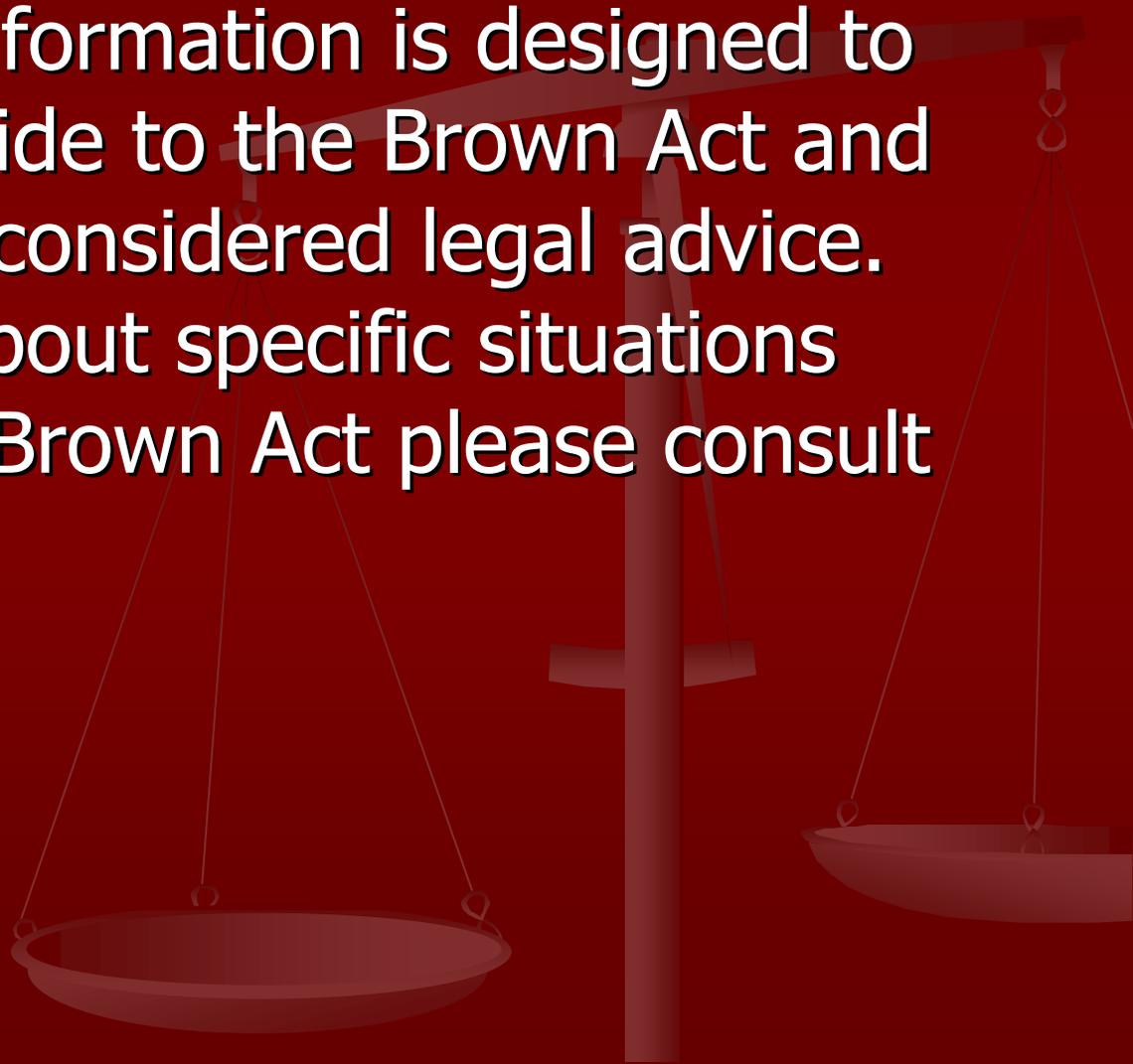


Understanding the Ralph M. Brown Act

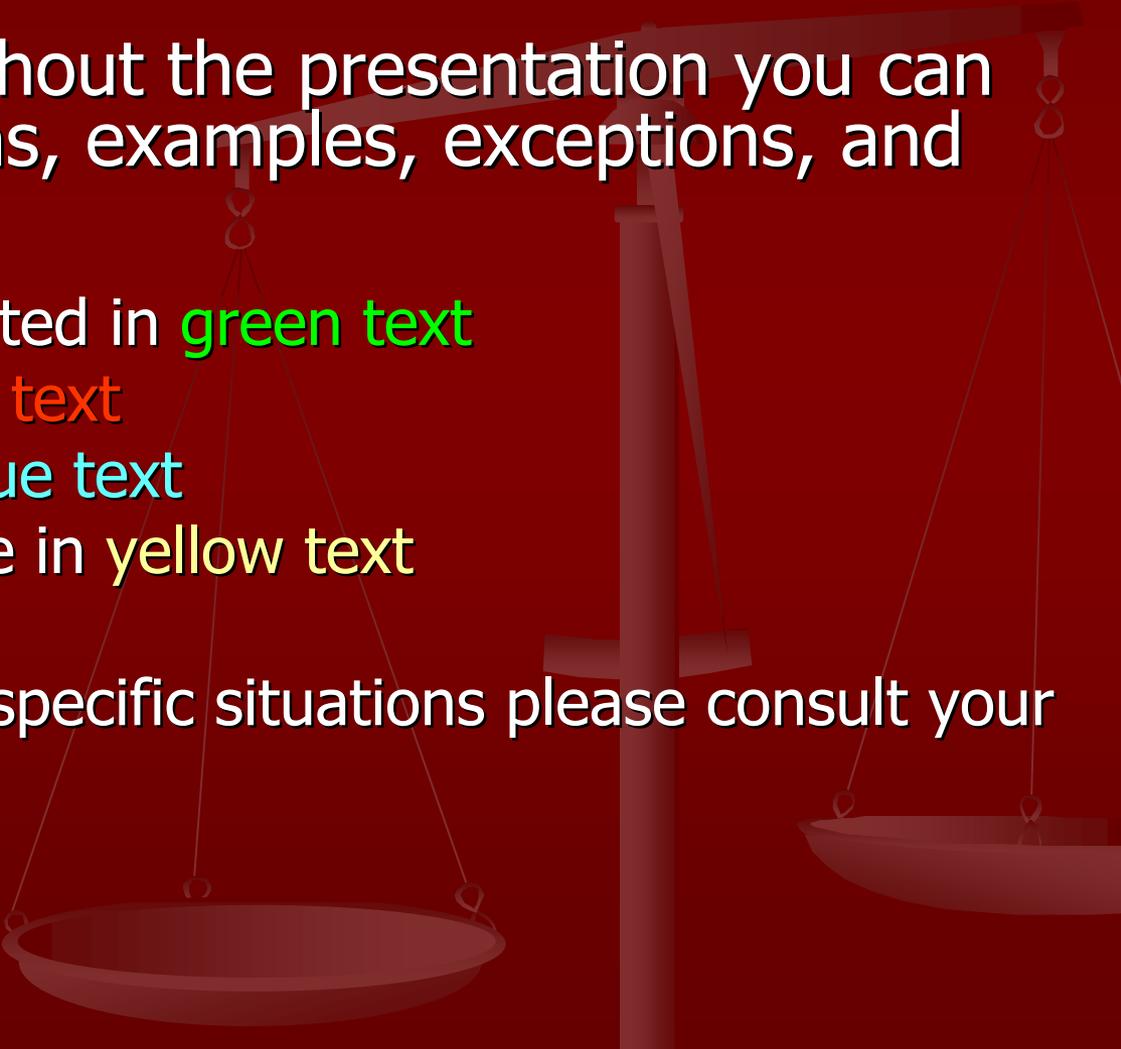
A California RCD Leadership Academy Production

