

Brown Act and Ethics Issues

Chabot-Las Positas Community College District | September 13, 2022

Presented by: Eileen O'Hare-Anderson

LCW LIEBERT CASSIDY WHITMORE

Brown Act and Ethics Issues

Presented By:

Eileen O'Hare-Anderson / September 13, 2022

AGENDA

- The Brown Act – A Refresher
- Ethics Issues
 - Government Code § 1090
 - Political Reform Act
 - Common Law Conflicts

LCW LIEBERT CASSIDY WHITMORE

LCW LIEBERT CASSIDY WHITMORE

© 2022 All rights reserved | www.lcwlegal.com

Brown Act and Ethics Issues

Chabot-Las Positas Community College District | September 13, 2022

Presented by: Eileen O'Hare-Anderson

The Brown Act



What is a Meeting Covered by the Act?

- Congregation of a majority of board members of a legislative body
 - Same time and place
 - To “hear, discuss, or deliberate”
 - On any item within its subject matter jurisdiction
 - Regardless of reaching collective concurrence

Government Code, § 54952.2



LIEBERT CASSIDY WHITMORE

What is a "Meeting?"

A meeting may occur during:

- Informal sessions
- Conferences for discussion of public business
 - Including retreats
- Telephone conversations (i.e. group telephone conference or in consecutive calls)
- Email
- Video/virtual conference

Be Careful – Serial Meetings Prohibited!

- No communication between board members that
 - Includes a majority through email, telephone, intermediaries, etc.
 - To hear, discuss, or deliberate on any item within the subject matter jurisdiction of the district
- Cannot use individual contacts to bypass Brown Act

Government Code, § 54952.2 subd. (b)

Brown Act and Ethics Issues

Chabot-Las Positas Community College District | September 13, 2022

Presented by: Eileen O'Hare-Anderson

Types of Meetings

- Regular meetings
- Special meetings
- Emergency meetings
- Teleconference meetings



LIEBERT CASSIDY WHITMORE

What is a Regular Meeting?

- Meeting held at a time & place
 - Specified by applicable law/rule
- Regularly scheduled time
- Agenda posted at least 72 hours prior
- Posting location freely accessible
 - Also on District website



LIEBERT CASSIDY WHITMORE

What is a Special Meeting?

- Meeting called at *any* time
- By the presiding officer or a majority of the members
- Notice:
 - posted 24 hours before meeting
 - delivered to members and press 24 hours before meeting
 - Date, time, location, brief description
 - May only discuss items on the agenda (Can't add items)
- No special meetings regarding compensation for any local agency executive



LIEBERT CASSIDY WHITMORE

What is an Emergency Meeting?

- Emergency – VERY limited
 - Work stoppage, crippling activity, disaster, or other activity that severely impairs or threatens public health or safety
- Requires majority of governing body
- No written notice required
- Must give notice to media
- Limited closed sessions



LIEBERT CASSIDY WHITMORE

Brown Act and Ethics Issues

Chabot-Las Positas Community College District | September 13, 2022

Presented by: Eileen O'Hare-Anderson

Closed Sessions



Closed Sessions

- Closed sessions are generally prohibited
- Common exceptions for closed session
 - Pending litigation
 - Personnel matters
 - Labor negotiations/relations
 - Student discipline/complaints



LIEBERT CASSIDY WHITMORE

Reporting After Closed Session

- Generally after closed session, board must report in open session
 - Action taken in closed session
 - Vote or abstention of every member
- The nature of the report depends on the type of action taken

Confidentiality of Closed Session

- No disclosure of personal recollection of closed session discussions
- No disclosure of confidential information acquired by being present in closed session
- Sanctions for violations
 - Discipline, referral to grand jury
- Exceptions
 - Informing DA/grand jury re violation
 - Questioning propriety/legality of actions

Brown Act and Ethics Issues

Chabot-Las Positas Community College District | September 13, 2022

Presented by: Eileen O'Hare-Anderson

Open or Closed Session?

