

For Information

The Brown Act and the Perils Of Electronic Communication

by Kara Ueda

Technology makes it easy to unintentionally violate California's open meeting law.

Local public officials are often frequent and zealous users of technology and social media. Given the rapid speed with which people can now send e-mails and text messages and post comments online, a casual e-mail conversation between two city council members or an offhand comment on a newspaper website may quickly and inadvertently turn into a "meeting" under the Brown Act.

About the Brown Act

Most members of legislative bodies (including city councils, commissions, boards and committees) soon learn upon taking office that a quorum of their membership may not meet to discuss official business unless the meeting complies with the Brown Act. Often referred to as California's open meeting law, the Brown Act provides that members of a legislative body may hold a meeting when a majority of them — at the same time and place — "hear, discuss, deliberate or take action on" an item within their subject matter jurisdiction.

To hold a lawful meeting under the Brown Act, a local agency must, among other things, provide public notice about the meeting for a certain time period and ensure that the public can access the meeting. Thus, if a city council (for example) has five

members, three of the five may not meet at a restaurant to discuss city business unless the city has posted public notice about the meeting and otherwise complies with the Brown Act.

The Brown Act does not prohibit individual members of a legislative body from separately providing their own comments and opinions about a matter. A commissioner may write a newspaper editorial about an item the commission approved, and a city council member may give a speech or tweet about local projects under way in the city. Nor does the Brown Act prohibit "one-way" communications where, for example, a city manager transmits a communication to the entire council by e-mail. The "passive receipt" of a document by public officials is different from a commission's or city council's collective action or discussion.

continued

About Legal Notes

This column is provided as general information and not as legal advice. The law is constantly evolving, and attorneys can and do disagree about what the law requires. Local agencies interested in determining how the law applies in a particular situation should consult their local agency attorneys.

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More Resources Online

For additional related sources, read the online version of this article at www.westerncity.com.

An In-Depth Guide to the Brown Act

The League publishes a guide to the Brown Act for the non-lawyer, which is updated periodically. *Open & Public IV: A Guide to the Ralph M. Brown Act* is available free online at www.cacities.org/opengovernment.

E-Mail Exchanges May Constitute Serial Meetings

Similarly, the Brown Act prohibits public officials from doing in successive steps what they cannot do in one step. More specifically, the Brown Act provides that a majority of a legislative body may not use any series of communications, either directly or through intermediaries, to discuss, deliberate or take action on any item of business that is within the legislative body's subject matter jurisdiction. Serial meetings typically occur by either a "hub and spoke" or a "daisy chain" meeting.

Hub and Spoke Meetings

A hub and spoke meeting occurs when one person acts as the center and communicates with members of the legislative body. For example, Council Member Newman cannot call Council Member Oliver to discuss an item of city business and then call Council Member Peoples to discuss his conversation with council member Oliver. In this meeting Council Member Newman was the hub, and the other two council members were the spokes. Hub and spoke meetings may also occur by e-mail if the individual members e-mail each other instead of calling.

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Daisy Chain Meetings

A serial meeting may also occur if Council Member Newman calls Council Member Oliver to discuss an item of city business, and then Council Member Oliver calls Council Member Peoples to discuss the same thing. This type of communication is also called a daisy chain meeting. This type of meeting is particularly likely to occur by e-mail due to the ease of forwarding e-mails.

Serial Meetings in Cyberspace

The Internet provides numerous opportunities for local officials to post their thoughts and opinions about city issues. Local bloggers report on city news and sometimes provide a running commentary of council and commission meetings as they happen. And most newspapers have websites where members of the public can — and frequently do — comment on the articles. When these entries or articles are especially timely or controversial, they practically invite comments by interested residents and local officials.

As of this writing, no court has specifically ruled on the intersection of comments posted on the Internet and the Brown Act's requirements. However, the same serial meeting rules that apply to e-mail may likely apply to other online conduct such as commenting about online news stories.

The potential danger with the online world is the speed with which a simple comment on a blog, a Facebook status update, a photo or newspaper article may rapidly become a discussion about city business by a quorum of the legislative body. For example, a local blogger may post an entry about an upcoming planning commission agenda item. Proponents and opponents both weigh in on the blog comments. A planning commissioner reads the entry and also posts a comment about the item. A second planning commissioner also decides to post a comment, and then a third planning commissioner responds to the first two commissioners.

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Thus, a discussion among the three of them ensues electronically on the Internet.