Disclaimer

The following information is designed to be a general guide to the Brown Act and should NOT be considered legal advice. For questions about specific situations concerning the Brown Act please consult an attorney.



Today's Presentation

- Please note: throughout the presentation you can easily find definitions, examples, exceptions, and important points:
 - Definitions are denoted in **green text**
 - Examples are in **red text**
 - Exceptions are in **blue text**
 - Important points are in **yellow text**
 - *For questions about specific situations please consult your attorney
- 

Open and Public



Ralph M. Brown 1959

Photo courtesy The Modesto Bee

"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."

California Government Code §54950



Meetings

Brown Act **Definition**: A meeting is a gathering of a majority of members to hear or discuss any item of district business or potential business. A meeting under the brown act does not have to include action. It can simply be the exchange of information.

There are three types of meetings:

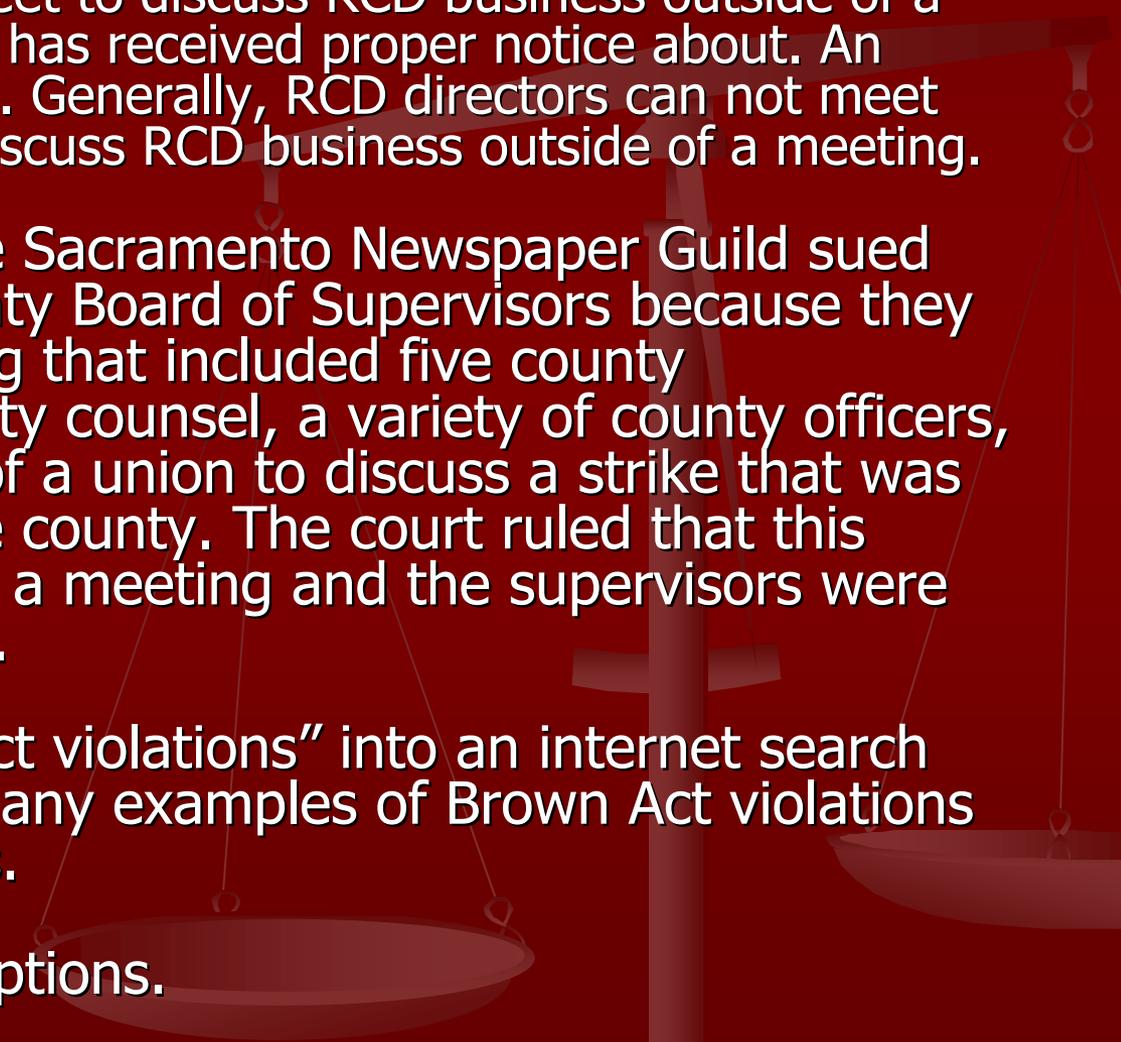
- Regular - regularly scheduled board meetings. The RCD must formally set the time and place for their regular meetings in their bylaws, by resolution or some similar formal rule.
- Special – meetings called by the agreement of a majority of the board to discuss a specific issue (ex. Project planning)
- Emergency – meetings held, as allowed in Section 54956.5 of the Act, to deal with emergency situations

Collective Briefings

- Collective briefings are **not** permitted. Any briefings involving the majority of the directors must be open to the public and satisfy the notice and agenda requirements specified in the Act.
- A unilateral written communication to a legislative body such as an informational or advisory memorandum does not violate the brown act. The memo may, however, be public record.

