



Lozano Smith
ATTORNEYS AT LAW

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2. Member of Legislative Body Includes Newly Elected and Appointed Officials Prior to Assuming Office.

The definition of “member of legislative body of a local agency” includes persons who have been elected but have not yet assumed the duties of office. While the Brown Act refers specifically to elected officials, presumably the Legislature intended the rule to apply to appointed officials. These persons must conform their conduct to the requirements of the Brown Act, and they are individually liable for violating the Brown Act prior to assuming office. This does not mean that newly elected or appointed members are authorized to attend closed session meetings of the legislative body prior to assuming the duties of office. Newly elected or appointed members may only attend closed session meetings if they have an official or essential role to play in the closed session.

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4. Meetings May Be Adjourned to Dates and Times Certain Provided the Adjourned Meeting is Posted as Such.

Regular or special meetings, including meetings with noticed public hearings, may be adjourned to a specified date, time, and place. Less than a quorum can adjourn a meeting. If all members are absent, the clerk or secretary to the legislative body may adjourn the meeting or public hearing to a specified date, time, and place. Notice of the adjourned meeting must be posted on or near the door of the meeting within twenty-four (24) hours after the adjournment.

(Government Code §§ 54955, 54955.1.)

5. All Meetings Must Have an Agenda and the Agenda Must Include a

6. Emergency Meetings Are Permissible.

preserve the confidentiality of closed sessions, only essential staff should be present during the closed session.

(Government Code §§ 54954.5, 54956.5(c).)

2. Closed Session Agenda Notice Requirements.

Regular meeting agendas and special meeting notices must include a description of the matters to be discussed (Government Code § 54954.5, 54956.5(c).)

their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

Written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act need not be disclosed when describing “facts and circumstances.”

(Government Code § 54956.9(b)(3).)

For the purposes of these situations, significant exposure to officers or employees of the agency, whether or not arising from within the course and scope of office or employment, is deemed significant exposure for the agency.

(Government Code § 54956.9(c).)

- (4) Exclusion of Legislative Body Members. A member of the legislative body may be excluded from a closed session meeting when the member is a party or potential party to litigation against the agency and the agency is considering that litigation.

(*DeGrassi v. City of Glendora* (2000) 207 F.3d 636.)

- (5) Settlement Meetings. Settlement meetings with adverse parties and an outside mediator to pending litigation may not be held in closed session. Such meetings extend beyond the receipt of advice from legal counsel.

(*Page v. MiraCosta Community College District* (2009) 180 Cal.App.4th 471.)

- d. To Consider the Appointment, Employment, Evaluation of Performance, Discipline, or Dismissal of a Public Employee and to Hear Complaints Against a Public Employee.

- (1) In General. Closed sessions are permitted to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a

generally, the legislative body may only hold closed sessions to consider the appointment, employment, evaluation, discipline, or dismissal of an employee over which the legislative body has appointing authority. In other words, the closed session is permissible only if the legislative body has decision making authority over that employee.

- (3) Salary Setting. The legislative body may not discuss or take action on proposed compensation except for a disciplinary reduction of compensation or as otherwise permitted in connection with labor negotiations.

(Government Code § 54957.)

- (4) City Manager, Superintende

g. Meetings Among Joint Powers Agencies Formed For Insurance Pooling and Local Agency Self-Insurance Authorities To Consider Liability Issues. Joint powers agencies formed for purposes of insurance pooling and self-insurance authorities may meet in closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or self-insurance authority, or a local agency member of the joint powers agency or self-insurance authority.

A JPA may, by policy, bylaw, or including a provision in the JPA agreement, make all information discussed in a JPA board meeting closed session confidential but authorize a JPA board member, who is also on the board of a member agency, to discuss the information with his or her member agency if it “has direct financial or liability implications” for the member agency. If there are such implications, the board member may discuss the information with (1) the member agency’s legal counsel to obtain “advice on whether the matter has direct financial or liability implications” or (2) the member agency board during a closed session.

(Government Code §§ 54956.95, 54956.96.)

h. Meetings To Consider A Charge Or Complaint From A Health Care Member. A local agency which provides Medi-Cal services may meet in closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status, or other information that is protected by federal law publicly disclosed.

