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Law clear on public meetings

By DAVID LITTLE

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So Jon Luvaas tried before a meeting to sway his fellow planning commissioners to vote his way. What's the big deal?

Well, it is a big deal. Most people get that. Those who forgive his transgression because they agree with his loathing of Wal-Mart miss the point.

Let's take Wal-Mart out of the equation, mostly because when you add that name to any argument people start hyperventilating and lose the ability to think rationally.

The crux of the issue is this: The public's business should be done in public. When a school board, city council, planning commission or any other public agency votes on an issue, their deliberations should be done publicly, not privately or in e-mail.

When Luvaas, who should know better, sent a 16-page memo via e-mail to his fellow planning commissioners telling them his views on an issue, he was violating the spirit of the state's open-meetings law, which states that citizens get to watch the decision-making process.

City Attorney Lori Barker disagrees with me. I talked to her Thursday and she said there was no Brown Act violation. I don't agree.

Our attorney, Rachel Matteo-Boehm, who specializes in First Amendment issues, believes it was a violation.

Matteo-Boehm is a Brown Act expert. It's what she does. Barker is a generalist, who knows many subjects but probably not as well as a specialist. In

other words, I trust our attorney.

Look at the law. It states clearly: "A majority of the members of a legislative body shall not, outside a meeting ... 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 ... jurisdiction of the legislative body."

It could be argued that simply sending an e-mail with Luvaas' opinion did not constitute "discussion, deliberation or action."

Wrong. In a 2001 opinion, state Attorney General Bill Lockyer, citing case law, pointed out that the term "deliberation" means "not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision."

The only way that wasn't a Brown Act violation, then, is if the majority of the body did not read Luvaas' e-mail. I can't guarantee that they did, but because Luvaas requested that it be part of the commission's packet, it's safe to assume a majority read it ahead of time. That would make it a violation.

The Brown Act was changed this year to be more strict. In the past, it was only a violation if communication was used to develop a "collective concurrence." That was hard to prove. Now the law says you just have to prove they "used" the information. Reading it constitutes "use."

That's what we would argue in court if we sued. If four commissioners read it, there was a violation.

Winning a lawsuit isn't the objective here. Getting boards, councils and commissions to do the public's work in public is.

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Look at it this way: When our elected or appointed officials discuss a hot topic at a meeting, the people should hear them. The people should be able to gauge reactions. They should hear ideas and opinions exchanged.

If all that is done before a meeting, where all seven commissioners state their opinion in separate e-mails, then commissioners would just come into a room and vote without explaining themselves, That doesn't serve the public.

I've been to too many meetings like that. Items are approved or denied quickly and without discussion, and you just know it was all ironed out beforehand, away from the glare of a public meeting.

That's why the Brown Act was invented. Even if the law is a little toothless, the least we can expect is that elected and appointed officials don't insult us by ignoring the law.

If the city attorney condones this practice, the policy should be changed. I expect our politicians to follow the spirit and the letter of the law. You should too.

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