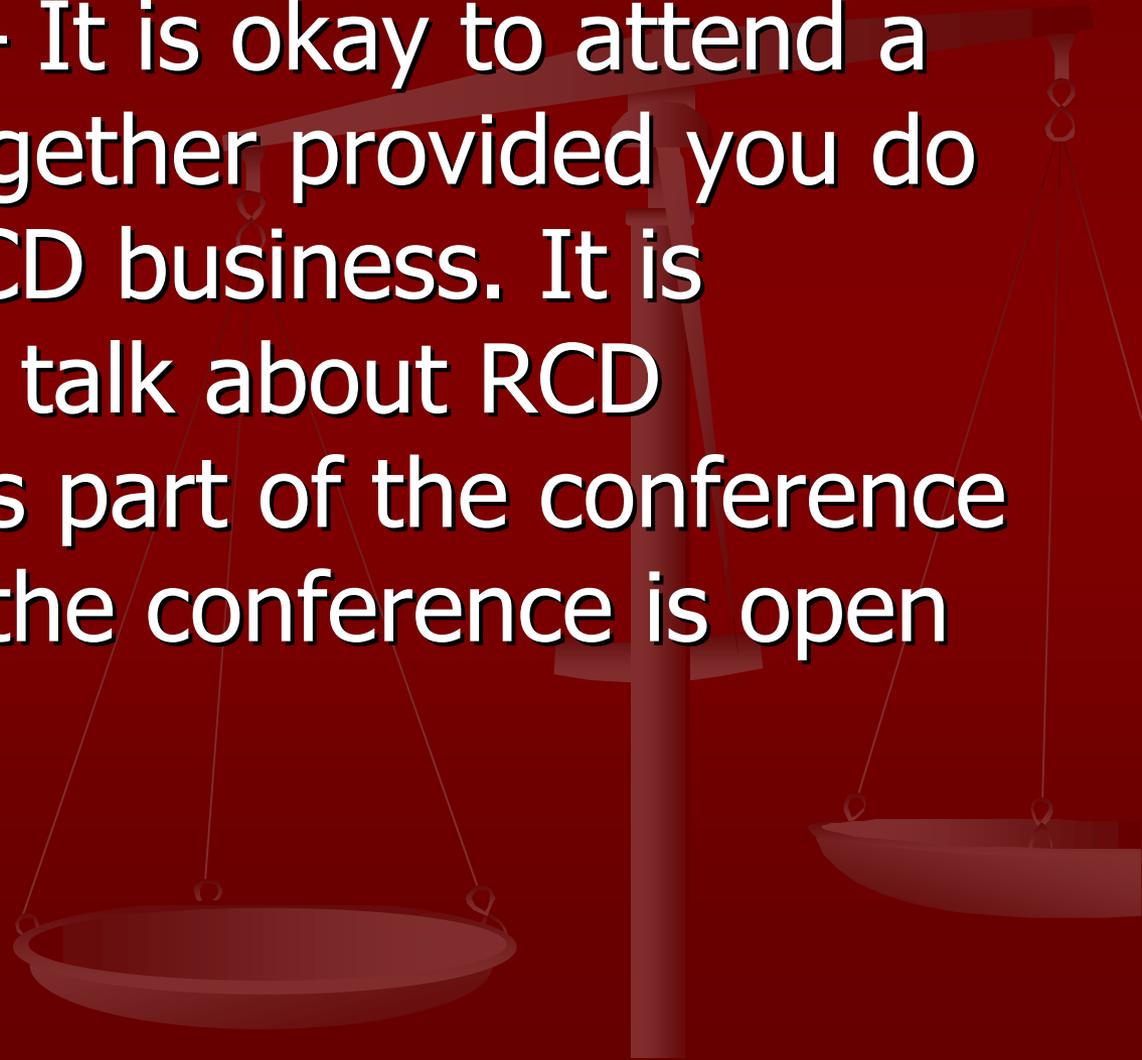


More About Meetings

- The Board CAN NOT meet to discuss RCD business outside of a meeting that the public has received proper notice about. An agenda must be posted. Generally, RCD directors can not meet for coffee or lunch to discuss RCD business outside of a meeting.
 - **Example:** In 1968 the Sacramento Newspaper Guild sued the Sacramento County Board of Supervisors because they held a lunch gathering that included five county supervisors, the county counsel, a variety of county officers, and representatives of a union to discuss a strike that was underway against the county. The court ruled that this gathering constituted a meeting and the supervisors were in violation of the act.
 - If you type “Brown Act violations” into an internet search engine you will get many examples of Brown Act violations or potential violations.
 - There are a few exceptions.
- 

Meeting Exceptions

- Conferences – It is okay to attend a conference together provided you do not discuss RCD business. It is permissible to talk about RCD business if it is part of the conference program and the conference is open to the public.



More Exceptions

- Community Meetings – It is okay to attend community meetings together. **For example**, if there is a meeting to discuss building a new school in your district it is okay if all RCD board members attend.
- Other Legislative Bodies – **For example** a meeting of the County Board of Supervisors.
- Social or Ceremonial Events – There is nothing in the Act to prohibit directors from attending purely social or ceremonial gathering. **For example**, funerals, weddings, etc.

The Bottom Line: With all of these exceptions, the board **must** avoid talking about RCD business while they are at the event. The only time directors can discuss RCD Business outside a meeting is if the business is part of the other organizations agenda and the agenda has been properly posted. **For example**, if the Board of Supervisors requested that the RCD attend their meeting to discuss RCD business and the BOS had properly posted notice of the meeting.

