

THE RALPH M. BROWN ACT

...NOT TO BE TAKEN LIGHTLY

SUMMARY

Several complaints received by the Grand Jury included allegations of Brown Act violations. These included board decisions being made that were not on the agenda, secret or serial board discussions, or inadequate availability of materials in advance of meetings. Because of the frequency of such complaints, the Grand Jury decided to closely study this issue. The Grand Jury surveyed board members and executive staff of various jurisdictions¹ in Sacramento County about their Brown Act training and experiences. In addition, the Grand Jury closely monitored the Twin Rivers Unified School District, in which the appointment of a Board member was rescinded due to a Brown Act violation.

The Brown Act seems straightforward, but compliance is not as easy as it seems. Inadvertent violations do occur, and when they do, they are usually easily fixed. However, sometimes a violation can cause great public embarrassment, controversy, and result in significant cost. To avoid procedural complaints, jurisdictions are encouraged to always follow the Brown Act requirements to the letter, including noticing, agenda development, conducting meetings, and limiting off-line discussions by board members. Jurisdictions should track that new board members and key staff get training upon appointment and every two years thereafter. Lastly, jurisdictions may want to invite the public to periodic Brown Act training during public meetings.

BACKGROUND

The Ralph M. Brown Act, or “The California Open Meeting Act” was enacted in 1953, with the intent to ensure that the public’s business is conducted in public, and with adequate opportunities for public input. The Act 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 and deliberations be conducted openly.² Though the Act has been law for six decades, there is ongoing confusion by many, including special district boards and staff, and the citizens that attend and participate during meetings, about the Brown Act and its implementation requirements.

There are several small districts within Sacramento County that are governed by the Board of Supervisors. The Brown Act requires, in part, that public agencies and their commissions, committees, boards and other bodies that are “legislative bodies”³:

- Post a notice of meetings at least 72 hours prior, except in certain cases;
- Post an agenda for meetings at least 72 hours prior, except in certain cases;

1 This report uses the generic term “jurisdiction” to mean all public boards and bodies subject to the Brown Act

2 Government Code Section 54950

3 Government Code 54951 further defines “legislative bodies” as created by charter, ordinance, resolution or formal action of a legislative body

- Make all documents used by the board to make decisions readily available to the public at the same time they are distributed to the board. Government Code section 54950 specifies that documents be available to the public “without delay” if distributed to all or a majority of members of a board before or at a meeting, unless the documents are exempt under the Public Records Act; and
- Not require a sign-in at public meetings.

The Grand Jury received many complaints alleging Brown Act violations. The frequency of these complaints triggered a broader investigation about Brown Act compliance among jurisdictions within the County. Allegations included:

- Boards made back-room decisions or conducted serial meetings by email prior to meetings, so that certain decisions were pre-determined;
- Information used by boards to make decisions was not available to the public at all, or not in a timely manner;
- Agendas posted on-line lacked adequate backup materials;
- Agendas were too vague for the public to understand; and
- Board chairs or executive staff did not allow adequate public comment, or rode roughshod over agendas and meetings.

In addition, the Brown Act seems to be a frequent topic for grand juries. In a review of recent Grand Jury reports throughout the state we discovered this topic was addressed in the Grand Jury Reports of: Madera County 2013, Humboldt County 2014, Shasta County 2014, and Alameda County 2014.

METHODOLOGY

The Grand Jury investigated a number of alleged Brown Act violations. Members reviewed extensive documents and interviewed each complainant along with numerous individuals, including those from the County Counsel’s office and the California Special District Association. The Grand Jury also closely monitored the Brown Act controversy at the Twin Rivers Unified School District. Lastly, to find out more about Brown Act training, compliance, and concern in Sacramento County, the Grand Jury conducted a short survey of 118 board members and executive staff whose jurisdictions are covered by the Brown Act.

DISCUSSION

The Brown Act seems simple to follow, but compliance is not as easy as it seems. Procedural complaints appear common throughout the State, but actual violations are less common. Because cities and larger jurisdictions often have legal counsel in attendance at meetings, procedural issues are dealt with on the spot. Smaller districts and boards less often have instant access to counsel, and are more likely to violate a procedure.

