

THE BAGLEY-KEENE OPEN MEETING ACT

The Do's, the Don'ts and the Legal Requirements

OVERVIEW

- ❑ Policy
- ❑ State Bodies
- ❑ Meetings
- ❑ Notice and Agendas
- ❑ Public Participation
- ❑ Closed Sessions
- ❑ Violations and Remedies

POLICY

“It is the public policy of this state that public agencies exist to aid in the conduct of the people’s business and the proceedings of public agencies be conducted openly so that the public may remain informed.”

- GC Section 11120

POLICY

“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.”

- GC Section 11120

STATE BODIES

“All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.”

-GC 11123(a)

Is This a State Body?

- ❑ The Bagley-Keene Act applies to all “State Bodies”
- ❑ “State Bodies” include:
 - ❑ Multi-Member Bodies
 - ❑ Advisory Bodies
 - ❑ Delegated Bodies

“Multi-Member” Bodies

- Two Part Test:
 - ▣ The body is created by statute or required by law to conduct official meetings
 - ▣ The body consists of two or more members
- Examples: State boards, commissions, committees
 - ▣ Does not matter if body is advisory or decision-making
- Bottom Line: If created by statute, the body is covered by Bagley Keene

“Advisory” Bodies

- Two types of Advisory Bodies are subject to the Act:
 - Advisory Bodies created by the legislature
 - Advisory Bodies having three or more members that are created by formal action of another body
- **Example:** The HBSB creates a two-member subcommittee to advise on a proposed expedited plan review process.
 - Is this subcommittee subject to the requirements of the Bagley Keene Act?

“Advisory” Bodies (Continued)...

- No!
 - ▣ A HBSB subcommittee must have three or more members to be an advisory body subject to the provisions of the Bagley Keene Act.
- Once again:
 - ▣ Advisory subcommittees created by the Board with three or more members are subject to the Act.
 - ▣ Advisory subcommittees created by the Board with only two members are NOT subject to the Act.

“Delegated” Bodies

- “Delegated” bodies are subject to the requirements of the Bagley Keene Act.
 - ▣ Key Question: Does the committee exercise power that has been delegated to it by another body?
 - Example: An executive committee that is given authority to act on behalf of the entire body between meetings
 - Note: No size requirement for delegated bodies
 - ▣ Policy: Avoid an end-run around Bagley Keene requirements

MEETINGS

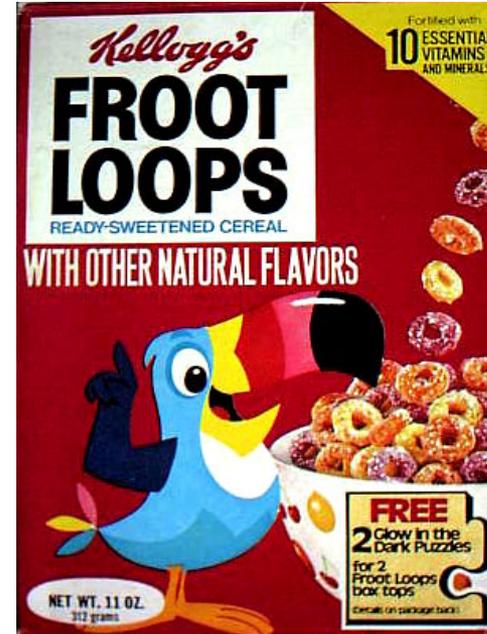
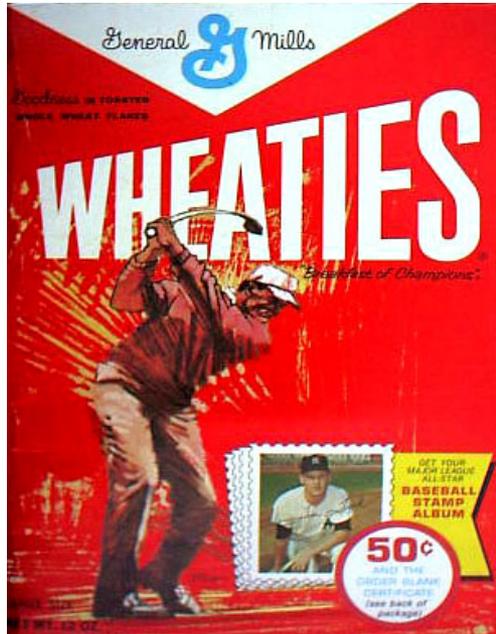
“All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.”

- GC Section 11123(a)

What is a “Meeting?”

- “Any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.” - GC Section 11122.5(a)
- Bagley Keene is not limited to “meetings” where a final decision is made!
 - “HEAR”
 - “DISCUSS”
 - “DELIBERATE”

Serial Meetings



**SERIAL MEETINGS ARE STRICTLY
PROHIBITED!!!**

Serial Meetings

- “Any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited.” - GC Section 11122.5(b)
- Common Types of Serial Meetings:
 - ▣ Daisy Chain
 - ▣ Hub and Spoke
 - ▣ Email

Meetings – Exceptions to the Rule

- Individual Contacts
 - But beware of the serial meeting!
- Social or Ceremonial Occasions
 - So long as business of the state body is not discussed
- Conferences and Retreats
 - So long as they are open to the public and involve subject matter of general interest to the public
- Meetings of Another Legislative Body
 - The meeting must be open to the public and properly noticed

Am I Covered?

