

Roche, Megan

From: City Clerk
Sent: Friday, June 25, 2021 8:23 AM
To: Agendadesk; Roche, Megan
Subject: Fw: Charter Review Commission Ad Hoc committees and the Brown Act
Attachments: Ad Hoc committees-0.pdf

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From: Roland Lebrun <[REDACTED]>
Sent: Friday, June 25, 2021 1:45 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Charter Review Commission Ad Hoc committees and the Brown Act

[External Email]

Dear Chair Frederick-Ferrer and Commissioners,

The intent of this email is to substantiate and elaborate on the comment I made at the May 17 Commission Meeting, specifically that **ad hoc committees appointed by a legislative body ARE subject to the Brown Act**: https://sanjose.granicus.com/DocumentViewer.php?file=sanjose_d5953acd3e2c38716e432aff65d8d4e4.pdf&view=1 (page 87)

See attached opinion to this effect by the League of California Cities: [https://www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys-Department/Publications/Open-Public-IV_-A-Guide-to-the-Ralph-M-Brown-Act-\(.aspx\)](https://www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys-Department/Publications/Open-Public-IV_-A-Guide-to-the-Ralph-M-Brown-Act-(.aspx)) (page 10).

*"Groups advisory to a single decision-maker or appointed by staff are not covered. **The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others.** A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered."* 56 Ops.Cal.Atty.Gen. 14 (1973)

In summary, the question is whether the Charter Commission ad hoc committees were established by a formal action of the Charter Commission and, if not, by which entity and/or individual(s).

Please ask staff to provide a written response clarifying the matter one way or the other for the record.

Thank you in advance.

Roland Lebrun.

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- **Certain kinds of hospital operators.** A lessee of a hospital (or portion of a hospital) first leased under Health and Safety Code subsection 32121(p) after Jan. 1, 1994, which exercises “material authority” delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.¹⁶

■ **WHAT IS NOT A “LEGISLATIVE BODY” FOR PURPOSES OF THE BROWN ACT?**

- A temporary advisory committee **composed solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.¹⁷ Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.¹⁸
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.¹⁹

Q. A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?

A. *No, because the committee has not been established by formal action of the legislative body.*

Q. During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?

A. *Possibly, because the direction from the city council might be regarded as a formal action of the body notwithstanding that the city manager controls the committee.*

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.²⁰
- County central committees of political parties are also not Brown Act bodies.²¹

Endnotes

- 1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123
- 2 California Government Code section 54952(a)
- 3 California Government Code section 54951. *But see*: Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.
- 4 *Torres v. Board of Commissioners* (1979) 89 Cal.App.3d 545
- 5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)
- 6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354
- 7 California Government Code section 54952.1
- 8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799
- 9 California Government Code section 54952(b)
- 10 79 Ops. Cal.Atty.Gen. 69 (1996)
- 11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781
- 12 California Government Code section 54952(c)(1)(B). The same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)
- 13 California Government Code section 54952(c)(1)(A); *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal.App.4th 287; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District* (2001) 87 Cal.App.4th 862; *see also*: 81 Ops.Cal.Atty.Gen. 281 (1998); 85 Ops.Cal.Atty.Gen. 55
- 14 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal.App.4th 287, 300 fn. 5
- 15 "The Brown Act," California Attorney General (2003), p. 7
- 16 California Government Code section 54952(d)
- 17 California Government Code section 54952(b); *see also*: *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821
- 18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123
- 19 56 Ops.Cal.Atty.Gen. 14 (1973)
- 20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870
- 21 59 Ops.Cal.Atty.Gen. 162 (1976)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at www.cacities.org/opengovernment. A current version of the Brown Act may be found at www.leginfo.ca.gov.