(Government Code § 54956.86.)

i. Meetings To Consider Final Draft Audit Report From Bureau of State Audits. A local agency may meet in closed session to review and consider a response to a confidential final draft audit report from the Bureau of State Audits. After public release of the audit report, further meetings must be held in open session unless exempted from that requirement by some other provision of law.

(Government Code § 54956.75.)

j. Meetings to Consider Investment of Pension Funds. A local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular, specific pension fund investments. All investment transaction decisions made during the closed session must be made by roll call vote.

(Government Code § 54956.81.)

C. THE REMEDIES FOR A VIOLATION OF THE BROWN ACT INCLUDE CURE AND CORRECTION, THE REQUIREMENT TO RECORD CLOSED SESSIONS, AN AWARD OF ATTORNEYS FEES, AND IN CERTAIN CIRCUMSTANCES DAMAGES

Most violations of the Brown Act can be remedied by correction of the violation. If there is a violation of the closed session requirements, a court can order the local agency to record its closed sessions.

The cure and correction remedy is not available for violations of the 24-hour employee notice requirement. Actions taken in violation of the 24-hour notice requirement are null and void which means that employees terminated after violating this provision may be entitled to damages for wrongful termination.

A prevailing plaintiff is entitled to costs and attorneys' fees unless special circumstances justify denial of such an award. A prevailing defendant (public agency) may be awarded costs and fees only if the court finds the action was frivolous and totally lacking in merit.

(Government Code §§ 54960, 54960.1 and 54960.5; *Galbiso v. Orosi Public Utility District* (2008) 167 Cal.App.4th 1063; *Moreno v. City of King* (2005) 127 Cal.App.4th 17; *Los Angeles Times Communications v. Los Angeles County Board of Supervisors* (2003) 112 Cal.App.4th 1313.)

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APPENDICES

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APPENDIX 2

RALPH M. BROWN ACT

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54957. Closed session regarding threat to public facilities and services;
personnel matters; exclusion of

THE RALPH M. BROWN ACT

GOVERNMENT CODE

TITLE 5. Local Agencies

DIVISION 2. Cities, Counties, and Other Agencies

PART 1. Powers and Duties

Common to Cities, Counties, and Other Agencies

CHAPTER 9. Meetings

54950. Declaration of intent: sovereignty

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 thei

through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person that do not violate subdivision (b).

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which

accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if

which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to post a single agenda for any one meeting.

(c) The Legislature hereby finds and declares that complete, faithful, and uninterrupted compliance with the Ralph M. Brown Act to post a sement shall only include

the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

(e) This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of either of the following:

(1) The property owners subject to the assessment.

(2) The voters within the local agency imposing the tax or assessment.

(f) Nothing in this section shall prohibit a local agency from holding a consolidated meeting or hearing at which the legislative body discusses multiple tax or assessment proposals.

(g) The local agency may recover the reasonable costs of public meetings, public hearings, and notice required by this section from the proceeds of the tax or assessment. The costs recovered for these purposes, whether recovered pursuant to this subdivision or any other provision of law, shall not exceed the reasonable costs of the public meetings, public hearings, and notice.

(h) Any new or increased assessment that is subject to the notice and hearing provisions of Article XIIC or XIID of the California Constitution is not subject to the notice and hearing requirements of this section.

54955. Adjournment; adjourned meetings

The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

54955.1. Continuance of hearing

Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted

and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (f), shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Corporations in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(f) For purposes of this section, “health plan trade secret” means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(1) The secrecy of the information is necessary for the health plan to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(2) Premature disclosure of the trade secret would create a substantial probability of depriving the health plan of a substantial economic benefit or opportunity.

54956.9. Closed sessions concerning pending litigation; attorney-client privilege

Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive

expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

For purposes of this section, “litigation” includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(a) Litigation, to which the local agency is a party, has been initiated formally.

(b) (1) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(2) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) of this subdivision.

(3) For purposes of paragraphs (1) and (2), “existing facts and circumstances” shall consist only of one of the following:

(A) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(B) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

(C) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(D) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(E) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency

(2) Approval given to its legal c

earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

(b) After any closed session, the legislative body shall reconvene into open

or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

(4) Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not ubster,iato

(b) For purposes of this section, “confidential information” means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

6. Communications.
7. Administrative Items.
 - A. Administration (City Manager, City Clerk, Finance).
 - 1.
 - 2.
 - B. Community and Economic Development.
 - 1.
 - 2.
 - C. Public Works.
 - 1.
 - 2.
 - D. Public Safety.
 - 1.
 - 2.
 - E. Planning.
 - 1.
 - 2.