Violations, when they occur, are most often inadvertent and not serious, usually easily fixed by a new vote at the next meeting to re-confirm the Board’s intent. However, in some cases the violation is only rectified at great cost and embarrassment. In addition, an individual citizen or

small group may sometimes use the Brown Act as a bludgeon to advance its own agenda or try to intimidate boards and staff into delaying or reversing decisions with which he/she/they disagree.

Three examples are discussed below.

CARMICHAEL RECREATION AND PARKS DISTRICT

Several citizens complained about procedures followed by the District in conducting a special election, which included alleged Brown Act violations. In particular, there was an allegation that an “Engineers Report” was released to the public without enough advance notice prior to a successful April 17, 2014 property tax assessment election. If this document were not available to the public in a timely manner, it would mean that the public was not given adequate information about its vote prior to the election.

District Board discussions about a possible assessment election started in May of 2013, and on January 14, 2014, the County Board of Supervisors approved proceeding with that election. An Engineer’s Report was required to be prepared. This report is a key document that contains proposed improvement projects, proposed boundaries of the new district, and an assessment per parcel. The draft report was prepared in January 2014, and the District Board preliminarily approved it on February 6, 2014. It is unclear whether this draft was available for public review 72 hours prior, as required by the Brown Act, but it was available by February 9.

Ballots were mailed to residents within the proposed District boundaries on February 23, 2014. The official Engineer’s Report was finalized on March 17, 2014. It was thus made available to the public for review at least 45 days prior to the election, as prescribed by Proposition 218, the law under which the election/public hearing was conducted.

Though the Brown Act may have been violated, voters had almost two months to review and comment on two versions of the Engineer’s Report before the April 17, 2014 vote deadline. This is an example of a potential technical violation that did not have major consequences because of subsequent actions.

ARCADE CREEK RECREATION AND PARKS DISTRICT

The Grand Jury received a complaint alleging a Brown Act violation by the Arcade Creek Recreation and Parks District during the re-naming of Hamilton Street Park. In January 2011, the District Board voted to re-name Hamilton Street Park to Jane Steele Park, in honor of the retiring District Administrator’s years of service. In an attempt to surprise Administrator Steele, the Board had agreed to the change prior to the meeting, without any public notice of the discussions and without posting it on any agenda. A \$10,000 concrete monument was erected in July 2011. The Board had no inkling that the decision would be controversial. A few local citizens, upon noticing the sign, became upset by the name change, but no further action occurred for three years. However, the September 25, 2014 meeting was quite controversial, with 14 citizens signing in and eight citizens expressing the desire to return the park to its former name. Brown Act violations were alleged. Legal counsel happened to be at that meeting and researched the allegations. After researching, Counsel reported at the October 2014 meeting that Brown Act violations did occur, that the 90-day statute of limitations had long expired and that the Board could take action to void the January 2011 decision. The Board immediately voted to again name the park Hamilton Street Park, and has spent additional funds to alter the monument sign.

The Hamilton Street Park naming was an example of a board conducting “secret” or “serial” meetings at which the public was excluded. Though this decision was clearly conducted with the good intent to surprise the honoree, these and other discussions about agenda items very likely occurred during regular pre-meeting potlucks which several board members routinely attended. Such discussions clearly violate the Brown Act. Potlucks, dinner meetings and receptions are acceptable as long as no business is discussed until after the meeting is opened. We note that the Arcade Creek Recreation and Parks District has recently discontinued its potlucks.

Currently, the posting of agendas and certain background materials by the District appear to comply with the Brown Act. Agendas and materials are also emailed to those who request them. However, not all documents used by the Board are posted on the website, particularly lengthy documents and items relating to the consent calendar and budgets. The website notes, however, that these documents are available on request. In the future, the District may want to make every attempt to post all supporting documents on its website. The Grand Jury notes that the District has now adopted an official park naming policy, and commends the District for including a 90- minute Brown Act training module at its annual Board retreat on January 31, 2015.

TWIN RIVERS UNIFIED SCHOOL DISTRICT

A group of local citizens circulated a petition to vacate the unanimous appointment on December 8, 2014 of a new Trustee to the District’s Board. The petition alleged that a Brown Act violation occurred when the District voted to seat the appointee without properly putting it on the agenda. That agenda stated the actual vote would take place on December 11, 2014.

