, SB 457 by Deddeh, initially prohibited the state Bureau of Collection and Investigative Services from releasing the home address or phone number of anyone holding a license. It was passed and signed after being amended to instead require written requests for such information.

Finally, Deukmejian gave his consent to a bill setting back recent legislative efforts to open the state Medi-Cal program to public scrutiny.

A little-noticed provision in a 19... law threw a blanket over roughly $... billion worth of contracts between the state and hospitals providing health care services for the poor. The rationale was that major savings to taxpayers from bidding of contracts would be undermined if competitors knew what contract winners were being paid.

Negative publicity over this unprecedented step prompted lawmakers to pass a follow-up bill saying the contracts would be made public a year after their execution.

But now lawmakers and the governor have moved back in the direction of secrecy. The new law says the most important bit of information in those contracts — the rate of payment to hospitals — can be kept under wraps for three years.

1356

A - 562b

San Mateo, CA
(San Mateo Co.)
Times
(Cir. 4xW. 48,7[illegible]

NOV 12 1995

New law protects public interest in open meetings

A recurring aspect of government is that some officials find it all too easy to forget that their business is really the public's business.

That's why the State Meetings Act, enacted in 1967, requires California boards and commissions to conduct open meetings and to make available specific agendas in advance.

But that act had a serious loophole. It did not provide for the invalidation of actions taken during meetings that failed to comply with the law.

So we're glad to see that Gov. Deukmejian, through his recent signing of Assembly Bill 214, has now plugged that loophole. The new measure strengthens the earlier law and thus makes state agencies more accountable to the public whom they serve.

Authored by Assemblyman Lloyd Connelly of Sacramento, AB 214 authorizes a court to void actions taken in violation of the Open Meetings Act, if the complaint is made within 60 days of the agency action.

In signing the legislation, Deukmejian overruled the objections of Shirley Chilton, California's Secretary of Consumer Services. She had argued that the need for "finality of government action" precluded strict enforcement of the Open Meetings Act.

We agree with the governor. The public has a right to be kept currently informed about how its business is being conducted, and to know that state agencies cannot arbitrarily ignore such rights without having their actions challenged in court.

Opening meetings

The Hanford Sentinel

California's open meeting law covering state agencies has real teeth in it now that Gov. George Deukmejian has signed corrective legislation.

THE LAW WAS enacted in 1967 requiring state boards and commissions to conduct open meetings and to provide specific agendas in advance. But earlier this year Attorney General John Van de Kamp ruled that the act contained a big loophole. It did not permit invalidation of actions taken during illegal, closed-door meetings.

Assemblyman Lloyd Connelly, D-Sacramento, introduced AB 214 to block such abuses by allowing a judge to void actions taken in violation of the Bagley-Keene Open Meeting Act. But such action can be taken only within 30 days of the infraction, and only in the case of serious violations.

The signing of AB 214 sends a signal to state officials that the Legislature and the governor require that these officials be more accountable to the public.

WE HOPE lawmakers next will recognize the need to similarly tighten the Brown Act, which requires local government officials to conduct their own business in the open.

The Daily Californian

Opinion

Monday, February 18, 1985 8A

Stronger open meeting laws

California, compared to some other states, has fairly strong laws protecting the right of the public to information it needs and should have. But some improvements are required to make them enforceable.

The Bagley-Keene Open Meetings Act, enacted in 1967, requires that state agencies deliberate in public, just as the Brown Act makes the same demand of local agencies.

Unfortunately, current law is void of any useful mechanism for a citizen to challenge suspected violations of the Open Meetings Act. AB214 has been proposed to strengthen the law to clarify what is meant by a "specific agenda," since some agencies use vague wording to mislead the public into thinking nothing important is going to happen.

The proposed amendments also would permit any interested party who suspects a violation of the open meeting law to request a judicial review within 60 days of the alleged violation. If a judge determines that an action taken by an agency occurred during a violation of the Open Meetings Act, that action could be declared null and void.

Invalidating actions that occur when an agency is violating the Open Meetings Act is an effective way to get our representatives to honor the intent and spirit of laws made to assure public access to information that should indeed be public.

Bakersfield, CA
(Kern Co.)
Californian
(Cir. D. 66,867)
(Cir. S. 74,643)

OCT 7 - 1985

Allen's P. C. B Est. 1888

AB 214

When it's public business

By signing AB214, Gov. Deukmejian has strengthened the state's Open Meetings Act and made state agencies more accountable to the public. That's all to the good.

The Bagley-Keene Open Meeting Act required state agencies to conduct their business in public, but Attorney General John Van de Kamp pointed out that the act and the far broader Brown Act were directory rather than mandatory and he wanted that corrected.

Shed of the phraseology, it meant that actions taken in secret couldn't be overturned if they were otherwise legal.

Assemblyman Lloyd Connelly, D-Sacramento, moved to close that loophole, and with support from Van de Kamp, the Peace Officers Research Association of California and the California Newspaper Publishers Association, authored AB214.

The measure prevents the invalidation of actions taken during illegal, closed-door meetings. It does so by permitting a court to void actions taken in violation of the Open Meetings Act.

The governor signed the bill despite the objections of Shirley Chilton, secretary for the state's Consumer Services. She had urged the governor to veto the measure, contending it could leave that agency's rulings with less than enforceable status of the Open Meetings Act.

She failed to consider – at least in her pitch to the governor – that Connelly's bill imposes a 30-day statute of limitations.

The measure, it seems to us, was nothing more than a modest yet important step toward the people's ability to do its work in public. The public has a right to see how its business is being conducted and to know that state agencies cannot arbitrarily ignore the open-meeting law.

