

Redistricting Commission

The Brown Act and Social Media

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Review of The Ralph M. Brown Act

(Cal. Gov't Code §§ 54950 – 54963)

- “It is the intent of the law that [the actions of public agencies] be taken openly and that their deliberations be conducted openly.” Gov't Code §54950.

Core Principles of The Brown Act

- All meetings of a legislative body of a local agency shall be open and public.
- All persons shall be permitted to attend and participate in the meetings.

What is a “Meeting”?

- “Meeting” includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body. Gov’t Code § 54952.2(a).



Serial Meetings and Social Media

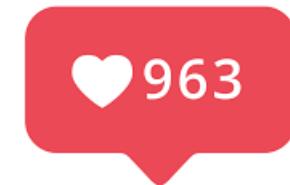
- “A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.” Cal. Gov’t Code § 54952.2(b)(1).
 - A public official commenting or liking another public official’s social media post could, unintentionally, cause a serial meeting to occur, within a matter of seconds.

Assembly Bill 992 & Social Media Communications

- AB 992 added language to the Brown Act to permit certain social media communications to clarify that the Brown Act does not prohibit:
 - . . . a member of the legislative body from engaging in separate conversations or communications on . . . social media . . . to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body provided that a majority of the members of the legislative body do not use the . . . social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body . . . Gov't Code § 54952.2(b)(3)(A).

“Discuss Among Themselves” and Social Media

- Communications made, posted, or shared on an internet-based social media platform between members of a legislative body, including comments or use of digital icons that express reactions to communications made by other members of the legislative body. Gov’t Code §54952.2(b)(3)(B)(i)



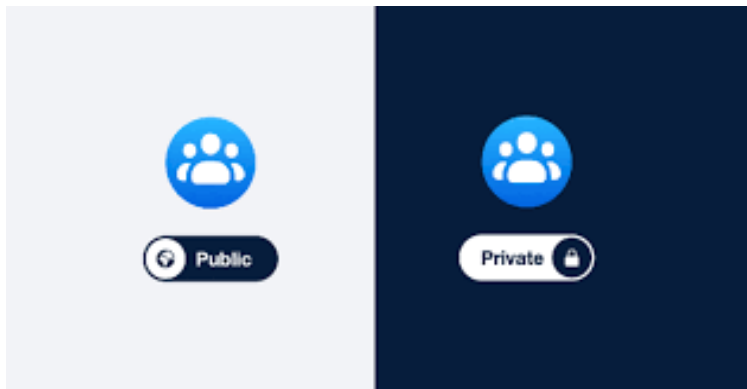
Use of “Likes” and “Dislikes” in Social Media

- Members of a legislative body cannot respond directly to communications or comments posted or shared by another member of the body, including the use of digital icons expressing reactions, such as the “Like” button on Facebook because a serial meeting may inadvertently occur.



Open and Accessible Requirements

- Social media platforms used to communicate on matters within the legislative body's jurisdiction should be open and accessible to the public, free of charge, and do not require approval for participation from the social media site or a third party. Gov't Code §54952.2(b)(3)(B)(iii)
 - Nextdoor is not open and accessible because it requires approval to join.
 - Private groups on Facebook that require approval of a moderator to join are not open and accessible.



What About Other Forms of Communications?



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- AB 992 applies only to communications about public business on social media.
- AB 992 does not apply to other forms of communications, such as texts or emails.
 - However, communications via text, emails, etc. about public business by members of a legislative body could still violate the Brown Act or cause a serial meeting to occur.

Other Social Media Considerations

- Use caution when blocking individuals from a public account.
- Removing posts should not be based on the viewpoint expressed by the user.
- Court guidance suggests the removal of offensive posts or temporary blocking of a user may be warranted for posts that:
 - Contain sexually explicit, profane, or obscene language or content;
 - Are threatening, abusive, or harassing;
 - Incite or promote violence or illegal activities;
 - Contain information that reasonably could compromise safety;
 - Violate privacy, copyright, trademark or intellectual property laws; or
 - Contain links to malware.

Other Social Media Considerations

- Public and Personal Accounts
 - For public accounts that are not regularly checked, consider a disclaimer that the account is not regularly checked and provide how the public can best contact the public official.
 - For personal accounts, consider a disclaimer that says it is a personal page.
 - Do not use personal accounts for public business.
 - There is no prohibition on one public official “liking” or commenting on another public official’s personal or private matter, for example, liking a family photo or a birth announcement.

Resources

- MS-2020-30, Legal Update: Assembly Bill 992 – The Brown Act and Social Media (Dec. 14, 2020),
<https://docs.sandiego.gov/memooflaw/MS-2020-30.pdf.pdf>
- MS-2021-8, Case Law Update on Elected Officials' Use of Social Media: *Garnier v. O'Connor-Ratcliff* (Apr. 9, 2021),
<https://docs.sandiego.gov/memooflaw/MS-2021-8.pdf.pdf>

Questions?