

THE BROWN ACT: CLOSED OR OPEN

The Cuyama Joint Unified School District

SUMMARY

Over half a century ago, the California State Legislature declared that public policy requires public agencies to conduct public business in the open. It was believed that transparency in government would lead to better and more responsive governance. Out of this effort came legislation commonly known as the Brown Act (Act), which dealt primarily with ensuring that meetings were “open and public.”

The Act also protects the need for governments to meet in “closed sessions” to make decisions on such issues as public employment, pending litigation, and property negotiations. The Act prohibits unauthorized disclosure of confidential information acquired in closed sessions.

In 2011, the Cuyama Joint Unified School District (CJUSD) Board of Education held several closed sessions during which confidential information was discussed. It was reported to the 2011-12 Santa Barbara County Grand Jury (Jury) that confidential information discussed in those closed sessions had been disclosed without authorization. As a result, the Jury initiated an investigation, and concluded that the confidentiality protections of the Brown Act had been violated.

The Jury recommends that the CJUSD immediately provide training for each of its Board members, institute regular reminders of confidentiality requirements in closed meetings, and keep records of its training to comply with state law.

BACKGROUND

In 1953, the state legislature passed an open meeting law designed to bring transparency to local agency legislative bodies by making meetings both open and public. Assembly Member Ralph M. Brown agreed to carry the bill and hence its name, the Ralph M. Brown Act. Over the years the Act has been modified by a series of amendments and construed by court decisions. Today the Act and similar “open government” laws cover every type of legislative body in the state including the state legislature, state agencies, and local governments.

The Brown Act also includes important exceptions to the open and public rule for

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legislative bodies, and establishes that some meetings may be closed to the public. These meetings, known as closed sessions, are confidential so as not to prejudice negotiating positions of a legislative body nor jeopardize an individual's privacy.

The Act specifically prohibits the unauthorized disclosure of confidential information acquired in a closed session.

In August 2011, the Jury received queries from members of the public regarding the apparently unauthorized public disclosure of confidential information that had been discussed during several closed sessions of the Cuyama Joint Unified School District Board of Education. Such information is protected as confidential under the Act. As a result, the Jury initiated an investigation into allegations of wrongful disclosure of confidential information.

METHODOLOGY

The purpose of the investigation conducted by the Jury was to ascertain if the confidentiality of information disclosed in closed sessions of the CJUSD Board had been violated. It was also an objective of the Jury's investigation to determine what measures could be implemented to prevent future violations.

In pursuit of those objectives, members of the Jury conferred with a Santa Barbara County Chief Assistant County Counsel regarding jurisdiction and received a briefing on the relevant portions of the Brown Act. The Jury reviewed the Act with special emphasis on the confidentiality of closed sessions and legal requirements for adequate and timely training that covers confidentiality portions of the Act. The Jury interviewed the CJUSD Board members and a consultant who were in attendance at the closed sessions held May 21 and 22, 2011. The Jury also reviewed various documents related to the issue. In addition, on-site visits were made.

OBSERVATIONS AND ANALYSIS

All Boards of Education are legislative bodies under the Brown Act

The Ralph M. Brown Act was enacted to ensure that business conducted by the legislative bodies of all local public agencies is done in public. The Cuyama Joint Unified School District Board of Education is a local public agency legislative body as defined in the Act:

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

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deliberations be conducted openly.

All meetings of the legislative body of a local agency shall be open and public....

The provision for closed meetings under the Brown Act

There is a very important part of the Act that allows for non-public meetings by legislative bodies. These meetings are restricted to specific subjects which include, among others:

- Litigation issues
- Real estate negotiations
- Labor negotiations
- Certain grand jury testimony
- Discussions of public security
- Discussions of public employment ... *to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee ...*

Thus, the Act protects all confidential information acquired during a closed meeting of a covered legislative body. Such information may be made public only if authorized by a majority of the legislative body, in this case the CJUSD Board of Education.

Furthermore, the CJUSD has adopted bylaws and policies that address the issue of confidentiality of closed sessions. CJUSD Board of Education Policy 4119.23 states:

The Governing Board, administration and staff shall maintain the confidentiality of all confidential records until such time as laws, state regulations and/or bylaws of this district permit disclosure.

CJUSD Board of Education Bylaw 9011 states:

In accordance with the law, a Board member shall not disclose confidential information acquired during a closed session to a person not entitled to receive such information, unless a majority of the Board has authorized its disclosure. (Government Code 54963)

The legal requirement for Brown Act training, retraining, and maintenance of training records

Subsequent legislation mandates that members of legislative bodies receive training which reviews the requirements of the Act. *Government Code* Section 53235(b)

... at least two hours of training in general ethics principles and ethics laws relevant to his or her public service every two years.

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In addition, *Government Code Section 53235.2 (a) and (b)* provide that the agency, in this case the CJUSD:

- (a) ... shall maintain records indicating both of the following:
 - (1) *The dates that local officials satisfied the requirements of this article.*
 - (2) *The entity that provided the training.*
- (b) ... shall maintain these records for at least five years after local officials receive the training.

Two of the five members of the CJUSD Board of Education serving in May of 2011 were recorded as having received training which included a review of the Act. Members also received the publication entitled *The Brown Act and Voting at Governing Board Meetings* in addition to follow-up information provided from time to time by their legal counsel and the Santa Barbara County Education Office.

Brown Act violations by attendee(s) of the May 21 and 22, 2011 closed meetings of the CJUSD Board of Education

In accordance with the Brown Act, special closed meetings held on May 21 and 22, 2011 were so noticed to the public on posted agendas. The agendas stated that:

The Board will consider and may act upon any of the following items in closed session. (A) Public Employee(s) interview: Superintendent

It was reported that on May 23, 2011 confidential information from the closed meetings was being discussed in public places. These discussions included specific information that could only have come from the May 21 and 22 closed meetings. The information should not have been in the public domain. Unless authorized by a majority of the CJUSD Board of Education, such public disclosure would constitute a violation of the closed session protections afforded by the Brown Act. The Jury learned that there was no such authorization.

The purpose of the Brown Act is to ensure that the public's business is conducted in public. It is also recognized by the Act that there are circumstances, carefully spelled out, that require confidentiality for the public good. Violations of either the open or closed meeting rules of the Act are unethical, illegal, and contrary to good governance.

FINDINGS AND RECOMMENDATIONS

Finding 1

All requirements of the Ralph M. Brown Act related to the confidentiality of closed sessions fully apply to the Cuyama Joint Unified School District.

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Finding 2

Only two of five members of the current Cuyama Joint Unified School District Board of Education were recorded as having received the required training under *California Government Code 53235.1*.

Finding 3

The confidentiality rules for the May 21 and 22, 2011 closed meetings of the Cuyama Joint Unified School District Board of Education were violated.

Recommendation 1

That all members of the Cuyama Joint Unified School District Board of Education complete a State certified training session covering the Brown Act, as required by *Government Code 53235*.

Recommendation 2

That the Cuyama Joint Unified School District maintain up-to-date records of Brown Act training received by Board members, as required by *Government Code 53235.2*.

Recommendation 3

That the Cuyama Joint Unified School District bylaws be amended to include a requirement to admonish all attendees at each closed session about the requirement to maintain confidentiality of all confidential information acquired in that session.

REQUEST FOR RESPONSE

In accordance with *California Penal Code Section 933.05*, each agency and government body affected by or named in this report is requested to respond in writing to the findings and recommendations in a timely manner. The following are the affected agencies for this report, with the mandated response period for each:

Cuyama Joint Unified School District Board of Education – 90 days

Findings: 1, 2, 3

Recommendations: 1, 2, 3