

Meeting Date
10/02/13
Agenda Item
#9



Brown Act Fundamentals

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Ralph M. Brown Act Open Meetings Laws For Local Legislative Bodies

- The Brown Act sets forth the rules regarding open meetings held by local legislative bodies
- The CCCERA Board of Retirement is subject to the Brown Act

Government Code Section 54950 et seq.

Purpose of the Brown Act

- To ensure that public agency actions are taken openly
- To ensure that public agency deliberations are done openly

Government Code Section 54950

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Key Concepts

- Retirement Board meetings must be open and accessible to the public
- A Board meeting agenda must be posted publicly
- During Board meetings, the public must be given an opportunity to comment

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Retirement Board meetings must be open and accessible to the public

- “Meeting” means any congregation of a majority of the Retirement Board (i.e. five Retirement Board members) at the same place and location (including teleconference locations) to hear, discuss, deliberate or take action on any item within the body’s subject matter jurisdiction

Govt. Code § 54952.2(a)

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Serial Meetings

- “Meeting” also means any serial use of communication, personal intermediaries, or technological devices through which a majority of the Board’s members discuss, deliberate, or take action on an item
- For example, an unlawful “serial” meeting would occur if Board member A e-mails Board member B about his or her position on a Retirement Board issue. B forwards A’s e-mail to C, who then forwards to D, who then forwards to E. A mere series of e-mails or phone calls by a majority of the Board about one of its business items violates the Brown Act

Govt. Code § 54952.2(b)

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Retirement Board Members Attendance At Conferences

- A majority of the Retirement Board members may attend a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to other public pension systems, so long as the majority of the board do not discuss among themselves business that is within the subject matter jurisdiction of the Retirement Board
- Examples of such conferences include the State Association of County Retirement Systems (SACRS) and the California Association of Public Retirement Systems (CALAPRS) conferences

Govt. Code § 54952.2(c)(2)

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Attendance at Purely Social Events

- A majority of the Retirement Board members may attend a purely social or ceremonial occasion, provided that the majority of the Retirement Board members do not discuss among themselves business that is within the subject matter of the retirement board

Govt. Code § 54952.2(c)(5)

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Agenda Requirement

- At least 72 hours before a regular meeting of the Retirement Board, an agenda containing a general description of each item of business to be transacted, including items to be discussed, and the time and location of the meeting must be posted in a public location and the CCCERA Internet Web site

Govt. Code § 54954.2(a)

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Agenda Requirement

- If an item is not included on the agenda, the Retirement Board may not act on or discuss that item, or add that item to the meeting's agenda as an urgency item, subject to limited exceptions
- As to items that are not included on the agenda, Retirement Board members and staff may ask a question for clarification, make a brief announcement, or make a brief report. Retirement Board members may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda

Govt. Code § 54954.2

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Public Comment

- During each meeting, the Retirement Board must allow public comment on each agenda item and on other matters within the jurisdiction of the Board

Govt. Code § 54954-3(a)

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Closed Session

- The Brown Act authorizes the Retirement Board to hold closed sessions to discuss or take action on items under certain enumerated circumstances
- Examples:
 - The Retirement Board may meet in closed session to deliberate or take action on the purchase or sale of a particular, specific pension fund investment (Govt. Code § 54956.81)
 - The Retirement Board may meet in closed session on personnel matters (Govt. Code § 54957)
 - The Retirement Board may meet in closed session to confer with legal counsel regarding pending litigation that has been formally initiated, exposure to litigation against the retirement system or the board, and to decide whether to initiate litigation (Govt. Code § 54956.9)
- Confidentiality of Closed Sessions: Board members may not disclose confidential information acquired by being present in a closed session to a person not entitled to receive the information (Govt. Code § 54963(a))

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Consequence of Violating the Brown Act

- Criminal liability for individual Board members
- Civil remedies: civil actions to stop, prevent or invalidate of the action of the Board
- Attorneys fees and costs awarded to plaintiff

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Consequence of Violating the Brown Act

- Individual criminal liability:
Each Retirement Board member who attends a Retirement Board meeting where action is taken in violation of any provisions of the Brown Act, 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 the Brown Act, is guilty of a misdemeanor.

Govt. Code § 54959

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Consequence of Violating the Brown Act

- Civil remedies: Any person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of the Brown Act.

Govt. Code § 54960

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Consequence of Violating the Brown Act

- Civil remedies: Any person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency is null and void.
- Prior to commencing the action, the person must make a demand of the Board to cure or correct the action

Govt. Code § 54960.1

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Consequence of Violating the Brown Act

- A court may award attorney fees and costs to the prevailing plaintiff
- A court may award attorney fees and cost to a defendant public agency if the court finds that the action against the agency for alleged Brown Act violation was frivolous and lacking in merit.

Govt. Code § 54960.5

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Questions?

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Gift Limits and Reporting Rules

Karen Levy, Esq.
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October 2, 2013

The Political Reform Act

- The Political Reform Act imposes limits and reporting obligations on gifts received by:
 - Retirement Board Members, chief or principal investment officers or chief financial managers (Section 87200 filers)
 - Designated employees and advisors of the retirement system required to file statements of economic interests under CCCERA's conflict-of-interest code

Government Code
Sections 81000-91014

The FPPC

The Fair Political Practices Commission ("FPPC") is the agency charged with administering the Act. The FPPC adopts rules and regulations, issues advice letters, and imposes penalties for violations.