Special Meetings

Conditions for a special meeting:

- Written notice must be delivered to each member of the legislative body and to each local newspaper of general circulation, and radio or television station which has requested such notice in writing. (§54956)
- The written notice must be delivered and posted at least 24 hours prior to the special meeting in a site freely accessible to the public. The notice must include the time and place of the meeting, and a brief description of all business to be transacted or discussed. (§54956)
- The RCD cannot consider business that is not mentioned in the notice.
- Notice is required even if no action is taken at the meeting.
- As with regular meetings, every special meeting must allow for a public comment period (§54954.3(b))

Emergency Meetings



- Extremely rare
- Only call an emergency meeting if there is in fact an emergency
- An emergency is **defined as**:
 - a crippling activity, work stoppage or other activity which severely impairs public health, safety or both. (§54956.5(a)(1))
 - Example:** a levee that was part of an RCD revegetation project is failing as a result of the project.
- Generally emergency meetings can not include closed sessions (§54956.5)
 - **Exception:** If the RCD is meeting with law enforcement officials and at least 2/3rds of the board determines that it is necessary.
- Anyone who has requested notice of meetings must be called one hour before the meeting.
- In the event the phones are not working the notice requirement is waived.

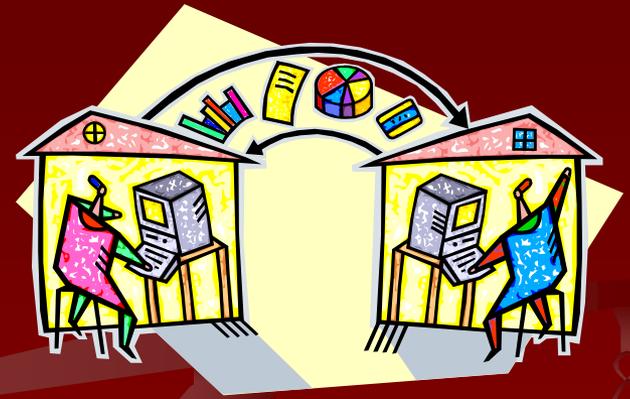
Emergency Meetings Cont.

- After an emergency meeting the minutes, a list of people who received notice, roll call votes, and any actions taken must be posted in a freely accessible public location for at least 10 days. (§54956.5(e).)
- In the case of a dire emergency, the RCD would only need to provide notice at or near the time that notice is provided to the members of the body. (§ 54956.5(b).)
- **Definition:** A dire emergency is a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body. (§ 54956.5(a)(2).)
- It is **extremely** unlikely this would ever apply to an RCD

Subcommittees

- The Brown Act also applies to meetings of all:
 - Standing committees – a committee that has continuing jurisdiction over a particular topic §54952(b) **For example:** Budgets, personnel, etc.
 - Advisory committees that include a majority of the board and are not standing committees
 - Advisory committees that are standing committees (regardless of the number of directors)
- **Exception:** The Brown Act does not apply to a subcommittee that is made up of less than a majority of directors, is an advisory committee AND is not a standing committee

Serial Meetings



- Serial meetings are not allowed
- Serial meetings occur when a majority of the directors have communicated about an issue and have developed a collective concurrence.
- A collective concurrence is developed when:
 - Directors have either directly or indirectly heard each others opinion on a topic enough to collectively develop or begin to develop an agreement on an issue.

Types of Serial Meetings

- A daisy chain meeting:
 - **Example:** When director Bob calls director Bill to talk about a vernal pools project then Bill calls director John to talk about it and finally John calls director Fred. A majority of the directors have talked about the topic and a collective concurrence has been established.
- Hub and spoke meeting:
 - **Example:** For instance, if employee Terri calls director John and discusses an RCD issue to get his opinion with him then she calls director Robert then calls director Bill and then calls director Tim telling each what the other has said, a majority of the RCD has indirectly discussed the topic without public notice and is therefore in violation of the Brown Act.

E-mail

§5492.2(b): Except as authorized pursuant to §54953, any use of direct communication, personal intermediaries, or **technological devices** that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited

The attorney general has issued an opinion stating that this section of the act applies to email.

The Attorney General's opinion regarding e-mail

- In 2001 the CA Attorney General issued an opinion regarding the use of email. (Opinion #00-906, 2001)
- The opinion concluded: A majority of the board members of a local public agency may not e-mail each other to develop a collective concurrence as to action to be taken by the board without violating the Ralph M. Brown Act.
- Even if the emails are made public they would still be a violation of the Act because the board would be depriving the public of the deliberative process.
- The opinion also states, "The term 'deliberation' has been broadly construed to connote 'not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision.' [Citation.]" (*Rowen v. Santa Clara Unified School Dist.*, (1981) 121 Cal.App.3d 231, 234; see *Roberts v. City of Palmdale*, *supra*, 5 Cal.4th at p. 376.)
- You can find the opinion at:
<http://ag.ca.gov/opinions/published/00-906.pdf>

Meeting Agendas

All meetings of the board of directors must have a properly prepared and posted agenda



Meeting Agendas

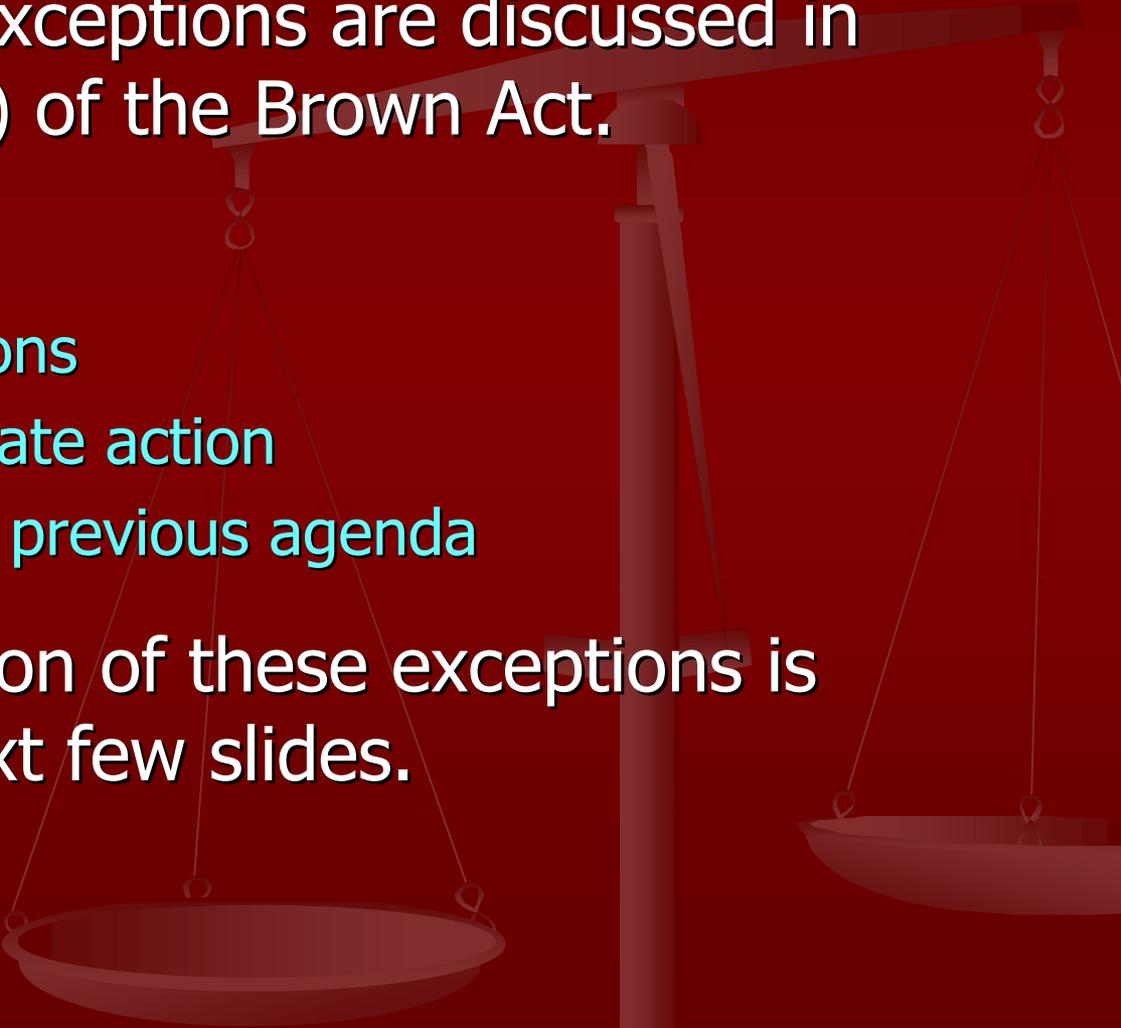
➤ Requirements:

