Brown Act Basics

Introduction

The Ralph M. Brown Act (Brown Act) (codified at Government Code 54950 et seq.) requires meetings of "legislative bodies" of local agencies to be open and public.

Covered Bodies

The term "legislative body" includes the following:

- The governing body of a local agency or any other local body created by state or federal statute.

- Any permanent or temporary advisory or decision-making commission, committee, board, or other body created by charter, ordinance, resolution, or formal action of a legislative body.

Covered Meetings

A meeting is any congregation of a majority of the members of a legislative body at the same time and location (including permitted teleconference locations) to hear, discuss, deliberate or take action on any item that is within the subject matter jurisdiction of the legislative body.

Even though that definition has a physical focus—a congregation of a majority at the same time and place—the Brown Act also prohibits a majority of the members of a legislative body, outside an open and noticed meeting, from using a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take any action on any item of business within the subject matter jurisdiction of the legislative body.

However, the ban on serial meetings does not prevent a staff member from engaging in separate conversations or communications, outside of a meeting, with members of a legislative body to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if the staff member does not communicate to members of the legislative body the comments or position of any other member of the legislative body.

Social Media

Members of a legislative body may use certain internet-based social media platforms to answer questions from the public, provide information to the public, or solicit information from the public regarding a matter within the legislative body's subject matter jurisdiction. The platform must be "open and accessible to the public," which means that "members of the general public have the ability to access and participate, free of charge, in the social media platform without the approval by the social media platform or a person or entity other than the social media platform, including any forum and chatroom, and cannot be blocked from doing so, except when the internet-based social media platform determines that an individual violated its protocols or rules."

However, a majority of the members of the legislative body may not use any social media platform to "discuss among themselves" official business. In the context of social media, "discuss among themselves" means "communications made, posted, or shared on an internet-based platform between members of a legislative body, including comments or use of digital icons [i.e., emojis] that express reactions to communications made by other members of the legislative body."

A single contact between two public officials (less than a quorum) normally would not constitute a prohibited serial meeting. However, on social media, a member of a legislative body may not "respond directly" to any communication relating to a matter within the subject matter jurisdiction of that agency that is made, posted, or shared by any other member of the legislative body.

<u>Noticing Requirements</u>

Each legislative body except advisory committees and standing committees must take formal action to establish a time and place for holding regular meetings. Meetings of advisory committees or standing committees for which an agenda is posted 72 hours in advance of the meeting are considered to be regular meetings for all purposes under the Brown Act, even if the committee does not have a regular meeting schedule.

Regular meeting agendas must be posted at least 72 hours before the meeting in a location that is freely accessible to the public. Agendas must also be posted on the local agency's website, if it has one, 72 hours before the meeting.

<u>Agenda Requirements</u>

The agenda must specify the time and location of the meeting and provide a "brief general description" of each item of business to be transacted or discussed. It must also provide an opportunity for the public to address the legislative body on any item of interest to the public within the subject matter jurisdiction of the legislative body, before or during the time the legislative body considers the item.

The agenda must designate and provide the address of a location where members of the public may inspect the agenda and any associated writings, such as staff reports, and where documents delivered after the posting of the agenda may be obtained. The agenda must also contain information on how a person may request a disability accommodation to participate in a meeting.

Subject to certain exceptions, no action or discussion may occur on any item not appearing on the posted agenda. Limited questions, requests, and responses on matters not appearing on the posted agenda are allowed as follows:

- Brief responses by members of the legislative body and staff to statements or questions posed by the public;
- Questions for clarification;
- References to staff or other resources for factual information;
- Requests to staff to report back on an issue at a subsequent meeting;
- Requests or actions to agendize a matter of business for some future meeting; and
- Brief announcements by members of the body or staff and brief reports on their activities

Disclosure of confidential information acquired at a closed session is prohibited unless the legislative body authorizes disclosure.

<u>Meeting Process</u>

Roberts Rule