



Understanding the Brown Act & Conflict of Interest Laws

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Understanding the Brown Act & Conflict of Interest Laws



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The Brown Act

Purpose & scope of the Act

“...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 in remaining informed so that they may retain control over the instruments they have created.”



The Brown Act (Contd.)

What is a meeting?

- **Any time a majority of the members of a legislative body meet to hear, discuss, deliberate, or take action on any item of school business.**
- **Exceptions to definition**
- **Prohibition against serial meetings. A majority of the members of a legislative body shall not, outside a meeting authorized by the Brown Act, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.**



The Brown Act (Contd.)

Does it Apply to Committees?

Commissions, committees and boards or other bodies of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution or formal action of a legislative body are legislative bodies.

Exception: Advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies unless it is a standing committee of the legislative body which has a continuing subject matter jurisdiction or a meeting schedule fixed by charter ordinance, resolution or formal action of the legislative body.



The Brown Act (Contd.)

Prior Rule Regarding Communications Outside Properly Noticed Meeting Contained in *Wolfe v. City of Fremont* (2006):

- **Majority of the members of a legislative body may talk outside a properly noticed meeting so long as they never actually reach agreement to take any action that is within the jurisdiction of the local agency.**

The Brown Act (Contd.)

New Rules Pertaining to Communications Outside a Properly Noticed Meeting

SB 1732 (Effective January 1, 2009):

- **Amends the Brown Act to prohibit a majority of the members of a legislative body, outside of a properly noticed meeting, from engaging in a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the jurisdiction of the legislative body.**



The Brown Act (Contd.)

Additional SB 1732 Requirement

- **An employee or official of a local agency may engage in separate conversations or communications outside of a meeting authorized by the Brown Act with members of the legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.**



The Brown Act (Contd.)

What are the notice & agenda requirements?

- **Regular meetings – Agenda posted 72 hours in advance**
- **Special meetings – Agenda posted 24 hours in advance**
- **Emergency Meetings – Agenda posted less than 24 hours in advance**



The Brown Act (Contd.)

What are the notice & agenda requirements?

- **Posted in publicly accessible location for entire posting period within jurisdiction.**
- **Closed session agenda requirements**
 - 1) **Safe harbor language**
 - 2) **Public report of action taken in closed session and vote or abstention of every member.**

The Brown Act (Contd.)

What are the public's rights?

- **Public testimony**
 - Addressing angry speakers?
- **Taping or broadcasting**
- **Conditions of attendance**
- **Non-discriminatory facilities**
- **Copies of agendas and other writings distributed to all, or a majority of all, of the members of a legislative body in connection with a matter subject to discussion or consideration at an open meeting of the body.**



The Brown Act (Contd.)

What are the permissible closed sessions?

1. Personnel

- **24 hour written notice to employee if complaints and/or charges will be heard.**
- **Failure to provide notice = any action taken against employee in the closed session shall be null and void.**

The Brown Act (Contd.)

What are the permissible closed sessions? (Contd.)

2. Pending litigation
3. Real estate negotiations
4. Labor negotiations
5. Public security exception
6. Pupil discipline

The Brown Act (Contd.)

Teleconferencing Requirements

- 1. All votes taken shall be by roll call.**
- 2. Agenda must be posted at all teleconference locations and teleconference meetings must be conducted in a manner that protects the statutory and constitutional rights of the parties of the public appearing before the legislative body of the local agency.**



The Brown Act (Contd.)

Teleconferencing Requirements

- 3. Each teleconference location shall be identified in the notice and agenda of the meeting.**
- 4. Each teleconference location shall be accessible to the public.**



The Brown Act (Contd.)

Teleconferencing Requirements

- 5. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction.**
- 6. Members of the public shall have the right to address the legislative body directly at each teleconference location.**



The Brown Act (Contd.)

What are the penalties & remedies for violating the Act?

- **Confidentiality requirement**
 - 1) **No Board member or staff member may disclose information from closed session without the authorization of the legislative body.**
 - 2) **Failure to comply for employee = disciplinary action and/or injunctive relief.**
 - 3) **Failure to comply for Board members = referral to grand jury and/or injunctive relief.**



The Brown Act (Contd.)

What are the penalties & remedies for violating the Act?

- **Criminal penalties & Civil remedies**
 - 1) **Criminal penalties = prosecution for misdemeanor if a member of a legislative body attends the meeting of the legislative body where action is taken in violation of any provision of this chapter and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter.**

The Brown Act (Contd.)

What are the penalties & remedies for violating the Act?

- 2) **Civil Remedies = Injunctive relief or court declaring action null and void after failure to cure violation.**



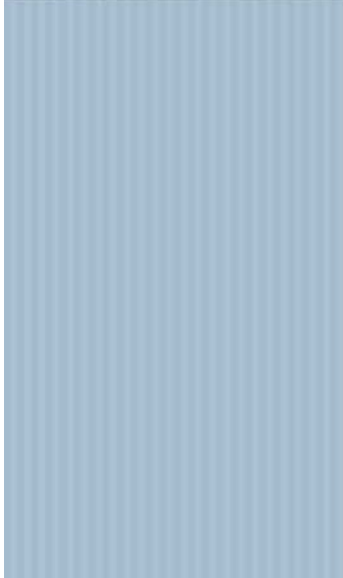
The Brown Act (Contd.)

What are the penalties & remedies for violating the Act?