- Posting requirements – Agendas must be posted at least 72 hours before the regular meeting in a location freely accessible to the members of the public.
- Content requirements – The agenda should contain a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session.
- Agendas must have enough information to enable members of the general public to determine the general nature of subject matter of each agenda item to be discussed.

➤ The 1994 revision specified that the brief description generally need not exceed 20 words.

****The board can not discuss or take action on any item that is not on the agenda. However, there can be responses to questions from the public or other limited routine comments. There are three action exceptions.

The Three Action Exceptions



- The three action exceptions are discussed in section 54954.2(b) of the Brown Act.
- They are:
 - Emergency situations
 - A need for immediate action
 - Items posted on a previous agenda
- A detailed discussion of these exceptions is included in the next few slides.

Action Exceptions

Emergency Situations

- Action can be taken on an item that is not on the agenda if there is an emergency situation
- An Emergency situation exists if the legislative body determines a work stoppage, crippling disaster, or other activity severely impairs public health, safety or both.
- This exception would generally only apply to RCDs in **very rare** occasions.
 - **An example** might be if the Merced River floods (like in 97) and NRCS offers EWP money to stabilize the river banks but they need a local sponsor. If the flood happened right before the regular board meeting after the agenda had been posted and a director brings up the topic of the RCD acting as the local sponsor for the EWP money for a vote, it would be allowable for the board to take action.

Action Exceptions

A Need For Immediate Action

- Action can be taken on an item that is not on the agenda if the board determines by a 2/3rds vote that there is a need for immediate action that can't reasonably wait until the next meeting. (§54954.2(b)(2))
- Requirements to use this exception:
 - The issue must have come to the attention of the board after the agenda had been posted.
 - The board must openly discuss the issue during the meeting.
- **Example-** The day before the RCD board meeting a director finds a grant opportunity that is the perfect match for a long planned RCD project. The grant proposal is due two days after the regular meeting. The director is willing to put in the extra effort to complete the proposal, however, he needs the approval of the board. In this case the director could bring the proposal up at the meeting for the directors to vote on whether or not to pursue this opportunity. The vote would not be a violation of the brown act.

Action Exceptions

The third action exception

- The item appeared on a previous agenda and was continued from a meeting held not more than five days earlier.
- **Example:** An RCD can not come to a resolution on a topic at their regularly scheduled board meeting. So, they agree to continue the discussion on the topic at their already planned budget meeting the next day.

