

# Brown Act Basics and the Role of the Personnel Commission

Personnel Commission of the Covina-Valley Unified  
School District  
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# Brown Act Basics



## Agenda

- What is it? – The Open Government Law
- Who does it apply to?
- What is a meeting?
- Board Meeting Conduct
- Agendas
- Closed Session
- Enforcement
- Role of the Personnel Commission

# The Brown Act – The Open Government Law

“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 their deliberations be conducted openly”

*Government Code §54950*

“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”

*Government Code §54953(a)*

# The Brown Act

## Who Does It Apply To?



- Legislative Bodies, as defined (GC § 54952)
  - Includes members-elect (GC § 54952.1)
- In addition to the Personnel Commission:
  - Standing Committees
  - Ad Hoc Committees comprised of PC members and others
- Excludes:
  - Less-than-quorum subcommittees of the Personnel Commission
  - Committees Appointed by the Director

# The Brown Act

## What is a Meeting?



- Any congregation of a majority of the members of a legislative body, no matter how informal, by any means, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body. (GC § 54952.2(a))
- Must be construed broadly – No members may communicate on any single subject outside of a meeting
- Must avoid serial meetings – including through intermediaries
- Social Media – must avoid comments and likes to other members
- One way communications are permitted, but use caution



# What is a “Serial Meeting?”

- The development of a collective concurrence is no longer an element of a prohibited meeting.
- Serial, but less than a quorum meetings of a district’s governing board members with a mediator in an effort to reach a settlement for the termination of the district’s president, constituted the collective acquisition and exchange of facts preliminary to an ultimate decision. The court found the mediator to be an intermediary for purposes of Section 54952.2(b).
  - Page v. Mira Costa Community College Dist. (2009) 180 Cal.App.4th 471.

# What is a Not a “Serial Meeting”?

- An **employee or official** of a local agency may engage in **separate conversations or communications** outside of a meeting with members of a legislative body in order **to answer questions or provide information** regarding a matter within the jurisdiction of the 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.
  - Gov. Code § 54952.2(b)(2)



# Social Media: AB 992

AB 992 amends Gov't Code 54952.2, effective Jan. 1, 2021

- Authorizes individual Board/Council Members to engage in conversations with the public on an “internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body.”
- Board/Council Members, however, are not authorized to use social media to discuss among themselves business within the subject matter jurisdiction of the legislative body
- Additionally, Board/Council Members are prohibited from responding directly to any post and/or comment that is made, posted, or shared by any other Board/Council Member of the same legislative body.
- Communications restricted by AB 992 include not only comments, but also include the “use of digital icons that express reactions to communications made by other members of the legislative body” (i.e., emojis, “like” buttons, reactions)
- The restrictions on social media usage relates to actions of Board/Council Members, individually, and not the respective local agencies.

# The Brown Act

## Meeting Conduct



- Must allow public comment:
  - Subject to reasonable regulation (3/20 mins. typical)
  - Public comment on closed session matters before closed session
  - Public comment on open session agenda, and non-agenda, items
  - In a special meeting, public comment only on agenda items
- Teleconferencing/Remote Meetings
  - Traditional and Post-Pandemic rules
- Disruptions (Brown Act, Ed Code/Penal Code)
  - PC may order removal of disruptive presence – give warning first
  - PC may clear the room (other than non-disruptive media) and/or retreat to Closed Session
  - PC may adjourn the meeting and reconvene later

# The Brown Act

## Board Meeting Agendas



- Must be posted in advance of meetings, including on website
  - 72 hours for regular meetings, 24 hours for special meetings
  - 1 hour for emergency meetings – work stoppage/crippling disaster
- Agenda Items
  - Must reasonably apprise the public of the business to be transacted so they can determine whether to participate
  - Brief general description, usually no more than 20 words
  - Agenda materials provided to Commission become public records unless otherwise protected, must be made available for inspection
  - Closed session agenda items use “safe harbor” language