Adjournment to [Special Agency Meeting]
(See Attached Agenda)

8. Consent Calendar. *(Items considered routine in nature are placed on the Consent Calendar. They will all be considered and voted upon in one vote as one item unless a Council member requests individual consideration. A Council member's vote in favor of the Consent Calendar is considered and recorded as a separate affirmative vote in favor of each action listed. Motions in favor of adoption of the Consent Calendar are deemed to include a motion to waive the reading of any ordinance or resolution on the Consent Calendar.)*
 - A.
 - B.
 - C.
9. Council Items.
 - A. Committee Reports.
 - B. Council Comments.
 - C.
10. Closed Session.
 - A.
 - B.
 - C.
11. Adjournment.

[SPECIAL AGENCY AGENDA]
_____, 20__ ; __:__ p.m.
CITY COUNCIL CHAMBER
[ADDRESS]

In compliance with the Americans with Disabilities Act, if you need special assistance to access the Council Chamber to otherwise participate at this meeting, including auxiliary aids or services, please contact the City Clerk at (____) ____-____. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the Council meeting.

Documents provided to a majority of the Agency Board regarding an open session item on this agenda will be made available for public inspection in City offices located at [_____] during normal business hours. [OPTIONAL:] In addition, such writings and documents may be posted on the City's website, www._____.

The Agency Board welcomes participation at Council Meetings. Members of the public may address the Board on any item of interest to the public that is scheduled on the Agenda. In order for everyone to be heard, please limit your comments to 5 minutes or less.

1. Meeting Called to Order.
2. Roll Call.
3. Public Comments. *(This is an opportunity for members of the public to address the Board on any matter within the Board's jurisdiction that is not listed on the Agenda. To ensure fair and equal treatment of all who appear before the Board, and to expedite Agency business, speakers will be limited to three minutes. The three-minute per speaker time limitation may be extended for good cause by the Chairperson, or by majority vote of the Board Members. Anyone wishing to be placed on the Agenda for a specific topic should contact the Executive Director's office and submit correspondence at least 10 days before the desired date of appearance.)*
4. Public Hearings.
5. Administrative Items.
6. Consent Calendar. *(Items considered routine in nature are placed on the Consent Calendar. They will all be considered and voted upon in one vote as one item unless a Member requests individual consideration. A Board member's vote in favor of the Consent Calendar is considered and recorded as a separate affirmative vote in favor of each action listed.)*
7. Board Items.
 - A. Board comments.

Adjournment to City Council Meeting

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[SAMPLE SCHOOL BOARD AGENDA]

[Name] School District
Board of Trustees
Regular Meeting



more than ___ minutes pursuant to Board policy. Public comment will also be allowed on each specific agenda item prior to Board action thereon.

VIII. CONSENT CALENDAR

Items listed under the Consent Calendar are considered to be routine and are acted on by the Board of Trustees in one motion. There is no discussion of these items before the Board vote unless a member of the Board, staff, or public requests specific items be discussed and/or removed from the Consent Calendar. It is understood that the Administration recommends approval on all Consent Items. Each item on the Consent Calendar approved by the Board of Trustees shall be deemed to have been considered in full and adopted as recommended.

A. Routine business transactions, annual renewal of programs, bids, agreements, notices of public hearings, and proclamations:

1. Approve (ved from4. 364. 364..7575 0 n2.3540TD-c806,66400166.78050H.25 799

(Check if applicable)

Government Code Section 54957; Education Code Section 32281

**THREAT TO PUBLIC SERVICES OR FACILITIES;
CONSIDERATION OF TACTICAL RESPONSE PLAN**

Consultation with: _____
(Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title.)

Government Code Section 54957.6*

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: _____
(Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session)

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**DISPOSITION OF JOINT
POWERS AGENCY CLAIMS
(GOV. CODE, § 54957.1(a)(4))**

What to Report:

- 1) voting tally;
- 2) name of claimant;
- 3) name of local agency claimed against;
- 4) substance of claim;
- 5) monetary amount approved by payment and agreed upon by the claimant, if any.