- **Notice & demand for cure**
 - 1) **Written demand must be made within 30 days if demand relates to agenda posting requirement and the action was taken in open session.**
 - 2) **Otherwise demand must be made within 90 days.**
 - 3) **Legislative body must cure within 30 days or notify the demanding party that it will not cure**
 - 4) **Demanding party can initiate litigation to compel compliance and if successful, may be awarded attorneys fees and court costs.**

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Conflicts of Interest Law



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Conflicts of Interest

“public officials should perform their duties in an impartial manner, free from bias caused by their own financial interests...”



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What is a Conflict?

- **Broad Definition:** A *conflict of interest* arises when an individual who has a private interest in the outcome of a contract or a public decision, participates in the decision-making process or influences or attempts to influence others making the contract or decision.
- In short, a conflict of interest is a clash between an individual's duty to his or her office and his or her personal interests.
- Public officials are disqualified from participating in decisions in which they may have a financial interest.



Primary California Conflicts of Interest Statutes

- **Political Reform Act (PRA)**
Government Code Section 87100 *et seq*
- **Government Code Section 1090**
****Debatable whether applicable to charter schools***
- **Corporations Code Section 5233**
(self-dealing transactions)



Elements of the Political Reform Act Conflict of Interest

- 1. Public official (board members, officers and employees)?**
- 2. Making or participating in making a governmental decision?**
- 3. Public official has a qualifying financial interest?**
- 4. Is the financial interest directly/indirectly involved in governmental decision?**

If yes to all questions, must disclose and abstain (Directors must leave room during discussion and vote – and comply with anti-self dealing provision in bylaws).

Conflict of Interest Code

- **The Political Reform Act requires a conflict of interest code.**
- **Code should identify a list of positions that involve the making or participation in making of decisions that may foreseeably have a material effect on any financial interest (“designated employees”).**
- **File copy with appropriate code reviewing body.**



Statement of Economic Interest (Form 700)

- **The Political Reform Act requires “*designated employees*” in local governmental agencies (e.g., charter schools) to file a Statement of Economic Interest (Form 700) disclosing:**
 - Reportable investments,
 - Business positions,
 - Interests in real property and income**from entities that are located or doing business within your agency’s jurisdiction.**
- **Includes financial interests of spouse/registered domestic partner and dependent children.**



Statement of Economic Interest (Form 700)
(Contd.)

Examples of “Designated Employees:”

- Board Members
- Corporate Officers (e.g., President, CEO, CFO, Secretary, etc.)
- Executive Director
- Principal

Filed upon assuming the office or position, once annually thereafter (see code – usually April 1), and upon leaving the office or position.

Signed under penalty of perjury.



Statement of Economic Interest (Form 700) (Contd.)

- A public document once filed with the local governmental agency (the local governmental agency keeps the completed forms and designates an individual to oversee the process).
- Not all economic interests listed; only the types of interests in real property, investments, business positions, and sources of income and gifts which could foreseeably and materially affect a public official's decisions.
- Gifts: Of \$50 more must be reported; prohibited from receiving gifts of more than \$390 from single source.



Penalties for Failing to File Form 700

- 1) Criminal charges by the Attorney General for deliberate failure to file.**
 - 2) Civil action by FPPC or a private citizen.**
- Form 700 can be obtained online at www.fppc.ca.gov**



Elements of Government Code Section 1090
***Debatable whether applicable to charter schools**

- **Public official**
- **Public contract, sale or purchase**
- **Financial interest – remote interest exception**
- **Absolute prohibition on the entire Board**



Difference Between the Political Reform Act and Government Code Section 1090

- **Political Reform Act: Disclosure and recusal avoids a violation.** (Assuming the Board of Directors still consists of a quorum, it may then proceed to take action.)
- **Government Code Section 1090:** Disclosure and recusal does **NOT** avoid a violation; would effectively prohibit paid employees from serving on Board.



What are the Penalties & Remedies for Violating the California Conflicts of Interest Statutes?

- **Political Reform Act (Government Code Section 87100 *et seq.*:**
 - 1) **Administrative Sanctions (e.g., fines per violation, cease and desist orders, orders to file reports).**
 - 2) **Civil Penalties (e.g., injunctions, damages and attorney's fees).**
- **District could use alleged violations to attempt to revoke the School.**



What are the Penalties & Remedies for Violating the California Conflicts of Interest Statutes? (Contd.)

- **Government Code Section 1090:**
 - 1) **Criminal penalties (e.g., fine of up to \$1,000 or imprisonment in state prison).**
 - 2) **Permanent disqualification from holding any office in California.**
 - 3) **Additionally, any contract made in violation of Government Code Section 1090 is void.**





Corporate Fiduciary Duties

Corp. Code Section 5231



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Corporate Fiduciary Duties

- **Directors may be personally liable for violating fiduciary duties.**
- **Duty of Care:**
 - **To act with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.**
 - **Put another way: Board should make decisions only after it has expended sufficient skill, time, and effort to effectively assess any risk to make a prudent decision.**



Duty of Care (contd.)

- **Directors not expected to be experts.**
 - Director entitled to rely on information prepared by reliable experts, officers, directors and employees.
- **A director should:**
 - Attend meetings regularly.
 - Carefully review Board materials and minutes.
 - Keep informed about issues that impact school.
 - Request expert opinions.
 - Request additional information, if needed.



Duty of Loyalty

- **Director acts with undivided loyalty to the corporation (school).**
- **Must avoid activities that are in competition with the corporation (school).**
- **May not usurp any business opportunity.**
- **Must avoid self-dealing transactions – the director’s loyalty must lie with the corporation first.**



Possible Penalties

- **Directors who violate Corporations Code duties can be held liable for their actions if it's shown that their decisions put personal interests above those of the corporation and damage the corporation.**
- **Profits obtained by Directors can be disgorged by the Court**



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QUESTIONS & ANSWERS

