



OFFICE OF THE DISTRICT ATTORNEY
MARIN COUNTY, CALIFORNIA

*Prevention * Prosecution * Protection*

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June 4, 2009

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Peggy M. Tothl
ADMINISTRATOR

Ms. Sager,

On May 7, 2009 our office received a Brown Act complaint from Trustee Jeanne Thompson. She met with myself and Chief Deputy District Attorney Barry Borden. Ms. Thompson outlined her concerns to us involving the failure to report out actions taken in closed sessions, discussion of non agenda items in closed sessions, failure to adjourn a meeting, and changing a posted agenda item prior to the beginning of an open session meeting

I was assigned by CDDA Borden to conduct the investigation on Ms. Thompson's complaint and I interviewed other board members, school staff and your legal counsel.

I have made the following determinations through my investigation.

I was unable to determine that there were violations of the Brown Act involving government code section 54957.1, reporting out action after a closed session. The reason that I cannot make this determination is the fact that several board members felt that they did not take any action during these closed sessions. They felt they were giving input to the superintendent and thus taking no action. What complicates my evaluation is the fact that the board does not take minutes in closed session. This is obviously a diverse board and the taking of minutes would eliminate any misinterpretation of the discussions held in closed session. Another recommendation is the procedure of making motions and taking votes rather than coming to consensus about an issue. This would ensure the reporting out of action taken or not taken in closed session.

I was unable to establish any violation concerning the non agenda items being discussed in closed session. None of the other trustees had any recollection or notes indicating that items not on the agenda were discussed. Again minutes taken

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during the closed session would have been assisted me in my investigation on this issue.

I did confirm the fact that the meeting of April 6, 2009 was not adjourned properly per government code 54955.

On the issue of changing an open session agenda item prior to the start of the April 9, 2009 meeting I learned that you had attended a recent Brown Act workshop and the issue of correcting a listed agenda item was one of the topics of discussion. It appears that the board followed government code section 54954.2 (b)(2).

I would make the following recommendations to the board to assist them in complying with the Brown Act.

Board members should attend Brown Act workshops to ensure they are fully aware of the law and its requirements.

Minutes should be taken in closed session to ensure the accuracy of the discussions and motions made and votes taken.

Motions and votes should be taken on issues rather than coming to a consensus on issues. This will ensure a clear record of actions to be taken and reported out in open session.

Board members should review government code section 54952.6 that discusses the definition of "action taken". This will ensure a clear understanding of the definition and assist in discussions during closed sessions.

In speaking with the board members and legal counsel, they all were cooperative and willing to comply with the Brown Act. As I mentioned in my interview with you, the policy of our office is to educate boards and districts. While there may be gray areas in the law I feel my recommendations will assist the board in complying with the Brown Act. My investigation was reviewed by CDDA Borden who confirmed my findings and my recommendations

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* (date)

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Very truly yours,

Inspector Michael P McBride

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