When to Report:

- 1) As soon as (disposition of the claim is) reached. (Statute does not specify whether an open session report must be made or whether disclosure upon inquiry is sufficient.)

**APPROVAL OF AGREEMENTS
CONCLUDING LABOR
NEGOTIATIONS
(GOV. CODE, § 54957.1(a)(6))**

What to Report:

- 1) the item approved;
- 2) voting tally;
- 3) other party.

When to Report:

- 1) after agreement is final, and
- 2) has been accepted or ratified by other party. (Statute does not specify whether open session report must be made or whether disclosure upon inquiry is sufficient.)

**APPROVAL OF LITIGATION
DEFENSE, APPELLATE REVIEW, OR
AMICUS CURIAE PARTICIPATION**

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Personnel, medical, or similar files, the disclosure of which would constitute an invasion of personal privacy. (Government Code § 6254(c).) Public employee salaries and benefits do not fall into this category. The home addresses and telephone numbers of employees do. (*United States Department of Defense v. Federal Labor Relations Authority* (1994) 114 S.Ct. 1006, 1015-106, 510 U.S. 487, 501-502; *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Super. Ct.*

Student records are exempt from disclosure pursuant to the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C., §§ 1232g et seq., and the California Education Code §§ 49073 et seq. and 76240 et seq. Generally, no production of student records is allowed absent parental consent or a court order. A properly issued subpoena, prepared and served by an attorney, will suffice. (34 C.F.R., § 99.31(a)(9).)

4. [The Agency May Only Charge Its Actual Duplication Costs.](#)

Agencies may charge for their duplication costs as a condition of providing copies of non-exempt records. This includes only copying costs per page. It does not include employee time to locate and assemble the records. (Government Code § 6253(b).) The agency may ask for these costs before making the copies. If the Legislature has enacted a statutory fee for obtaining copies of the record, that fee will control, provided it is reasonable. If a citizen requests an electronic document and the request “would require data compilation, extraction, or programming to produce the record” the citizen must bear the costs of producing the record. (Government Code § 6253.9(b)(2).)

5. [The Remedy for Violations is an Order Compelling Disclosure and Attorneys Fees.](#)

An aggrieved person may bring an action for a writ of mandate, injunction or declaratory relief to compel disclosure of the records. All such proceedings are expedited so that a decision is made at the earliest possible time. A prevailing plaintiff is entitled to attorneys fees. A prevailing defendant only if the action is clearly frivolous. (Government Code §§ 6258, 6259.)

ETHICS IN PUBLIC SERVICE FUNDAMENTALS

The rules governing ethics are designed to ensure open government and fairness. The rules are complex, and sometimes technical. New rules are adopted every year. The purpose of these “Ethics In Public Service Fundamentals” is to summarize the basic ethics principles, alert public officials to issues they need to be aware of, especially legislative body members, and to learn to know when to ask questions; this is not intended to be a comprehensive summary or review of all applicable laws. If a red flag is raised, the reader is urged to consult with the applicable regulating authority, such as the Fair Political Practices Commission or California Attorney General’s Office, or seek legal counsel. There are also a multitude of resources on ethics and conflicts of interest available on the internet from the following organizations:

Institute for Local Government, www.ca-ilg.org. (The ILG prepared a number of publications on public service ethics.)

California Fair Political Practices Commission, www.fppc.ca.gov. (The FPPC created numerous Fact Sheets.)

California Attorney General, www.ag.ca.gov/publications. (The AG prepared a Conflict of Interest Publication last updated in 2010.)

California School Boards Association, www.csba.org. (The CSBA prepared a July 2010 Fact Sheet on Conflict of Interest for governing board members.)

Some local officials are required to receive biennial ethics training. These include elected and appointed officials of local agencies who receive compensation or reimbursement for expenses incurred as part of their official duties. Currently local agencies required to receive the training include cities, counties, and special districts, but not school districts. (Government Code §§ 53234, 53235.) Many local agencies require training for all officials that file Form 700 Statement of Economic Interests.

We recommend that training be provided for all locally elected officials, appointed members of boards and commissions that have decision making authority or whose advisory recommendations are regularly accepted, and anyone with significant decision making authority, especially those having authority over financial matters and contracts for construction, goods or services. These individuals are usually the ones who file the Form 700. We also recommend the training for school districts. Our Firm regularly provides public agency ethics training and we can tailor the training to specific agency needs.

