

Herding Cats: Local Senates & the Brown Act

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One of the perennial thorny issues that confronts local senates is the question of whether or not they are subject to the Ralph M. Brown Open Meetings Act. The short and simple answer is *yes*, though reasonable minds may disagree on the status of some local senate standing and ad hoc committees.

As most local senate presidents know, public agencies, like locally-elected community college boards of trustees, must meet Brown Act requirements in the conduct of their business. The items to be discussed and acted upon at board meetings must normally be announced to the public 72 hours prior to the meeting at which the board will deliberate. Items may not be acted upon of which the public received no notice.

The question of whether local senates are subject to the Brown Act is explicitly addressed in California Attorney General opinion 83-304, dated July 28, 1983. In that document, the Attorney General concluded that academic senates *are* subject to Brown Act requirements because Title 5 requires that local community college governing boards *must* recognize their local academic senate and thus local senates are subordinate creations of local boards of trustees. Indeed, as most local senate presidents know, local governing boards must stipulate in local policy whether they will “rely primarily” or “reach mutual agreement” with their academic senates in the “10 + 1”

areas stipulated in Title 5 §53200. Similarly, Title 5 §55002(a) establishes a parallel relationship between the local community college governing board and the college’s curriculum committee. A local senate or college which has other standing committees whose recommendations proceed directly to the board (regarding sabbatical leaves, for example) should ensure that those committees also conduct their business in the light of Brown Act requirements.

About these matters there is little controversy or disagreement. As much as possible, public boards *and their subcommittees* should conduct their affairs in public and with adequate notice to the public so that it can participate as it sees fit. The following language comes from the prelude to the Bagley-Keene Act, which is to state agencies what the Brown Act is to local agencies.

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.

Thus a simple test would ask, “If a matter of public concern were to be decided by a public agency, would I not want every opportunity possible to voice my concerns?”

Brown Act Exceptions

One exclusion from the Brown Act that most do seem to agree upon is the case where the Board has delegated to a person or group the tasks of *implementing* local policy. Thus the Board approves the budget and colleges follow that spending plan as departments meet to create class schedules and purchase equipment and supplies. This can get fuzzy when delegated areas of implementation overlap with policy-setting processes. For example, imagine the following local sabbatical process: the Board has approved three sabbaticals as negotiated; senate processes implement this decision by identifying the best candidates. But the process then calls for the Board to approve these selections. Where does the process transition from policy to implementation?

In practice, interpreting these rules as we determine what to do with each deliberating group can become very gray. There are some districts that follow the high road and Brown Act nearly everything, and there are some who are less inclined.

A second test is a practical one. Some subordinate groups are tasked with a very specific non-policy setting task. A curriculum tech review committee might be charged with ensuring that all Title 5 requirements are met. Thus, if their work process produces a product or information with no advice or recommendation then the Brown Act may not apply. So if this committee forwarded two batches of curriculum—one that contains no errors while the other does, with each error flagged—it would be up to the parent committee to approve, fix, or deny, and the subordinate group made no recommendations with regard to policy or priority. Similarly, if a local senate tasked a committee to go out and find all the regulations pertaining to the Brown Act and report back, this committee may not need to follow the act. But if their task was to *advise* the senate on how to implement the Brown Act, then their deliberations could be construed as falling under the act.


With regard to Brown Act compliance, local senates should consider the golden rule. Local senates should provide the same openness and transparency in their decision-making that they wish their local trustees to provide to the college community and the public.

Additional Nuances

“Serial meetings” are prohibited by the Brown Act. A serial meeting takes place when members of a Board contact each other, one after another (i.e. serially) to arrive at a decision out of the public eye. For this reason, email, blogs, wikis, faxes, and snail-mail are inappropriate tools to use in decision making. Certainly asking for a clarification or confirming a meeting date is allowable, but any required notices must be posted in a location that is accessible to the public. Any materials related to the meeting must be reasonably available for review as well.

New un-agendized items may be introduced at a meeting, but these must be placed on a subsequent meeting agenda to allow for the proper noticing of the item. Parliamentary procedures don’t normally require “first” and “second” reading of action items, but doing this does ensure Brown Act compliance.

In summary, philosophically the Brown Act embodies the ideal of openness and transparency that most academics prefer. It can be challenging to implement in every instance, and it can be challenging to determine when it must be followed, but it is almost always a desirable practice. ■



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