

# The BAGLEY-KEENE Open Meeting Act



The Legal Requirements for Open and Public Meetings



CALIFORNIA COMMUNITY COLLEGES

# OVERVIEW

- Policy
- State Bodies
- Meetings
- Notice and Agendas
- Public Participation
- Violations and Remedies



# POLICY

“It is the public policy of this state that public agencies exist to aid in the conduct of the people’s business and the proceedings of public agencies be conducted openly so that the public may remain informed.”

- GC Section 11120



# STATE BODIES

“All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.”

-GC 11123(a)



# Is This a State Body?

- The Bagley-Keene Act applies to all “State Bodies”
- “State Bodies” include:
  - Multi-Member Bodies
  - Advisory Bodies
  - Delegated Bodies



# “Multi-Member” Bodies

- Two Part Test:
  - The body is created by statute or required by law to conduct official meetings
  - The body consists of two or more members
- Examples: The Board of Governors, and other state boards, commissions, and committees created by statute
  - Does not matter if body is advisory or decision-making
- Bottom Line: If created by statute, the body is covered by Bagley Keene



# “Advisory” Bodies

- Two types of Advisory Bodies are subject to the Act:
  - Advisory Bodies created by the legislature
  - Advisory Bodies having three or more members that are created by formal action of another body
- **Example:** The BOG creates a two-member subcommittee to advise on proposed amendments to the standing orders.
  - Is this subcommittee subject to the requirements of the Bagley Keene Act?



# “Advisory” Bodies (Continued)...

- No!
  - A BOG subcommittee must have three or more members to be an advisory body subject to the provisions of the Bagley Keene Act.
- Once again:
  - Advisory subcommittees created by the Board with three or more members are subject to the Act.
  - Advisory subcommittees created by the Board with only two members are NOT subject to the Act.





# “Delegated” Bodies

- “Delegated” bodies are subject to the requirements of the Bagley Keene Act.
  - Key Question: Does the committee exercise power that has been delegated to it by another body?
    - Example: An executive committee that is given authority to act on behalf of the entire body between meetings
    - Note: No size requirement for delegated bodies
  - Policy: Avoid an end-run around Bagley Keene requirements



# Example: Chancellor Search Consultant Committee

- Hypothetical: What if the Board of Governors created a two member subcommittee to select and enter into a contract with a consultant to coordinate a nationwide chancellor search?
- Would the Chancellor Search Consultant Committee's meetings be subject to the Bagley Keene Act?
  - Multimember Body?
  - Advisory Body?
  - Delegated Body?



# Chancellor Search Consultant Committee



PRESENTED TO THE BOARD OF GOVERNORS

DATE: November 16-17, 2015

**BACKGROUND:** In order to facilitate the selection of the next chancellor, the Board will establish a Search Consultant Committee responsible for selecting a consultant to coordinate a nationwide chancellor search. The Board President will announce the members on the Search Consultant Committee and the Board will delegate authority to the Search Consultant Committee to award a contract for executive search consulting services not to exceed \$100,000. (Education Code Section 71090(b), Procedures and Standing Orders of the Board of Governors Article 8, Section 52)

**RECOMMENDED ACTION:** It is recommended that the board approve the establishment of a Search Consultant Committee, and delegate contracting authority to the committee.



# Chancellor Search Consultant Committee

- Yes, the Chancellor Search Consultant Committee was a delegated body because it exercised power delegated to it by the Board of Governors.