- When does Bagley-Keene apply to you as a Committee member?

ALWAYS!!!

- From the time of your appointment until the time you leave the HBSB
- Whenever the topic of discussion concerns HBSB business

Teleconference Meetings

- Agendas must identify each teleconference location and be posted at each location
- Each location must be open and accessible to the public and allow for public participation
 - ▣ Example: Hospital bed
 - ▣ Example: No participation by cell phone in car
- Agenda must provide an opportunity for public comment from each teleconference location
- A member of the state body must be present at each site specified in the notice of meeting
- All votes must be audible and taken by roll call

NOTICE AND AGENDAS

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- GC Section 11123(a)

The Basics – Regular Meetings

- Written notice of meetings must be given to individuals who request notice in writing
- Notice of the meeting and an agenda describing the matters to be discussed must be provided and posted on the internet at least 10 days in advance of meeting
- Notice must include time, date and location of meeting and name, address, and telephone number of a contact person who can provide additional information prior to the meeting
- The notice, agenda and supporting documents are public records and must be made available to public
 - Writings, when distributed to a majority of the body by any person in connection with a matter subject to consideration at a public meeting, are public records that must be made available to the public “upon request without delay.” GC Section 11125.1

Agendas (Continued...)

- Agenda must contain a brief description of the items of business to be transacted or discussed in either open or closed session
 - In general, agenda descriptions need not exceed 20 words per item
 - *Agenda descriptions should provide sufficient information to allow members of the public to decide whether or not to attend the meeting or participate in the agenda item*
 - Closed session items must include reference to specific statutory authority authorizing the closed session

PUBLIC PARTICIPATION

“All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.”

- GC Section 11123(a)

The Public's Place at the Table

- The state body must provide an opportunity for members of the public to directly address the body on each agenda item before or during the state body's discussion or consideration of the item. GC 11125.7(a)
- Reasonable regulations on public comment may be adopted (example: time limits for individual speakers)
- Public criticism of the policies, programs or services of the state body may not be prohibited. GC 11125.7(c)

The Public's Right to Attend

- All meetings must comply with the ADA
- Any person may record the proceedings via audio recorder, video recorder or still motion camera
- No conditions may be set for attendance at or participation in a public meeting
 - ▣ Sign-in not required
 - ▣ Self-identification not required as a prerequisite to speak
 - ▣ No fees may be charged for providing notice

CLOSED SESSIONS

“All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.”

- GC Section 11123(a)

Closed Sessions - Overview

- ❑ Closed Sessions are the exception to the general requirement that meetings be open and public
- ❑ Legislative acknowledgement that certain matters are best discussed in private due to practical, strategic and/or privacy concerns
- ❑ Closed sessions may only be held for specific and limited purposes identified in the Bagley Keene Act
- ❑ Not favored, and narrowly construed

Closed Sessions - Authorized Topics

- Personnel Exception
 - ▣ The hiring, disciplining or termination of an employee
 - ▣ To hear charges or complaints about an employee
- Pending Litigation Exception
 - ▣ State body is already a party to litigation
 - ▣ Under facts and circumstances, state body has significant exposure to litigation
 - ▣ Meeting to discuss the potential initiation of litigation
- Real Property Exception
 - ▣ Advise negotiator(s) regarding price and terms of payment
- Security Exception
 - ▣ Consider matters posing potential threat to safety and security

Closed Sessions - Violations

- Examples of inappropriate closed sessions:
 - Closed sessions that are not properly noticed and identified on the meeting agenda
 - Attendance at a closed session by persons other than those directly involved in the closed session topic as part of their official duties
 - Closed session discussions outside the scope of the noticed and identified topic
 - Voting by secret ballot at an open meeting is construed as an inappropriate closed session

Closed Sessions - Process

- Closed session must be listed on the meeting agenda and properly noticed
 - The agenda must cite the specific statutory authority authorizing the closed session topic
- Prior to the closed session, the state body must convene in open session and publicly disclose the general subject matter to be discussed in closed session
- After the closed session, the state body must reconvene in open session and identify any “reportable actions” taken in closed session

VIOLATIONS AND REMEDIES

Injunctions, overturned decisions, misdemeanor charges and the court of public opinion...



Why should I care?

- Lawsuits
- Depending on the circumstances, the decision of the body may be overturned
 - ▣ An opportunity to cure and correct?
- Injunctions against future violations
- A prevailing plaintiff may recover attorneys fees and costs of litigation
- Criminal misdemeanor penalties
 - ▣ If the member attends a meeting in violation of the Act with the intent to deprive the public of information he or she knows, or has reason to know, the public is entitled to receive

Don't Forget

- ❑ You are representatives of the state, OSHPD and your appointing authorities
- ❑ You are conducting the public's business and expending the public's funds
- ❑ The open meeting laws were adopted with full knowledge that some efficiencies would be lost
- ❑ The court of public opinion – this is about the public's perception of how its business is conducted

In Summary...

- Complicated details, but simple general rule
 - ▣ Do the public's business in public
 - ▣ Give the public notice and an opportunity to participate
- **When in doubt, ask for help!**
 - ▣ OSHPD Legal Office
 - (916) 326-3610
 - Legal.office@oshpd.ca.gov