The FPPC has published a helpful fact sheet regarding gifts, see

<http://www.fppc.ca.gov/factsheets/LocalOfficialsFactSheet.pdf>

More information available at www.fppc.ca.gov
& (866) ASK- FPPC

Gift Limits

You may not accept gifts from any single source totaling more than \$440 in a calendar year.

(Govt. Code Section 89503;
FPPC Regulation 18940.2.)

Gift Reporting

If you accept gifts from any single source totaling \$50 or more in a calendar year, you must report it and identify the source.

FPPC Form 700 – Statement of Economic Interest

What is a “Gift”

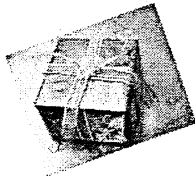
A “gift” is any payment or other benefit provided to you or your family that confers a personal benefit for which you do not provide goods or services of equal or greater value.

A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public.

(Section 82028.)

(See FPPC Regulation 18946 for valuation guidelines.)

Examples of Gifts



- Food, beverages
- Gift basket, artwork, wine, chocolates
- Tickets or passes to events, including free or discounted admission to events (such as sporting and entertainment events, amusement parks)
- Round of golf, spa treatment, hot air balloon ride
- Lodging, travel
- Discounts, rebates (unless offered in the regular course of business to members of the public without regard to official status)

Ask: Does it confer a personal benefit to me or my family for which I did not provide payment?

You have “received” or “accepted” a gift when:

You have actual possession of the gift or when you take any action exercising direction or control over the gift, including discarding the gift or turning it over to another person

(FPPC Regulation 18941)

What if I returned or paid for the gift?

- Gifts which you return (unused) to the donor **are not subject to any gift limit and are not required to be disclosed on a Statement of Economic Interests (Form 700)**
- Gifts for which you reimburse the donor, within 30 days of receipt, **are also not subject to any gift limit and not required to be disclosed on a Statement of Economic Interests (Form 700)**

(GC Section 82028(b)(2); FPPC Regulation 18943.)

What if.....

- ... the gift was given to my daughter. Does it count? Yes. It counts as a gift **UNLESS** you can show that there is an established working or social relationship between the donor and your family member that is independent of the relationship between the donor and the official.
- ... the gift was given to me and spouse. Does it count? Yes. It counts as a gift. Gifts made to **BOTH** an official and his or her family member (spouse, dependent minor child, and children up to age 23 who are students and not living on their own or providing a majority of their own support) are treated as a gift to the official for the full value of the gift. (FPPC Regulation 18944.) For Section 87200 filers (Board members, CEO), a gift given to a family member is presumed to confer a personal benefit on a local official if it is made by a person who is or has been directly involved in a governmental decision within the last 12 months.
- **Wedding Gift Exception** - wedding gifts are not subject to the \$440 per year gift limit but are reportable. (Regulation 18942(b)(2).)

Gift Exceptions:

The following are not subject to any gift limit and are not required to be disclosed on a Statement of Economic Interests (Form 700):

- Gifts from your spouse or former spouse, child, step-child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift. (Section 82028(b) (3); Regulation 18942(a)(3).)
- Gifts approximately equal in value exchanged between you and another individual on holidays, birthdays, or similar occasions to the extent that the gifts exchanged are not substantially disproportionate in value. "Gifts exchanged" includes food, beverages, entertainment, and nominal benefits provided at the occasion by the honoree or another individual, other than a lobbyist, hosting the event. (Regulation 18942(a)(8).)
- Informational material provided to assist you in the performance of your official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars. (Section 82028(b)(1); Regulations 18942(a)(1) and 18942.1.)
- Prize or award won unrelated to official capacity (but gift must be reported as income)
- Bereavement offerings, acts of neighborliness, and benefits exchanged between people "on a date or in a dating relationship" unless the gift donor is a lobbyist or someone who may contract with CCCERA within 12 months

- CCCERA CLIENT CONFERENCES AND SEMINARS
- NON-CLIENT CONFERENCES AND SEMINARS



Travel, lodging,
meals, incidentals

Group Gifts

(formerly: A Gift From Multiple Donors)

If a gift is received from multiple donors, only the name of any donor whose share of the gift is \$50 or more need be reported.

Remember: track each donor for aggregation with any other gift made by that donor

(FPPC Regulation § 18945.4, recently re-numbered 18945.2 and revised).

Board Policy:

- Retirement Board members and designated staff who receive gifts of \$75.00 or more in the current calendar year from any source conducting business or seeking to conduct business with the CCCERA Board, immediately before the Board considers an item involving that donor, must disclose on the record the receipt of the gift, the donor's name, and the nature and value of the gift. (CCCERA Code of Fiduciary Conduct, at ¶ 3.)
- Same rule when the gift was received by CCCERA; the Retirement Administrator must disclose on the record the donor's name, and the nature and value of the gift(s). (Note special FPPC disclosure rules regarding gifts to the agency)

Summary

- Keep in mind what is prohibited (more than \$440)
- Keep in mind what is reportable to the FPPC (\$50 or more)
- Keep in mind what is discloseable to the board (\$75.00 or more)



Questions?