- Superintendent/President wants to update Board on a contract grievance arbitration
- Board wants to discuss budget with labor negotiator
- Board wants to meet with legal counsel to understand options for hiring procedures
- Board wants to discuss a board member conflict of interest issue



LIEBERT CASSIDY WHITMORE

Ethical Issues



Brown Act and Ethics Issues

Chabot-Las Positas Community College District | September 13, 2022

Presented by: Eileen O'Hare-Anderson

Conflicts of Interest Analysis

- Government Code § 1090
- The Political Reform Act
- The Common Law

 LIEBERT CASSIDY WHITMORE

Government Code § 1090



 LIEBERT CASSIDY WHITMORE

© 2022 All rights reserved | www.lcwlegal.com

Government Code § 1090 Conflicts

General Rule

- A public officer or employee may not make contracts in which he or she is financially interested

Penalties

- Civil & criminal
 - *People v. Honig*
 - *Thomson v. Call*

Ethics in Practice: The RFP

The district is looking to hire a new CEO. To that end, it has issued an RFP for search firms. Applicants that make it to the first screening will be interviewed by an ad hoc committee of two board members and the retiring CEO. The committee will recommend one firm to the board for final approval.

Ethics in Practice: The RFP

1. Trustee Jones is on the ad hoc committee. Her live-in boyfriend is a headhunter for a firm that submits a proposal. Jones is sure she can remain objective and says nothing when her boyfriend's firm gets an interview.
Problems?
2. What if the boyfriend's firm is recommended to the Board—
May it contract with the firm? Should it?
3. At the meeting, board member Smith provides "full disclosure" that his wife is the firm's vice president and that he is officially "bowing out" of the process.
Does this cure the conflict? May the board delegate the contracting function to cure the conflict?

 LIEBERT CASSIDY WHITMORE

Summary of Operative Legal Principles

Government Code § 1090:

- No public officer may make a contract in which he/she is financially interested
- Even if contract is fair, just, equitable or more advantageous
- No "good faith" defense
- Contract is void and unenforceable
- Insufficient for interested party to abstain
- Appearance of financial conflict prohibited

 LIEBERT CASSIDY WHITMORE

The Political Reform Act



Political Reform Act Conflicts

General Rule

- No public official may:
 - Make/participate/use position to influence decision
 - If knows/should know of disqualifying conflict of interest



LIEBERT CASSIDY WHITMORE

Ethics in Practice: Forming the Interview Panel

In the CEO search, the District is in the process of forming a first-tier interview panel, with representation from the District's various constituent groups and the community. The board president is furious with the FA president for orchestrating a vote of no confidence against her and the Board. She sends the following email to the CEO:

I know we have to include union representation on the panel. Just make sure it ISN'T RONNIE. The last thing we need is her negativity.

Problems?



LIEBERT CASSIDY WHITMORE

Summary of Operative Legal Principles

Political Reform Act

- No public official may:
 - Make/participate/use position to influence a decision
 - If knows/should know of disqualifying financial conflict of interest
- Board member must:
 - Publicly identify the financial interest after announcement of agenda item
 - Leave the room/refrain from participating



LIEBERT CASSIDY WHITMORE

The Common Law



The Common Law Conflict of Interest Rules

Common Law Prohibition:

- Public officials may not use their position for private benefit – both economic and non-economic
- Public officials must act with undivided loyalty
- Public officials must act with the appearance of fairness



LIEBERT CASSIDY WHITMORE

Brown Act and Ethics Issues

Chabot-Las Positas Community College District | September 13, 2022

Presented by: Eileen O'Hare-Anderson

Resources

- The Fair Political Practices Commission
www.fppc.ca.gov
1-866-ASK-FPPC (1-866-275-3772)
- The Attorney General
www.ag.ca.gov

 LIEBERT CASSIDY WHITMORE

Questions from the Board?



 LIEBERT CASSIDY WHITMORE

© 2022 All rights reserved | www.lcwlegal.com

Brown Act and Ethics Issues

Chabot-Las Positas Community College District | September 13, 2022

Presented by: Eileen O'Hare-Anderson

Thank You!

Eileen O'Hare-Anderson

Partner | Fresno Office

559.256.7806 | eanderson@lcwlegal.com

www.lcwlegal.com/our-people/eileen-ohare-anderson



LIEBERT CASSIDY WHITMORE