

January 29, 2013

Mazie Brewington
Vice President, Administrative Services
Antelope Valley Community College District
3041 West Avenue K
Lancaster, California 93536

Re: *Opinion Regarding Application of Brown Act to Budget Committee and Strategic Planning Committee*
Client-Matter: AN060/001

Dear Ms. Brewington:

You have asked us to provide you with our opinion regarding whether the District's Strategic Planning and Budget Council is a "Brown Act Committee" subject to the strictures of the Ralph M. Brown Act.

Question

Does the Ralph M. Brown Act, found at Government Code section 54950 et seq., apply to the District's Strategic Planning and Budget Council?

Short Answer

The District's Strategic Planning and Budget Council is not subject to the Brown Act, but is subject to certain agenda requirements set out in Administrative Procedure 2510.

Factual Background

The District's Strategic Planning and Budget Council (Council) is a Committee established by the President/Superintendent pursuant to Administrative Procedure 3250. The Council provides for staff and student involvement in the strategic planning and budgeting process as required by the accreditation standards. The Committee makes recommendations to the President/Superintendent and the Vice President of Administrative Services regarding budgeting priorities. In turn, the budget is forwarded to the Board of Trustees. Administrative Procedure 2510 establishes the membership of the Council. No Board members are on the Council.

Discussion

A. Requirements of the Brown Act

We begin by looking at the general requirement of the Brown Act for local agencies to hold their meetings open to the public. This requirement is found in Government Code section 54953, subdivision (a):

“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.”

We next look to Government Code section 54952, which defines a “legislative body” of a local agency as follows:

“As used in this chapter, ‘legislative body’ means:

“(a)”

“(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body....”

Accordingly, if the Council is “created by charter, ordinance, resolution, or formal action of a legislative body” as defined in the Brown Act, it must comply with the requirements of the Brown Act.

B. The Council is not “Created by Formal Action of the Board of Trustees.”

A commission, committee, board, or other body of a local agency is “created by” charter, ordinance, resolution or other formal action of a legislative body if the legislative body “ ‘played a role’ in bringing ... ‘into existence’ ” the commission, committee, board, or other body. (*Epstein v. Hollywood Entertainment District II Bus. Improvement Dist.* (2001) 87 Cal.App.4th 862, 864, 104 Cal.Rptr.2d 857 (*Epstein*), quoting *International Longshoremen's, supra*, 69 Cal.App.4th at p. 295, 81 Cal.Rptr.2d 456; see also *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354, 358–363, 36 Cal.Rptr.3d 47.)

Here, the President/Superintendent adopted Administrative Procedure 3250. The Superintendent/President creates Administrative Procedures setting out the method the administration will use to implement Board Policy. Administrative Procedures must be consistent with the intent of Board Policy. The Superintendent/President may revise administrative procedures as necessary. (Board Policy 2410.)

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The Council was created as part of the action in adopting Administrative Procedure 3250. Thus, the President/Superintendent created the Council. The Board did not take action or play a role in bringing the Council into existence. For these reasons, we conclude that the Strategic Planning and Budget Council is not a "legislative body" within the meaning of the Brown Act and does not need to meet the requirements of the Brown Act.

C. The Strategic Planning and Budget Council Must Post its Agenda Pursuant to Administrative Procedure 2510.

The Strategic Planning and Budget Council is defined as a "shared governance council" in Administrative Procedure 2510. Pursuant to Administrative Procedure 2510, participatory governance committees must abide by "Participatory Governance Committee Operating Procedures" in Appendix I. These procedures specify that the Council must circulate a call for agenda items five days before a meeting and must post its agenda two days before a meeting. There are other requirements for posting draft minutes and similar issues. These are internal requirements of the District, which apply to the Council.

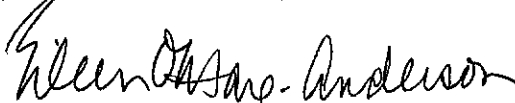
Conclusion

Because the Strategic Planning and Budget Council is not an advisory committee created by formal action of the Board of Trustees, we conclude it is not subject to the Brown Act. However, the Council is subject to the requirements of Administrative Procedure 2510, which include the requirement to post an agenda two days before a meeting.

Please do not hesitate to contact me if you have additional questions about any of the matters discussed in this opinion. Thank you for the opportunity to assist you.

Very truly yours,

LIEBERT CASSIDY WHITMORE


Eileen O'Hare-Anderson

EOA/ks