Closed Sessions

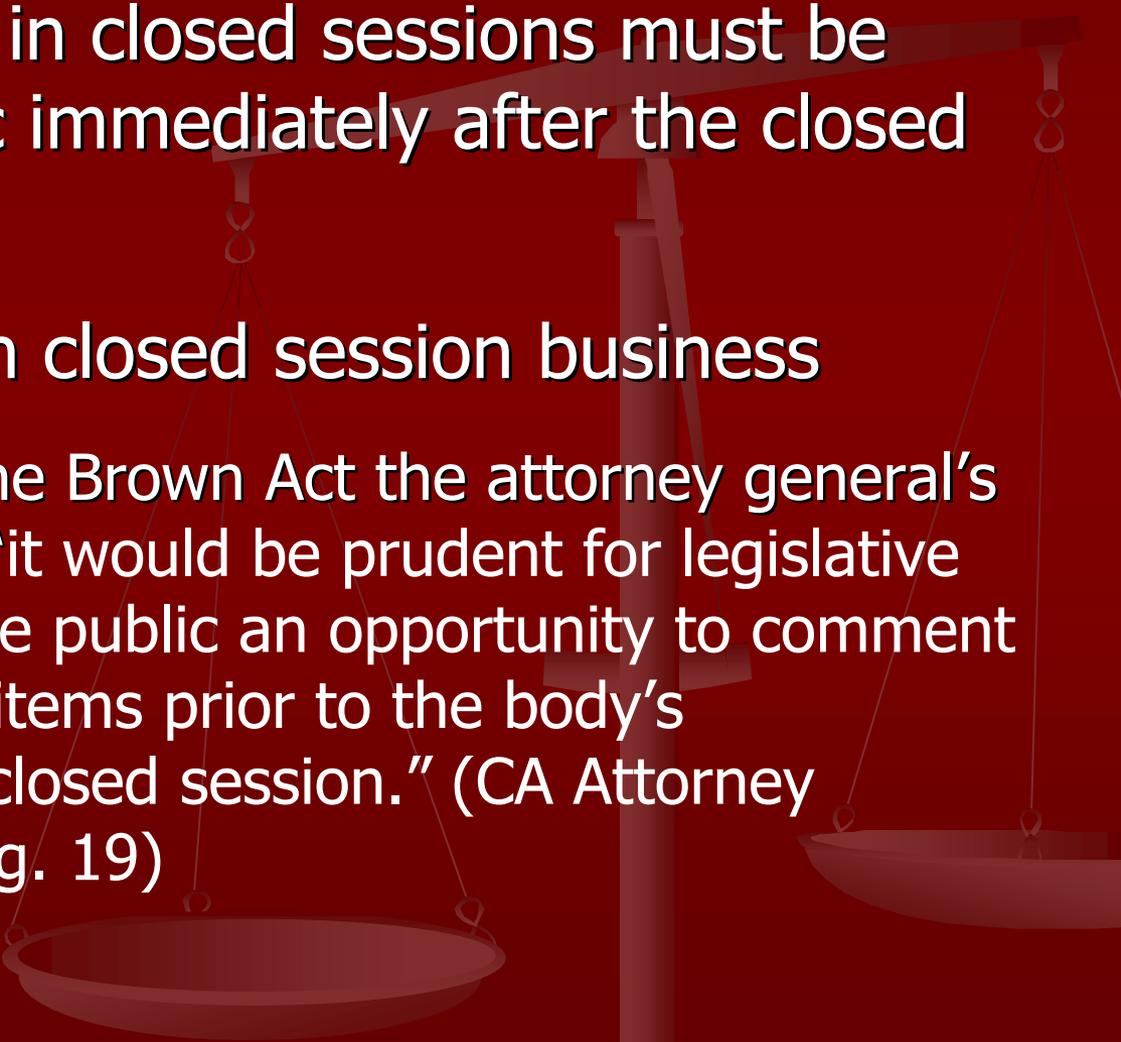


Without specific authority in the Brown Act for a closed session, all district business must be discussed in public

Closed Session Requirements

- The Attorney General has stated, "If a specific statutory exception authorizing a closed session cannot be found, the matter must be conducted in public regardless of its sensitivity." (§ 54962 [of CA government code]; *Rowen v. Santa Clara Unified School District* (1981) 121 Cal.App.3d 231, 234; 68 Ops.Cal.Atty.Gen. 34, 41-42 (1985).)
- Items to be discussed in closed sessions must be on the agenda and must be orally announced before going into closed session. The agenda must include the reason for the closed and a brief description. It is a good idea to cite the section of the Brown Act that allows for the closed session. Section 54954.5 of the Act provides a model format for closed session agendas.
- Meetings are either open or closed. The RCD can't invite only certain members of the public and exclude others. Closed sessions should include only RCD directors plus any additional support staff required, legal counsel, a supervisor involved in a disciplinary matter, consultants, a labor negotiator etc.

More Closed Session Requirements

- Decisions reached in closed sessions must be discussed in public immediately after the closed session.
 - Public comment on closed session business
 - In their guide to the Brown Act the attorney general's office has stated, "it would be prudent for legislative bodies to afford the public an opportunity to comment on closed-session items prior to the body's adjournment into closed session." (CA Attorney General's Office, pg. 19)
- 

Closed Sessions are allowed for: Personnel Matters (§54957)

Including:

- Employee appointment or employment
- Evaluation of employee performance
- Employee discipline or dismissal
- Complaints against employees

Closed Sessions are allowed for:

Pending Litigation §54956.9

Including:

- Existing Litigation
- Threatened or Anticipated Litigation
- Potential Litigation

Note: The Attorney General has stated that the RCD's lawyer must be present during the closed session.

(71 Ops. Cal. Atty. Gen. 96, 104-105 (1988).)

Closed Sessions are allowed for: Real Estate Negotiations

(§54956.8)



- If you are meeting with your negotiator to discuss the purchase, sale, exchange or lease of real property.
- Before going into closed session the RCD must name it's negotiator (it can be someone from the district), describe the property, and name the parties the district is negotiating with.

Closed Sessions are allowed for:

Labor Negotiations (§54957.6)

- Closed sessions are permitted for some aspects of labor negotiations.
(not likely to apply to RCDs)



Closed Session Minute Book (§54957.2 (a))

- The RCD may designate a clerk to take notes and enter them into a minute book during closed sessions.
- The minute book is **not** public record and must be kept confidential.
- The book is exempt from public disclosure under the Ca Public Records Act in Chapter 3.5 starting with §6250 of Division 7 of Title 1.

