

## LAW REVIEW

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### CITY COUNCIL VIOLATES BROWN ACT

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The Ralph M. Brown Act (Brown Act) was enacted years ago to ensure that the deliberations and actions of local agencies like cities, counties and districts are open and public, allowing meaningful public access to the decision making process.

The Brown Act requires meetings to be open to the public, held on a regular schedule and conducted in accordance with an agenda available in advance. Action may not be taken on non-agenda item. (When I first arrived in Truckee in 1973, I signed up to receive the Nevada County Board of Supervisors Agendas which arrived by mail *after* the meetings. At my request and to my amazement the County changed its board notice policy.)

The Brown Act prohibits a majority of officials from conducting business at a non-noticed meeting, and from using “direct communication, personal intermediaries, or technological devices [phones, fax, texting, email]...to develop a collective concurrence as to action to be taken on an item.”

#### Fremont Alarm Policy

The police department of the City of Fremont devised a new policy to govern its response to activated home invasion alarms. Essentially, the department would no longer respond to home alarms unless there was

verification the alarm was legitimate. I.e. many alarms would not be responded to.

The city manager of Fremont liked the new policy and met with each Council member—supposedly to encourage the City Council to adopt the new alarm policy. Although not on the agenda, the City Council arranged to have the police chief speak for 45 minutes on the new alarm policy.

Most telltale of a possible Brown Act violation, one of the Council members later admitted on the record that the Council had been fully briefed on the new alarm policy and had expressed its support for the new policy. I.e. somehow the City Council formed a consensus in support of the policy *before* the publicly noticed hearing.

#### City Sued

When the new home invasion alarm policy hit the newspapers, many in the community were upset. But they were no where near as angry as when they went to the City Council hearing on the adoption of the proposed policy where it was apparent the City Council had already made up its mind. Dennis Wolfe, a local resident, sued alleging violations of the Brown Act. He named the City of Fremont, the City Council and individual Council members, the city manager and the police chief. The trial court threw out the suit.

#### Brown Act

The Court of Appeal upheld the dismissal of the claims against the city manager and the police chief essentially because they are not government officials subject to the Brown Act.

The Court found that because the city manager had not made the other City Council members aware of each other's views, there was no improper "serial meeting"—a linking of separate conversations. It is not improper for a city manager to meet individually with Council members telling them of his/her view on a matter.

The Court noted it is not improper for members of the public to meet and influence the views of individual Council members. As the Court wrote, "such "lobbying," loosely defined, is not prohibited by the Brown Act so long as it is not conducted with... a majority of the legislative body."

#### Violation

However, the Court found the City Council had violated the Brown Act because it was clear from the facts that the Council members had individually discussed the issue among themselves and had apparently reached a "collective action" to support the new policy before the public hearing, all of which was verified by the one Council member's (dumb or remarkably candid) statement from the dais that the Council members had "expressed their support" in advance of the public hearing.

*Wolfe v. City of Fremont* illustrates the sometimes fine line between an exchange of ideas and open dialogue among city staffers and Council members and conducting all official business in a public setting. The courts will generally construe the Brown Act liberally to ensure the public's business is conducted in the open.

If you are interested in obtaining an informational booklet on the Brown Act, let me know.

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