

A REPORT BY
THE 2014-2015 CONTRA COSTA COUNTY GRAND JURY
725 Court Street
Martinez, California 94553

Report 1513

RALPH M. BROWN ACT

“The People of the State Do Not Yield Their Sovereignty
to the Agencies Which Serve Them”

APPROVED BY THE GRAND JURY:

Date: June 11, 2015



SHERRY RUFINI
GRAND JURY FOREPERSON

ACCEPTED FOR FILING:

Date: June 11, 2015



JOHN T. LAETTNER
JUDGE OF THE SUPERIOR COURT

Contact: Sherry Rufini
Foreperson
925-957-5638

Contra Costa County Grand Jury Report 1513

RALPH M. BROWN ACT

**“The People of the State Do Not Yield Their Sovereignty
to the Agencies Which Serve Them”**

**TO: RODEO HERCULES FIRE PROTECTION DISTRICT, RECLAMATION
DISTRICT 799, WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT**

SUMMARY

The Ralph M. Brown Act, (Act or Brown Act), a critical piece of legislation, protects transparency in government in California. It prohibits secret dealings by various elected bodies and provides remedies for violations. It applies to city councils, boards of supervisors, and local agencies, such as school boards and special districts in California.

During its investigation of Brown Act compliance, the Grand Jury visited board meetings of Rodeo Hercules Fire Protection District, Reclamation District 799 and West Contra Costa Unified School District (WCCUSD), (collectively, the “Districts”), the Grand Jury found instances of the Districts’ board members receiving too little training in the Brown Act and, in other instances, a general lack of respect for it. The Grand Jury also found improperly worded agenda items; a failure to make documents available to the public in a timely fashion; citizens who were uneducated about remedying Brown Act violations; and boards holding closed sessions at the end of an evening meeting when most of the public had left, thus limiting public comment on the item reported out of closed session to those few remaining. The Grand Jury also found through their investigations that citizens were often frustrated with the actions of their elected and or appointed representatives who appeared to obstruct the public’s right to meaningful participation in the public business through the rights guaranteed by the Brown Act. These citizens were frequently at a loss as to how to challenge violations of the Act.

Training for the Districts’ elected and appointed officials could help alleviate the observed lack of Brown Act compliance. This training should include the preparation and scrutiny of agendas and the legalities of closed sessions, which, when permitted, should be held prior to the beginning of evening meetings to allow ample time for the reporting of actions and votes taken in closed session, and for comments by the public.

Additionally, the Grand Jury recommends that each entity subject to the Brown Act provide a link on its website to provide a legal and simple way for citizens to object to perceived violations, including copies of cure and correct letters for their use and instructions on the legal timeframes for sending such letters.

METHODOLOGY

The Grand Jury:

Attended

- Special District Board meetings

Interviewed

- Elected and appointed officials
- First amendment attorneys
- Citizens of Contra Costa County

Reviewed

- The Brown Act
- Board websites
- Board minutes and agendas

BACKGROUND

The Grand Jury received 12 complaints from citizens, civic groups and government employees alleging violations of the Brown Act by certain special districts. The Jury inquired into four of those complaints. A common theme of the complaints was a lack of adherence to the Brown Act, such as failing to comply with the requirements to provide a clear description of each item on the agenda for a public meeting or to comply with the requirements of the Act for holding closed meetings.

The Brown Act is an essential feature of municipal, county and public agency government in California. A series of articles in 1952 by Mike Harris, a reporter for the *San Francisco Chronicle* raised questions about the secrecy of some government meetings. As a consequence of this exposé, the Brown Act was adopted in 1953.

The preamble of the Brown Act makes the Legislative intent clear:

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants

the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

In 1952, the *Sacramento Bee* said of the proposed Act:

A law to prohibit secret meetings of official bodies, save under the most exceptional circumstances, should not be necessary. Public officers above all other persons should be imbued with the truth that their business is the public's business and they should be the last to tolerate any attempt to keep the people from being fully informed as to what is going on in official agencies. Unfortunately, however, that is not always the case. Instances are many in which officials have contrived, deliberately and shamefully, to operate in a vacuum of secrecy.