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## **NOTICE OF MEETING**

of the

**Board of Governors of the California Community Colleges  
Chancellor Search Consultant Committee**

**Friday, December 18, 2015**

**10:00 a.m. – 5:00 p.m.**



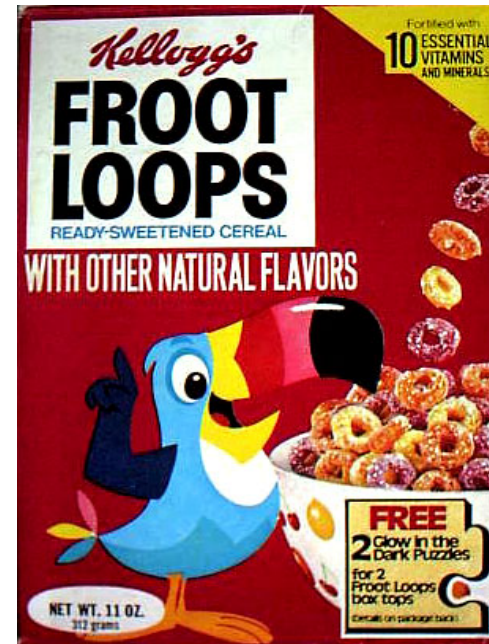
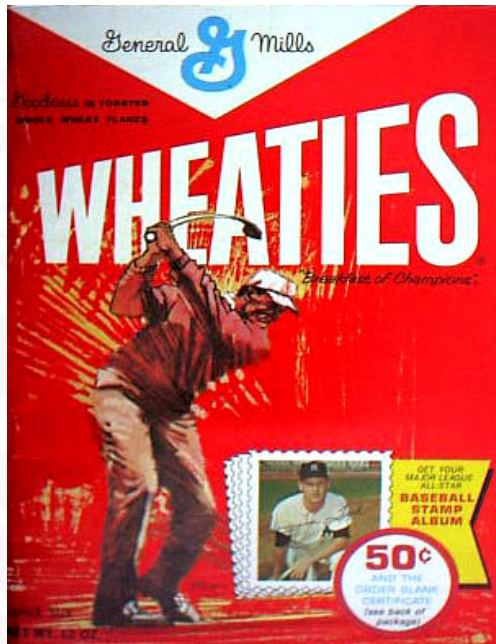
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# What is a “Meeting?”

- “Any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.” - GC Section 11122.5(a)
  - Bagley Keene is not limited to “meetings” where a final decision is made!
    - “HEAR”
    - “DISCUSS”
    - “DELIBERATE”



# Serial Meetings



**SERIAL MEETINGS ARE STRICTLY  
PROHIBITED!!!**



# Serial Meetings

- “Any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited.”

- GC Section 11122.5(b)

- Common Types of Serial Meetings:
  - Daisy Chain
  - Hub and Spoke
  - Email



# Meetings – Exceptions to the Rule

- Individual Contacts
  - But beware of the serial meeting!
- Social or Ceremonial Occasions
  - So long as business of the state body is not discussed
- Conferences and Retreats
  - So long as they are open to the public and involve subject matter of general interest to the public
- Meetings of Another Legislative Body
  - The meeting must be open to the public and properly noticed





# Teleconference Meetings

- Agendas must identify each teleconference location and be posted at each location
- Each location must be open and accessible to the public and allow for public participation
  - Example: Hospital bed
  - Example: No participation by cell phone in car
- Agenda must provide an opportunity for public comment from each teleconference location
- A member of the state body must be present at each site specified in the notice of meeting
- All votes must be audible and taken by rollcall



# NOTICE AND AGENDAS

- “All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.”

- GC Section 11123(a)



# The Basics – Regular Meetings

- Written notice of meetings must be given to individuals who request notice in writing
- Notice of the meeting and an agenda describing the matters to be discussed must be provided and posted on the internet at least 10 days in advance of meeting
- Notice must include time, date and location of meeting and name, address, and telephone number of a contact person who can provide additional information prior to the meeting
- The notice, agenda and supporting documents are public records and must be made available to public
  - Writings, when distributed to a majority of the body by any person in connection with a matter subject to consideration at a public meeting, are public records that must be made available to the public “upon request without delay.” GC Section 11125.1



# Agendas

- Agenda must contain a brief description of the items of business to be transacted or discussed in either open or closed session
  - In general, agenda descriptions need not exceed 20 words per item
  - Agenda descriptions should provide sufficient information to allow members of the public to decide whether or not to attend the meeting or participate in the agenda item
  - Closed session items must include reference to specific statutory authority authorizing the closed session



# Adding an Item to an Agenda (Urgency Items)

- The Bagley Keene Act generally prohibits any action or discussion of items not on the posted agenda.
- Urgency Items: When 2/3 of all members present (or all members if less than 2/3 are present) determine that there is a need for immediate action and the need to take action “came to the attention of the state body subsequent to the agenda being posted.”
- Notice of the urgency item(s)/revised agenda must be provided at least 48 hours in advance of meeting.
- Note that this exception may not be used if the legislative body or the staff knew about the need to take immediate action before the agenda was posted.





# Emergency Meetings

- Bagley Keene provides for emergency meetings in rare instances when there is a crippling disaster or work stoppage that would severely impair public health and safety.
- An emergency meeting requires one-hour notice to the media and must be held in open session.



# PUBLIC PARTICIPATION

- “All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.”