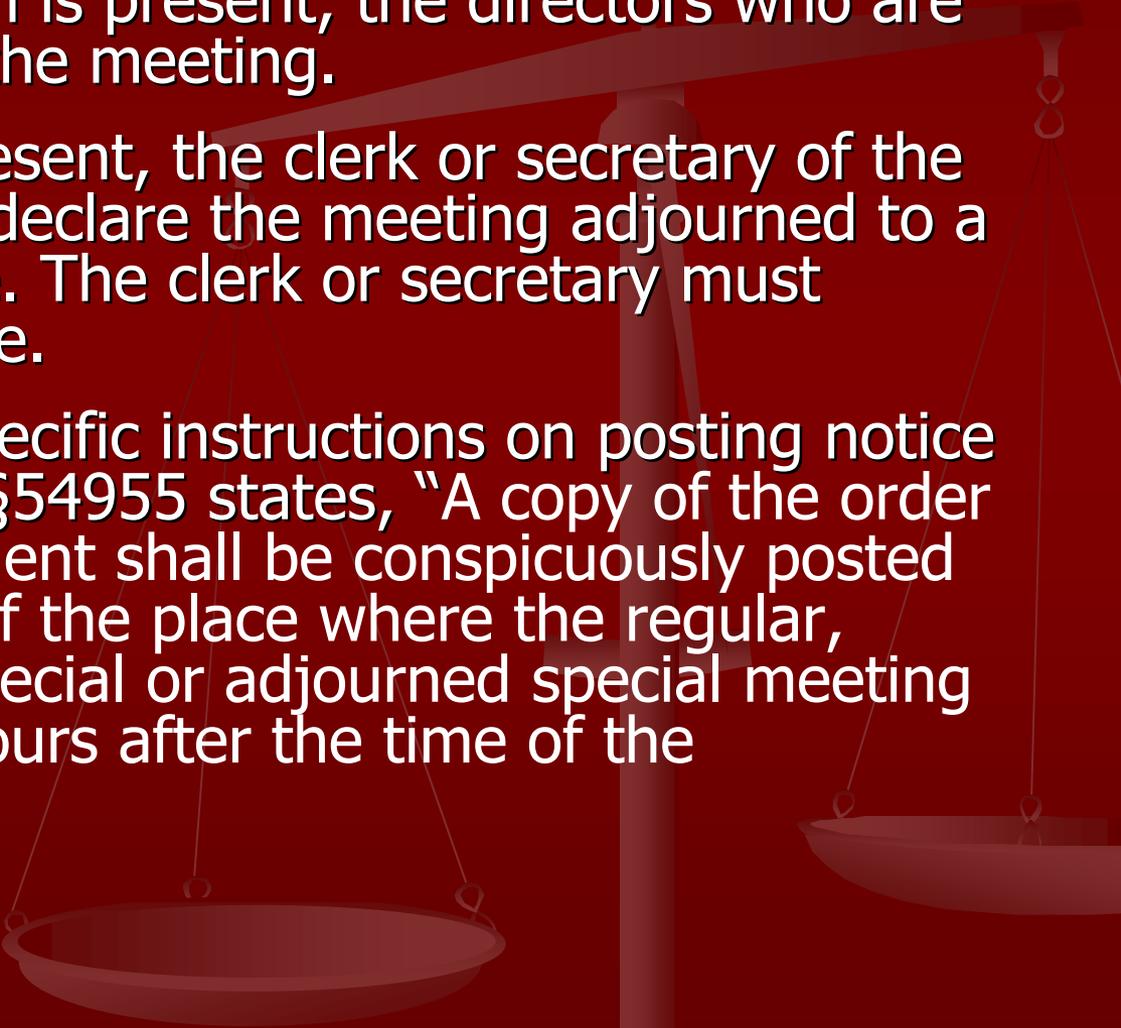


Adjournments and Continuances

- §54955 of the Act allows local agencies to adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment.

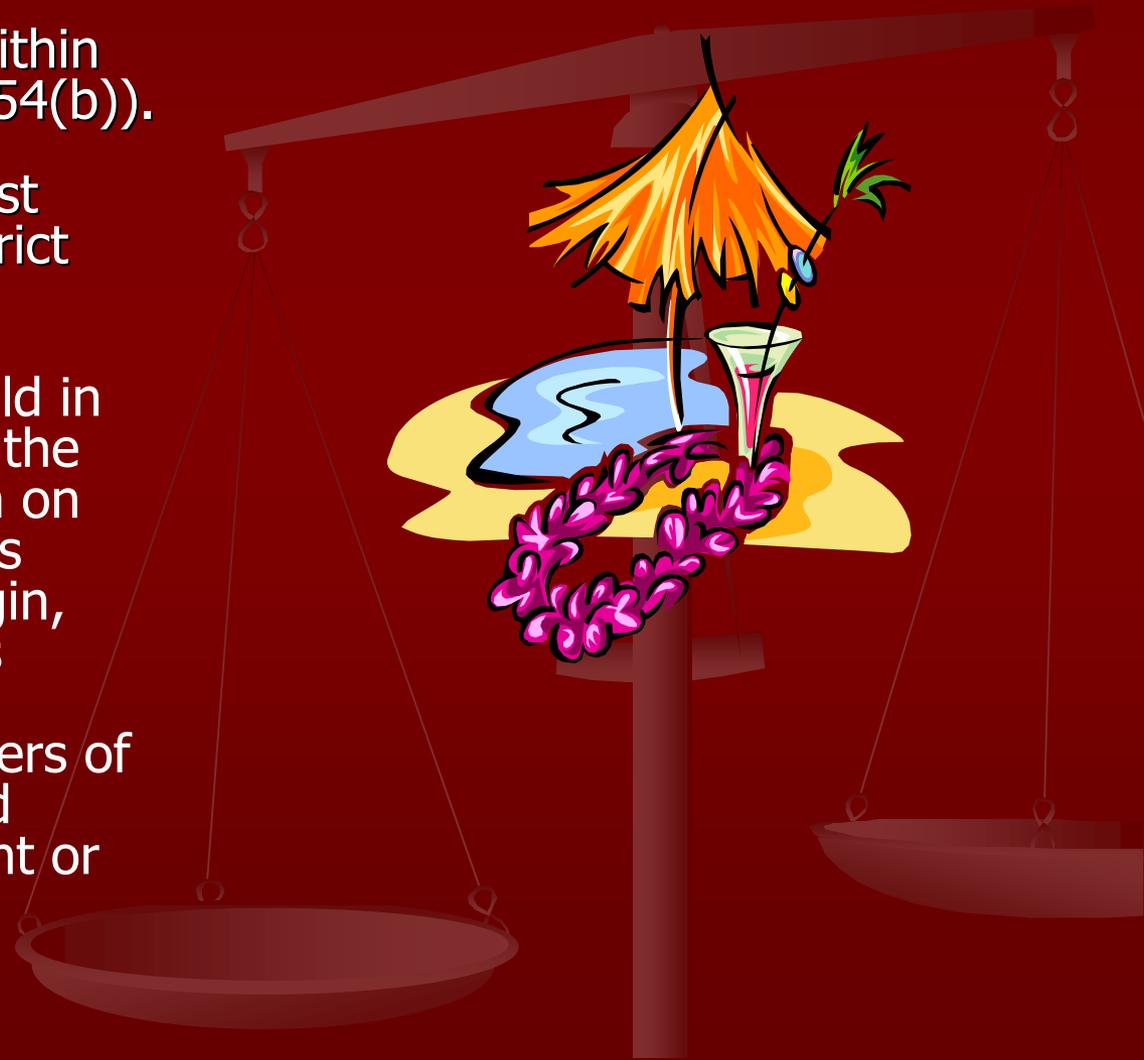


More on Adjournments and Continuances

- If less than a quorum is present, the directors who are present can adjourn the meeting.
 - If no directors are present, the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place. The clerk or secretary must create a written notice.
 - The Act gives very specific instructions on posting notice of the adjournment. §54955 states, "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".
- 

Location of Meetings

- With a few exceptions, meetings must be held within district boundaries (§54954(b)).
- Tropical locations are most likely not allowed for district meetings
- A meeting may not be held in any facility that prohibits the admittance of any person on the basis of race, religious creed, color, national origin, ancestry, or sex; which is inaccessible to disabled persons; or where members of the public may not attend without making a payment or purchase.



