

October 5, 2005

TO: Linda Michalowski  
Vice Chancellor for Student Services

FROM: Ralph Black  
Assistant General Counsel

SUBJECT: Applicability of Open Meeting Laws to a "summit conference"  
**Legal Opinion E 05-11**

You have asked whether the "summit conference" being convened by the System Office on Friday October 7, 2005, to discuss future plans for the statewide Student Senate must be conducted as a public meeting subject to the requirements of either the Ralph M. Brown Act or the Bagley-Keene Open Meeting Act. We conclude that neither of the open meeting laws applies to this conference. We will discuss the applicability of each statutory scheme separately below.

The Ralph M. Brown Act (Gov. Code, §§ 54950 et seq.) requires that meetings of legislative bodies of all local agencies must be open to the public. In Legal Opinion 93-10 we held that the California Student Association of Community Colleges (CalSACC) was a legislative body for purposes of the Brown Act. One reason for this conclusion was that the Attorney General had previously held that local student body governments constituted legislative bodies for purposes of the Brown Act and that the presidents of local student body organizations sat on the CalSACC Board in their official capacities representing their local student body organizations.

Since a number of student body presidents will be attending the summit, it might be thought that this same reasoning would lead to the conclusion that the group assembled for the summit is a legislative body under the Brown Act. However, in the case of Cal.SACC the local student body organizations pay dues to CalSACC so the requirement of the statute that the body be funded in whole or in part by another legislative body was satisfied. That is not the case here, so we do not believe the summit being convened on October 7th constitutes a legislative body for purposes of the Brown Act.

With respect to the Bagley-Keene Act (Gov. Code, §§ 11120 et seq.), the question is whether the group assembled for the summit would constitute a "state body" within the meaning of the Act. Section 11121 sets forth various types of entities which are considered "state bodies." Most are clearly inapplicable to this situation, but the fact that two members of the Board of Governors may be in attendance requires us to consider whether subsection (d) of section 11121 might be applicable. Subsection (d) provides that a "board, commission, committee, or similar multimember body" is a "state body" if it includes a person who is a member of another body that is a state body and (1) that

person serves in his or her official capacity and (2) the body is supported, in whole or in part, by funds provided by the other state body.

At first glance it would appear that this provision might well apply. The Board of Governors is a state body covered by the Act, members of the Board will attend the conference, and the conference is probably receiving some financial support by the Board of Governors since it is being hosted by the System Office.

However, there is a more fundamental issue. The threshold requirement of the statute is that we must be dealing with a "board, commission, committee, or similar multimember body." The group which will convene on October 7th is certainly not a "board" or "commission" and we do not think it can even reasonably be characterized as a "committee" or "multi-member body." Indeed, this isn't a "body" of any sort. As we understand it, it is merely a group of individuals who will be meeting for the first time to discuss the future structure of the Student Senate. The group is not incorporated, it has no charter or other organizational documents, no officers, and for all we know, it may never convene again.

If we were to hold that such an ad hoc group constitutes a "multi-member body," then a "state body" would be created any time the Chancellor's Office hosts a meeting or conference and a member of the Board attends. It is clear that the Legislature did not intend to so broadly define the scope of the Bagley-Keene Act. Section 11122.5 specifically recognized that conferences of this sort should not be covered by the Act. Subsection (c) of section 11122.5 provides that

"The prohibitions of this article do not apply to any of the following: . . .  
(2) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body."

Thus, a conference or meeting about community college issues does not become subject to the Bagley-Keene Act even if a majority of the members of the Board of Governors attend.

We think the summit you are planning to convene is most appropriately classified as a "conference or similar gathering" within the meaning of section 11122.5 rather than as a "committee" or "multi-member body" of the type referenced in section 11121. Accordingly, we hold that this event is not subject to the coverage of the Bagley-Keene Act.

The fact that we analogized this conference to the type of situation described in section 11122.5(c)(2) should not be misconstrued to mean that it must be open to the public.

That provision was written to ensure that a conference open to the general public would not be subject to the Act even if the majority of members of a state body attended. If less than a majority of the members of a state body attend a meeting, whether open to the public or not, the meeting would not be subject to the Act by virtue of their attendance. So, in this situation, the conference need not be open to the public unless a majority of the Board or one of its subcommittees will be in attendance. To our knowledge, this will not be the case.

Thus, we conclude that the summit conference you are planning is not subject to either the Brown Act or the Bagley-Keene Act. As a consequence, you are free to invite who ever you choose to participate or to observe and to exclude others as you deem appropriate.

SB:RB:sj

cc: Steven Bruckman, Executive Vice Chancellor and General Counsel  
Marianne Estes