On January 13, 2015, the District Superintendent admitted the District had violated the Brown Act, and that the Board would “cure and correct” the problem. On January 22, the Sacramento County Office of Education Superintendent issued a letter directing the School District to conduct an election to fill the vacancy. On January 27, the Twin Rivers Unified School District Board voted to rescind the December 8 appointment. On February 24, the District Board approved a traditional polling process and limited boundaries for a May 12, 2015 election. The cost of the special election to the tax payers has been estimated at \$113,000 by the Sacramento County Voter Registration Office. This was a very expensive procedural mistake for the District.

BROWN ACT SURVEY

To find out more about Brown Act training, compliance, and concern in Sacramento County, the Grand Jury sent a 10-question electronic survey to 118 board members and executive officers at a number of jurisdictions known to be legislative bodies under Government Code Section 54951. Forty-nine responses were received. The results are summarized below. The Appendix includes the actual survey.

Responses were received from 13 types of jurisdictions, including school districts, water districts, recreation and park districts, cemetery districts, fire protection districts, cities, Sacramento Local Agency Formation Commission, a Community Service District, a sewer district, a reclamation district, a flood control district, and a public utility. The number of responses was evenly split between board members and executive staff.

All respondents stated that they had taken Brown Act training once, upon being named to a board or hired. The California Special Districts Association (CSDA) and other associations provided training. It is unclear whether training occurs every two years, as required by AB 1234 (GC 53234 et seq.) as part of general ethics training. Most respondents think they are adequately trained, but some do not.

All but one respondent believe that they understand the Brown Act and that their jurisdiction follows it consistently. About half of the time, Brown Act compliance does come up as an issue, but these are generally resolved through consultation with counsel or by making procedural changes.

Procedural issues vary. The most common types of complaints are:

- Conducting board discussions about agenda items off-line, either in serial emails or calls, or prior to meetings;
- Inadequate public notice, either late notice or inadequate availability of materials;
- Inadequate public comment opportunities during meetings; and
- Misuse of closed sessions.

Interestingly, in three of the jurisdictions, there was some inconsistency between a board member and staff about whether the Act's procedures were properly followed. More frequent training, including case studies, should reduce the conflicts within boards, and between boards and the public.

One respondent provided additional information about the validity of procedural complaints, stating:

"While the District has received complaints regarding Brown Act violations The complaints have usually resulted from a lack of knowledge by the complainant. The district consults with District counsel when a violation is alleged."

FINDINGS

- F1. Larger boards such as the Board of Supervisors and city councils, which can afford consistent legal guidance at their meetings, usually follow Brown Act procedures.
- F2. There may be Brown Act violations that go unnoticed by staff, board members, and the public, especially in smaller jurisdictions.
- F3. Awareness of such violations is often triggered by a controversial decision, and can cause great embarrassment. Rectifying violations can be very expensive and result in unplanned costs.
- F4. There are numerous opportunities to get professional Brown Act training. New board members and key employees appear to all receive training. It is unclear whether that training is reinforced every two years as required in Government Code 53234(d)(3).
- F5. Since the general public has limited exposure to the Brown Act, strict adherence reduces the potential for procedural controversy.

RECOMMENDATIONS

- R1. Jurisdictions must always follow Brown Act procedures.
- R2. All jurisdictions should keep a log to ensure that board members and key staff receive training every two years, as required by Government Code 53235.1(c)(2)(b).
- R3. Board members and staff should personally ensure that their training is adequate and current.
- R4. Jurisdictions should periodically schedule Brown Act training on a meeting agenda and invite members of the public to attend.
- R5. To ensure full transparency, jurisdictions should regularly review their meeting and posting procedures for compliance with the Brown Act. Further, jurisdictions can also consider reviewing all their public practices, including seeking a "District Transparency Certificate of Excellence", which is offered by the Special District Leadership Foundation.
- R6. The Sacramento County Board of Supervisors and all cities within the County should ensure that their commissions, committees, boards and other bodies subject to the Brown Act, maintain records on their ethics and Brown Act training compliance.

RESPONSES

Penal Code sections 933 and 933.05 require that the following officials submit specific responses to the findings and recommendations in this report to the Presiding Judge of the Sacramento County Superior Court by October 1, 2015:

- Sacramento County Board of Supervisors - all Findings and Recommendation 6.

Mail or hand-deliver a hard copy of the response to:

Robert C. Hight, Presiding Judge
Sacramento County Superior Court
720 9th Street, Department 47
Sacramento, California 95814

In addition, email the response to:

Becky Castaneda, Grand Jury Coordinator at castanb@saccourt.com