By signing AB214, Gov. Deukmejian ensures those rights.

Open meetings

SDUnion 10-2-85

With his recent signing of Assembly Bill 214, Gov. Deukmejian has strengthened the state's Open Meetings Act and made state agencies more accountable to the public.

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We disagree. The public has right to see how its business being conducted and to know th state agencies cannot arbitrar ignore the open-meetings law.

With the signing of AB 214 Gov. Deukmejian ensures thos ri-

Governor signs bill designed to curb illegal secret sessions

SD Union 9/29/85

From Staff and Wire Reports

SACRAMENTO — Despite objections from a member of his Cabinet, Gov. Deukmejian yesterday signed a bill allowing citizen lawsuits to void state agency actions taken in illegal secret meetings.

"The bill puts real teeth" into a law requiring open decision-making by state government agencies, declared Assemblyman Lloyd Connelly, D-Sacramento, the author of AB 214. "State agencies are on notice that the people will not tolerate secret and illegal meetings."

The bill had been formally opposed by Shirley Chilton, state and Consumer Services Agency secretary, who told Connelly "the effect of your legislation may be more harmful than beneficial. Our concerns are numerous and serious."

Chilton said in an April 2 letter there is "an overriding need for finality in the proceedings of state administrative agencies," and that allowing decisions to be undone because of violations of the anti-secrecy laws would result in "poor public policy."

But Connelly, in defense of the bill, cited the case of a state food and agriculture board meeting in which the panel passed a resolution opposing the creation of a wilderness area while the listing on the agenda indicated it was a discussion of a "flood control problem." The state attorney general issued an opinion that the resolution could stand even though the law required accurate and specific advance prior notice of board actions.

Even before the administration objected to AB 214, Connelly had narrowed the bill to block frivolous lawsuits and to let state government sales of bonds or contracts stand, even if awarded illegally in secret.

Any lawsuit to overturn an illegal act must be commenced within 60 days of the alleged violation.

The bill does not affect actions taken by local governments in illegal secret meetings.

Deukmejian also signed a bill that could prevent a person's car insurance firm from learning of accidents that are not that driver's fault.

The governor also signed AB 2055 by Assemblyman Richard Katz, D-Sepulveda, which toughens penalties for criminals who threaten harm to their victims or victims' families.

Katz said the bill was prompted by the case of Theresa Saldana, an actress who has recovered from a brutal stabbing three years ago. Katz said her assailant has sent Saldana letters threatening to "finish the job" when he is released from prison in about three years.

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Deciding In The Dark

A year and a half ago, when Congress was considering whether to designate the Tuolumne River as a wild and scenic river, the state Board of Food and Agriculture decided to register its opposition. Under the state's open-meeting law, the board should have let the interested public know that such action was in the wind; that way, the pros and cons could have been fully aired. But the board, reluctant to invite controversy, played it close to the vest. The pertinent agenda item read "Tuolumne River: San Joaquin River Flood Control Problem."

As Attorney General John Van de Kamp declared, in assessing whether that statement was sufficiently specific to satisfy the law, "a member of the public would have to have been clairvoyant" to know what the Food and Agriculture Board had in mind. The board's view didn't ultimately prevail in Congress. But despite the board's plainly illegal behavior, its resolution remained on the books. Indeed, the only penalty that might conceivably have been imposed was to have carted board members off to jail, since deliberate violation of the open-meetings act is a misdemeanor. But jailing in such circumstances is neither likely nor appropriate.

AB 214, authored by Sacramento Assemblyman Lloyd Connelly, tries to put some punch behind the open-meeting requirements. It would allow citizens to go to court, in order to challenge otherwise proper but secretly made decisions of state agencies. If a court upheld the claim, the decision would be void and the agency would have to begin again, in full view of the public. There are exceptions for trivial violations, to avoid frivolous litigation, and for decisions about the issuing of bonds and other public indebtedness, to avoid fiscal uncertainty.

That's how things should be — not only for state agencies, provided for by AB 214, but for local government, too. In the 17 states including New York, Florida and Arizona with similar laws on the books, greater openness in doing the public's business is the order of the day.

That is why the attorney general and a broad coalition of organizations, including the Consumers Union, the Sierra Club, and the Police Officers Research Association of California, back the bill. The well-financed special interests won't approve, for it's much easier to trade favors in the dark — all the more reason for the Legislature to act promptly.

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Editorials

Out Of The Dark

To protect the public interest in free discussion and open government, California's Open Meeting Act prohibits state government bodies from making public policy in secrecy. Unfortunately, the law, as currently written, lacks real teeth to keep officials from defying its provisions. That would change under AB 214, sponsored by Assemblyman Lloyd Connelly of Sacramento and supported by Attorney General John Van de Kamp, along with a broad coalition of public-interest, consumer and environmental groups. The bill would amend the Open Meeting Act to allow citizens to sue to have decisions made in the dark declared null and void. Faced with the possibility of having their actions overturned in court, state bodies would be effectively deterred from acting with insufficient public notice or behind closed doors.

But this necessary reform has run into resistance. Passed unanimously by the Assembly, it encountered opposition in the Senate from the Deukmejian administration, which said the reform interfered with the finality of government action.

To meet such objections, Senate amendments to the bill, in which the Assembly will be asked to concur this week, shorten from 60 days to 30 days the period in which suits to invalidate secret actions would be permitted. Moreover, supporters of the legislation have gathered impressive testimony from attorneys general in states with similar laws that the null-and-void clause does not harm the operation of government and does increase public accountability.

With the administration's concerns now addressed, the way should be clear for the Assembly and the governor to approve this important protection for an open and accountable state government.

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Supreme Court of California

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