The Brown Act applies to boards, councils, and committees for counties, cities, districts and other local agencies in California. It can be found in its entirety at Government Codes sections 54950-54963.

In November 2004, voters also adopted Proposition 59, the "Open Government Ordinance". This amends the California Constitution to make plain that the public has an absolute right of access to these meetings.

This report focuses on the Districts' compliance with certain portions of the Brown Act.

DISCUSSION

Involvement and engagement of the people with local government has long been of critical importance in California and Contra Costa County. Every month, government officials in Contra Costa County meet and make decisions that affect the lives of citizens of the county, concerning issues such as education, fire safety, public health, reclamation, water, sanitation, and pension administration.

Generally, since the passage of the Brown Act, these meetings are held in public session. Closed government sessions are held to discuss certain confidential matters, such as litigation and personnel issues. These sessions are sometimes held at the end of the public meeting and, when the closed session is reopened the people attending the meeting often have left, so they do not hear the results of the vote that night and cannot comment on it.

Some hold the opinion that if an attendee leaves the meeting during closed session, the "fault" lies with the person who leaves, even if it is late at night. However, boards have the power to change the scheduling of closed meetings to an earlier time, although some Districts have not done so.

The Brown Act requires that agendas be posted at least 72 hours in advance of a meeting in most circumstances. Individual boards have the power to increase the notice time. For example, the City of San Francisco has enacted a 14-day period for review of labor contracts. The City of San Jose allows ten days for review of labor contracts, with each new offer becoming public at the time it is made during negotiations. Additionally, Contra Costa County has extended the notice period for agendas to 96 hours.

CLOSED SESSIONS:

The Districts are perceived by some as improperly conducting closed sessions. The Brown Act permits closed sessions only for particular types of business. The most commonly occurring items that may be heard during closed session are conferences with real property negotiators, discussions with legal counsel regarding pending or current litigation, threats to public safety, public employee appointments, and performance evaluations including disciplinary actions. Closed sessions may include a discussion on whether a change in compensation is warranted based on performance. They may not include discussion or action on proposed compensation except for a reduction in compensation because of disciplinary action.

After a closed session, in some circumstances the legislative body must publically report on action taken in closed session and disclose, by name, the vote or abstention of every member present. Copies of any finalized contracts that are approved in a closed session must be made available promptly.

A highly-questionable such closed session took place at the October 2014 meeting of the Rodeo-Hercules Fire District. In that session the District Board approved an employment agreement with its highest-ranking employee that contained significant pay and benefit increases as well as other favorable contract terms for the employee. However, the agenda for that meeting had offered no hint that contractual terms of such financial importance to the District were to be discussed at the meeting. The agenda had merely referred to a contract amendment that was to be discussed. Not enough copies of the contract were available to the public prior to the Board going into closed session to discuss and vote on the contract. Indeed, the Board members themselves had not seen the text of the proposed contract extension until they entered the closed session to discuss the matter. Yet the extension was approved in that single closed session of the Board which lasted less than an hour. No members of the public remained for the announcement of the vote or for comment after the closed session.

As illustrated by this particular case, citizens need to be aware of their entitlement to open government and to the remedies they have at hand when they see violations of the Brown Act.

AGENDAS

The Brown Act requires that a local public agency post an agenda that contains a brief general description of each item, including items to be discussed in closed session, at least 72 hours before a regular meeting on the public agency's building or kiosk. The agenda also must be posted on the agency's website, if the agency has a website.

DOCUMENTS

The Brown Act requires that when public documents are provided to a majority of board members, the documents must simultaneously be available to the people. If there are not enough copies available at the time of the meeting, the board must be able to make and distribute sufficient copies.

REMEDIES

There are statutory remedies for violations of the Brown Act. They are outlined below.