# The Brown Act

## Closed Session



- All meetings must occur before the public unless closed session is specifically allowed
- Confidentiality on certain matters benefit the public
- Typical closed session items:
  - Personnel – Appointments, Evaluations, Discipline/Dismissal/Release
  - Conference with Legal Counsel – Existing/Anticipated Litigation
  - Liability Claims
- Must report any closed session action in open session
- Closed session discussions are confidential (GC § 54963)

# The Brown Act

## Enforcement



- Civil

- Injunction, Writ – can result in nullification of action
  - Cancellation of contracts or settlements
- Cure and correct process (GC § 54960.1)
  - Cease and desist letter and unconditional commitment
  - Insulation from attorneys fees award

- Criminal

- Intentional, knowing violation is a misdemeanor (GC § 54959)
- Good faith reliance on opinion of counsel may preclude finding of intent

# Role of the Personnel Commission

- Classified Employee Positions
  - The Board creates positions and “fixes the duties” of the positions
  - The Board recommends minimum educational and work experience qualifications
  - The Commission approves the qualifications but *not* the duties or the creation of the position itself

(Education Code § 45276)



# Role of the Personnel Commission

- Classifying Positions
  - The Commission's most prominent role
  - Allocates positions to classes of jobs
  - Arranges positions in occupational hierarchies
  - Determines relationships within hierarchies (including relationships in pay; discussed later)

(Education Code § 45256)

# Role of the Personnel Commission

- Classifying Positions
  - Applies to *all* classified (non-certificated) positions
    - Management
    - Non-management
    - Confidential
  - Does *not* apply to non-classified positions
    - Students employed part-time
    - Apprentices
    - Professional experts

# Role of the Personnel Commission

- The Hiring Process
  - Job postings
  - Competitive examinations
  - Creation of eligibility lists
    - Ranked in order of relative merit
    - As determined by competitive examination
    - Eligibles with the same score have the same rank  
(Education Code § 45272)

# Role of the Personnel Commission

- The Hiring Process
- With a few exceptions, the District *must* hire from the top three candidates on an eligibility list (“rule of three ranks”)
- Examples of Exceptions:
  - Executive secretarial positions (Education Code § 45272)
  - A valid driver’s license (Education Code § 45277)
- Employees exempted from this rule have all the “rights, benefits, and burdens” of any other classified employee

# Role of the Personnel Commission

- The Hiring Process
- The Commission *may* delegate to the Personnel Director duties such as
  - Posting vacancies
  - Scheduling examinations and interviews
  - Creating eligibility lists

# Role of the Personnel Commission

- Compensation

- The Commission *recommends* salary schedules to the Board
- The Board negotiates, approves, amends, or rejects the recommendations
- The Board cannot amend the recommendations until the Commission has the opportunity to state the effect of the amendments “upon the principle of like pay for like service”
- The Board *sets* salaries, which “cannot operate to disturb the relationship which compensation schedules bear to one another, as the relationship has been established in the classification made by the commission”

(Education Code § 45268)



# Role of the Personnel Commission

- Discipline
- The Board supervises and evaluates employees and imposes disciplinary action
- The employee may *appeal* a suspension, demotion, or dismissal, to the Personnel Commission
- Lesser discipline (e.g., a reprimand) is not subject to Personnel Commission review
- The Commission's decision on an employee's appeal is final and binding on the Board, subject to civil court review
- (Education Code §§ 45302-45307)

# Role of the Personnel Commission

- Discipline
- If the Personnel Director recommends the discipline of an employee, he or she may not advise or make any recommendations to the Personnel Commission about the employee's appeal (Education Code § 45266(b))
- The Commission may modify the action approved by the Board, but it may not make the discipline more stringent (Education Code § 45307)

# Role of the Personnel Commission

- **Reclassification**
- The Commission has authority to set guidelines for reclassification of positions, which must be the result of “a gradual accretion of duties” and not a “sudden change” caused by reorganization or assignment of completely new duties and responsibilities (Education Code § 45285)
- All persons within the class who have held their positions for at least three years may be reclassified with their positions
- If the reclassification involves a bargaining unit position, no change is made until reasonable notice is given to the union (Education Code § 45285.5)

# Thank You

Questions or comments? Please contact:

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