1. [Be Alert to Decisions That May Have an Economic Effect.](#)

The California Political Reform Act, Government Code section 87100 et seq., and 2 California Code of Regulations section 18700 et seq., sets forth the rules governing financial conflicts of interest. Public officials, both at the state and local level, may not participate in a decision if the official’s financial interests might be materially affected by the decision.

Participation includes using the official's position to influence the decision. (Government Code § 87100; 2 California Code of Regulations §§ 18700 - 18702.4.)

There are five types of economic interest to be concerned with from which a conflict may arise:

There are various exceptions to the gift reporting and prohibition rules. These include: gifts from family members; gifts exchanged among friends at holidays and birthdays as long as not disproportionate in value; and wedding gifts. Further, gifts not used and returned within 30 days, donated to the public agency or a non-profit organization, or for which the official reimburses the donor the fair market value of the gift, are not reportable.

(Government Code §§ 82028, 87207, 89503; 2 California Code of Regulations §§ 18703.4, 18940 et seq.)

Public agencies should adopt local policies regarding the acceptance of gifts, tickets, and travel expenses. (Government Code § 53232 et seq., 89506; 2 California Code of Regulations §§ 18944.1, 18944.2, 18950.1 et seq.)

Note: elected and non-elected officials cannot accept free or discounted transportation from transportation carriers. (Cal.Const.Art. XII, § 7.) The rule does not apply to employees. Whether one is an “employee” or an “appointed official” is sometimes subject to debate. Generally, appointed members of boards and commissions as well as department heads should be considered appointed officials. There is no distinction for personal or public business and the penalty is forfeiture of office.

6. [Do Not Use Agency Resources for Personal Benefit.](#)

The personal or political use of public resources is prohibited. This includes staff time and agency equipment, and includes the support or opposition of candidates or local ballot measures. Authorized expenditures should be made pursuant to the agency’s reimbursement policy and may only be for actual and necessary expenses. A misuse of public funds will occur when it is not authorized or for a public purpose, or when personal benefit is not merely incidental. (Penal Code § 424; Government Code § 8314; 2 California Code of Regulations § 18901.1; *Stanson v. Mott* (1976) 17 Cal.3d 206.)

7. [Timely Complete Form 700 Statement of Economic Interest Disclosure Forms.](#)

The filing of a Form 700 Statement of Economic Interest requires public officials to disclose economic interests that might give rise to a disqualifying conflict of interest. It provides the public with the ability to ensure its elected and appointed officials are free from bias. The Form 700 should be filed upon assuming office, annually while in office, upon a change in position leading to a different reporting obligation, and upon leaving office. Each local agency is required to have its own local conflict of interest code that sets forth which officials and employees need to file. Elected officials and executive heads of agencies are statutorily required to file. (Government Code §§ 87200 et seq., 87300 et seq.; 2 California Code of Regulations §§ 18730 et seq.)

8. [Elected Officials Must Report Substantial Charitable Fundraising Efforts.](#)

Elected officials must disclose donations they solicit for charitab

APPENDIX 10

**LOCAL GOVERNMENT
PRACTICE GROUP MEMBERS**

LOCAL GOVERNMENT PRACTICE GROUP

MEMBER LIST

FOR INDIVIDUAL PROFILES

VISIT OUR WEBSITE AT: WWW.LOZANOSMITH.COM

FRESNO

Carrie Kurtural
Dale Bacigalupi
David Wolfe
Jeff Kuhn
Jenell Van Bindsbergen
Jerome Behrens
Laurie Avedisian
Regina Garza
Ruth Mendyk
Scott Cross
Stephen Mendyk
Judy Bailey - Paralegal
Mike Dunne – Paralegal

LOS ANGELES

Darren Kameya
Mark Kitabayashi
Trevin Sims
Victor Bullock

SANTA ROSA

Greg Wedner

SACRAMENTO

Daniel Maruccia
Greg Wedner
Sloan Simmons
Tom Gauthier

WALNUT CREEK

Arne Sandberg
Dulcinea Grantham
Ed Sklar
Harold M. Freiman

MONTEREY

Claudia Weaver
Mattie Scott
Thomas Manniello