Cease and Desist Letter

In 2012, SB 1003 was signed into law with an effective date of January 1, 2013. This legislation provides that a complainant or the district attorney may send a legislative body of a local agency a "Cease and Desist" letter within nine months of a Brown Act violation. After receiving such a letter, the legislative body does not have to admit fault for past violations of the Act, but only has to agree to abide by the law in the future.

Cure and Correct Letter

A complainant or the district attorney may send a "Cure and Correct" demand letter to a legislative body for the purpose of stopping ongoing violations of the Brown Act or preventing threatened future actions. The target of the letter must correct the action within thirty days of receipt of the letter and notify the complainant within thirty days of their action or inaction. If the board does not respond within thirty days there is an assumption that no action will be taken.

Effectiveness of Remedies

Most legislative bodies that violate the Brown Act will simply get a letter from the District Attorney advising them not to do it again. District attorneys' offices often look upon Brown Act violations as mistakes and oversights made by overworked and under-appreciated public servants.

When violations are treated in this fashion by public authorities, the public may well feel left out of the process and as a result, public confidence in government is eroded. The Grand Jury believes unresolved Brown Act violations have led to a decrease in public

trust, involvement and oversight.

FINDINGS

- F1. Rodeo-Hercules Fire District, Reclamation District 799 and WCCUSD members appear not to be familiar with certain requirements of the Brown Act.
- F2. Certain items were not identified correctly on the Rodeo-Hercules Fire District agendas, particularly those items discussed in closed sessions.
- F3. Many members of the public do not know how to correct a Brown Act violation and do not know the time frame to object to a perceived violation.
- F4. Certain shortcomings in following the letter and spirit of the Brown Act may have eroded the public trust in the Rodeo-Hercules Fire District, Reclamation District 799 and WCCUSD.
- F5. At an October 2014 Rodeo-Hercules Fire District meeting, not enough copies of an employment agreement that was to be discussed that night in closed session were made available to the public.
- F6. The public may need more than 72 hours prior notice of an agenda item relating to labor contracts to evaluate the financial impact or to review the boards assumptions in regard to sources of funding because these matters are often complex.
- F7. Rodeo Hercules Fire District closed sessions are held at the end of evening board meetings, resulting in limited opportunity for public comment on the outcome of matters decided in closed session.
- F8. Decisions reached on matters discussed in closed session and the identity of the board members who voted for matters decided in closed session have not always been disclosed at meetings of Rodeo-Hercules Fire District as required by the Brown Act.
- F9. Rodeo-Hercules Fire Department does not have the staff to keep a website updated.

RECOMMENDATIONS

- R1. Rodeo-Hercules Fire District, Reclamation District 799 and WCCUSD should have annual training in the Brown Act for its board members and support staff.
- R2. Rodeo-Hercules Fire District should have annual training concerning how to draft agendas that comply with the Brown Act.
- R3. Rodeo Hercules Fire District should consider maintaining a website of the District's minutes and agendas, and identify funds to do so.
- R4. Rodeo Hercules Fire District, Reclamation District 799 and WCCUSD should have a link for citizens to post concerns about possible Brown Act infractions, and identify funds to do so.
- R5. Rodeo Hercules Fire District, Reclamation District 799 and WCCUSD should have a link to an organization such as The First Amendment Coalition (thefirstamendmentcoalition.org) for both Cure and Correct and Cease and Desist letters, with instructions, and identify funds to do so.
- R6. Rodeo Hercules Fire District, Reclamation District and WCCUSD Boards should consider voting to extend the review period for contracts involving large financial commitments.
- R7. Rodeo Hercules Fire District, Reclamation District 799 and WCCUSD should have sufficient hard copies of supporting documents of items to be discussed in closed sessions before the closed sessions begin, and the ability to make and distribute sufficient copies if necessary.
- R8. Rodeo Hercules Fire District should consider conducting its closed sessions prior to the beginning of an evening meeting rather than the end because members of the public are less likely to be present to comment at a late hour on matters reported out of a closed session.