Did the planning commissioners violate the Brown Act? At first glance, it may seem that the planning commissioners did not violate the Brown Act if the blog is available for any member of the public to read. The planning commissioners may believe that basic open government principles were followed because they were not trying to have a secret meeting to discuss official business, and anyone could read their electronic conversation. But the planning commissioners also did not have their electronic conversation pursuant to a noticed meeting under the Brown Act. Instead, they used a series of communications to discuss and deliberate on an item within their subject matter jurisdiction.

The sheer openness of a conversation is not the critical factor under the Brown Act. For example, the three commissioners could have instead met in one of their living rooms and live-streamed their conversation on the Internet as it was occurring. That video would also be public and available for everyone to see and possibly to comment on as it was happening. This in-person living room conversation about city business, though, would not comply with the Brown Act.

In addition, an issue may raise particular legal and practical sensitivities where any type of comment may not be wise. For example, if a local agency will consider a matter where a person is owed certain due process rights or if an agency is

involved in pending litigation, local officials should first contact their city attorney for advice on whether they should be making any type of comment, regardless of the forum or medium. These considerations are separate and apart from Brown Act issues.





















Conclusion

While the use of new technology offers important advantages in keeping individuals up to date and informed, the speed with which messages may be sent and comments posted can have drawbacks if public officials inadvertently find themselves in the midst of an e-mail conversation or conversation thread with other members of their commission or city council. The law may eventually catch up to the current technology, but until it does public officials should continue to abide by the general Brown Act principles regardless of whether the communication is in person or online. ■

Looking for Footnotes?

A fully footnoted version of this article is available online at www.westerncity.com.

July 2011-Franklin Neighborhood Center

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<p>Daily Activities: Monday-Friday (only)</p> <ul style="list-style-type: none"> Computer Lab 2:30 p.m. -6:00 p.m. Art & Crafts 2:30 p.m. 5:30 p.m. Movie Room 2:30 p.m. – 6:00 p.m. <p>(Your choice of movie unless assigned in the calendar)</p>					<p>1</p>  <p>FRIDAY MOVIE FEATURE! @ 3:00 p.m.</p>	<p>2</p>
<p>3</p>	<p>4</p> <p>Youth Center Closed</p>	<p>5</p> <p>Candy Bracelets!</p>  <p>ART PROJECT @ 3 p.m.</p>	<p>6</p> <p>Cheesy Lasagna!</p>  <p>Cooking Class @ 3 p.m.</p>	<p>7</p> <p>Cyber Hunt!</p>  <p>Computer Lab @ 4pm.</p>	<p>8</p>  <p>FRIDAY MOVIE FEATURE! @ 3 p.m.</p>	<p>9</p>
<p>10</p>	<p>11</p> <p>Community Service Workshop</p>  <p>Multi-purpose Rm @ 3 p.m.</p>	<p>12</p> <p>Foosball Tournament</p>  <p>3:00 p.m. – 4:30 p.m. (Game Room)</p>	<p>13</p> <p>Cereal Box Journal</p>  <p>ART PROJECT @ 3 p.m.</p>	<p>14</p> <p>Wood Painting</p>  <p>Starting at 3 p.m. Multi-purpose Room</p>	<p>15</p>  <p>FRIDAY MOVIE FEATURE! @ 3 p.m.</p>	<p>16</p>
<p>17</p>	<p>18</p> <p>Science Experiment</p>  <p>SPEED SET JELL-O @ 3 p.m.</p>	<p>19</p> <p>Collage Marta Designs</p>  <p>ART PROJECT @ 3 p.m.</p>	<p>20</p> <p>Spaghetti Sauce!</p>  <p>Cooking Class @ 3 p.m.</p>	<p>21</p> <p>Newspaper Basket Weave</p>  <p>Starting at 3 p.m. Multi-purpose Room</p>	<p>22</p>  <p>FRIDAY MOVIE FEATURE! @ 3 p.m.</p>	<p>23</p>
<p>24</p>	<p>25</p> <p>Tuna Burgers</p>  <p>Cooking Class @ 3 p.m. Kitchen Room</p>	<p>26</p> <p>Gum Drop Challenge</p>  <p>Science Experiment @ 3:00 p.m.</p>	<p>27</p> <p>Comic Book Strips!</p>  <p>Starting at 3 p.m. Multi-purpose Room</p>	<p>28</p> <p>Mandala Creative Coloring</p>  <p>ART PROJECT @ 3p.m.</p>	<p>29</p>  <p>FRIDAY MOVIE FEATURE! @ 3 p.m.</p>	<p>30</p>

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