- GC Section 11123(a)



# The Public's Place at the Table

- The state body must provide an opportunity for members of the public to directly address the body on each agenda item before or during the state body's discussion of the item. GC Section 11125.7(a)
- The public must also be given the opportunity to comment on any item not on the agenda, but within the subject matter jurisdiction of the state body.
- Reasonable regulations on public comment may be adopted (example: time limits for individual speakers)
- Public criticism of the policies, programs or services of the state body may not be prohibited. GC Section 11125.7(c)





# The Public's Right to Attend

- All meetings must comply with the ADA
- Any person may record the proceedings via audio recorder, video recorder or still motion camera
- No conditions may be set for attendance at or participation in a public meeting
  - Sign-in not required
  - Self-identification not required as a prerequisite to speak
  - No fees may be charged for providing notice



# CLOSED SESSIONS

“All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.”

- GC Section 11123(a)

**Without specific statutory authority for a closed session, a matter must be discussed in public.**



# Authorized Closed Session Topics

- The Bagley Keene Act authorizes closed sessions for specific topics, including:
  - Existing or anticipated litigation
  - Real property negotiations
  - Public employee appointments, evaluation and discipline
  - Labor negotiations
  - Threats to security
- Note: There is no statutory exemption for topics that are embarrassing, difficult, sensitive uncomfortable or controversial

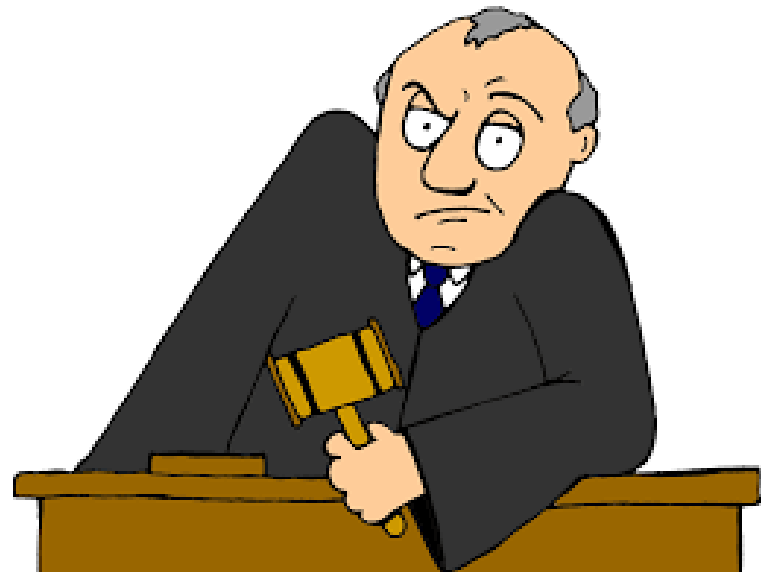


# Closed Session Process

- Closed session items must be briefly described on the posted agenda and the description must state the specific statutory authorization
- The state body must make a public announcement prior to the closed session (may reference the closed session agenda)
- Following a closed session, the state body must provide an oral or written report on certain actions taken in closed session



# VIOLATIONS AND REMEDIES



Injunctions, overturned decisions, misdemeanor charges and the court of public opinion...



# Why should I care?

- Lawsuits
- Depending on the circumstances, the decision of the body may be overturned
  - An opportunity to cure and correct?
- Injunctions against future violations
- A prevailing plaintiff may recover attorneys fees and costs of litigation
- Criminal misdemeanor penalties
  - If the member attends a meeting in violation of the Act with the intent to deprive the public of information he or she knows, or has reason to know, the public is entitled to receive



# Don't Forget

- We are representatives of the state, the community college system, and the Chancellor's Office.
- We are conducting the public's business and expending the public's funds
- The court of public opinion – this is about the public's perception of how its business is conducted



# In Summary...

- Complicated details, but simple general rule
  - Do the public's business in public
  - Give the public notice and an opportunity to participate
- If in doubt, ask your lawyers!
  - [legalaffairs@cccoco.edu](mailto:legalaffairs@cccoco.edu)
  - 916.445.4826





# The Legal Basics Series

- Did you miss our prior CCCCCO training sessions?
  - The Public Records Act
  - Conflicts of Interest, Gifts, and Form 700s
- How about our Webinars?
- Are you on the new OGC Listserv?
- Keep an eye out for “The Adoption of Title 5 Regulations – a Step by Step Process” in October