The Location Exceptions

- Meetings can be held outside district boundaries for the following reasons:
 - To comply with state or federal law or attend a judicial or administrative proceeding to which the agency is a party. §54954(b)(1)
 - To inspect real property that can not be easily brought within the district boundaries. The meeting discussion is limited to the property the district is inspecting. §54954(b)(2)
 - To participate as a body in a multi-agency meeting held in another jurisdiction also participating in the meeting. However, the meeting must take place within the boundaries of one of the agencies involved in the meeting. §54954(b)(3)
 - If the district does not have a facility within their boundaries, they can meet in the closest facility or at the principal office of the district if the office is located outside the district boundaries. §54954(b)(4)

Location Exceptions Continued

- To meet with elected or appointed federal or state officials when a local meeting would be impractical. However, discussion must be limited to a legislative or regulatory issue affecting the district that the federal or state officials have jurisdiction over. §54954(b)(5)
- To meet at or nearby a facility owned by the district that is outside district boundaries, if the topic of the meeting is limited to items related directly to that facility. §54954(b)(6)
- To visit the office of the district's legal counsel for a closed session on pending litigation when doing so would reduce legal fees or costs. §54954(b)(7)
- Finally, if there is an emergency that makes the regular meeting location unsafe, the meetings can be held at a location designated by the president or his/her designee in a notice to the local media that have requested notice, by the fastest method of communication available at the time. §54954(e)

Teleconferences



- 54953(b)(1) permits the use of teleconferencing.
- Requirements for teleconferences include:
 - Teleconferences must comply with the rest of the Act
 - All votes taken during a teleconference must be taken by roll call.
 - Agendas must be posted at all teleconference locations.
 - Each teleconference location must be identified in the agenda.
 - Each teleconference location must be accessible to the public.
 - At least a quorum of the board must participate from locations within the district boundaries.
 - The agenda must provide for public comment at each teleconference location.

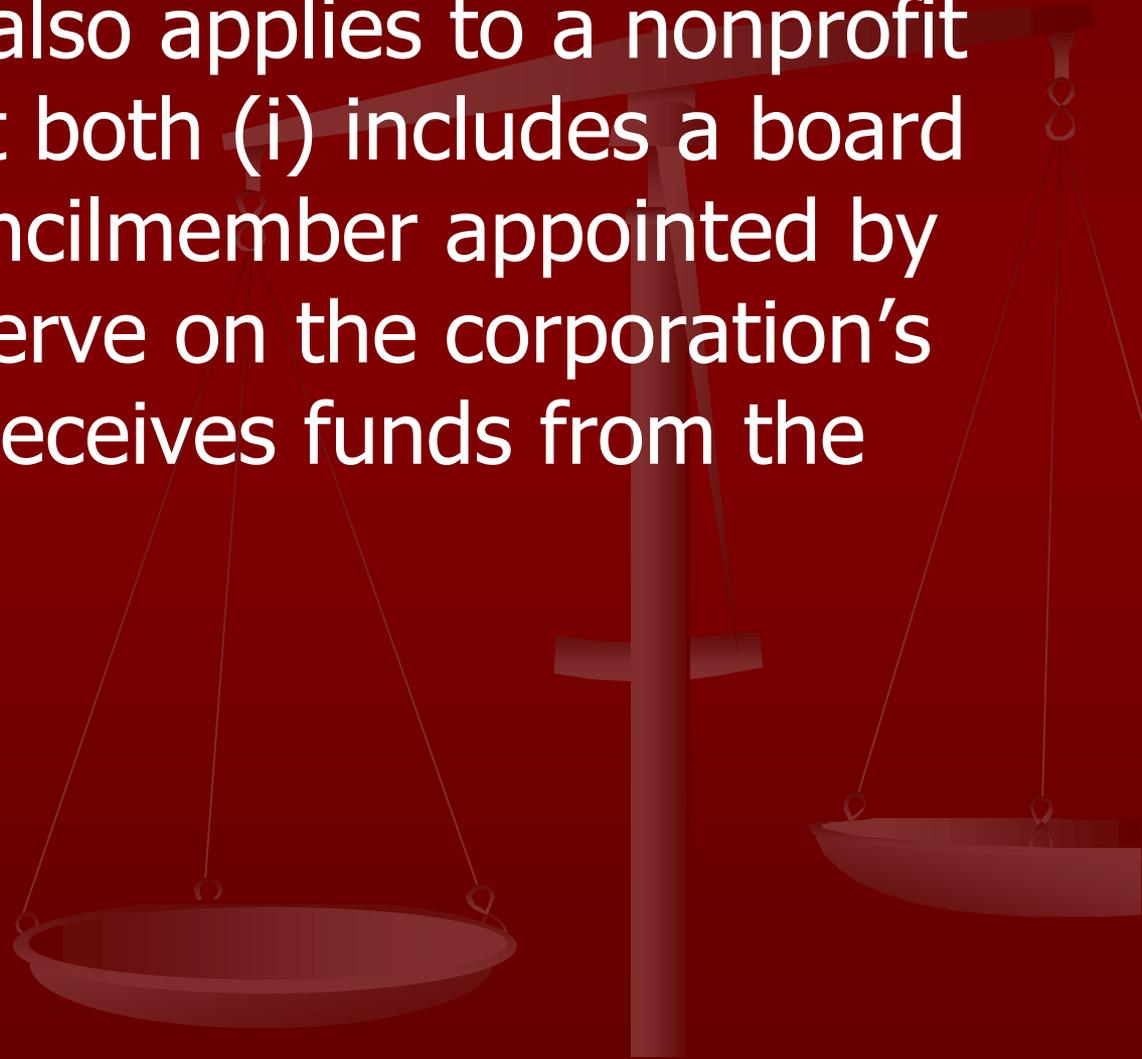
Disruptive Attendees

- The district **MUST** allow for negative public comment however, §54957.9 does address willful interruptions of meetings.
- The Act states that the members of the legislative body conducting the meeting may clear the room and continue the meeting. However, all press and other members of the public who were not part of the interruption must be allowed to stay.



Special Situations

- The Brown Act also applies to a nonprofit corporation that both (i) includes a board member or councilmember appointed by the agency to serve on the corporation's board, and (ii) receives funds from the district or city.



For more information

- View the CA Attorney General's publication at: http://www.ag.ca.gov/publications/2003_Intro_BrownAct.pdf
- Attorney General's Opinion Regarding the Use of email: <http://ag.ca.gov/opinions/published/00-906.pdf>
- Text of the Brown Act: <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=6815592595+1+0+0&WAISAction=retrieve>
- Ask your attorney!