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OPINION	:	No. 79-1110
	:	
of	:	<u>March 18, 1980</u>
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SUBJECT: COMPENSATION OF HOSPITAL ADMINISTRATOR—Section 54957.1 of the Government Code does not require the board of directors of a hospital district to report at its next public meeting action taken by it in executive session to set the compensation of its hospital administrator.

The Honorable Norman S. Waters, Assemblyman, Seventh District, has requested an opinion on a question which we have rephrased as follows:

Does section 54957.1 of the Government Code require the board of directors of a hospital district to report at its next public meeting action taken by it in executive session to set the compensation of its hospital administrator?

CONCLUSION

Section 54957.1 of the Government Code does not require the board of directors of a hospital district to report at its next public meeting action taken by it in executive session to set the compensation of its hospital administrator. However, that compensation, as an integral part of the hospital administrator's employment contract, would still be a matter of public record under section 6254.8 of the Government Code.

ANALYSIS

This request for our opinion presents the basic issue as to the scope of section 54957.1 of the Ralph M. Brown Act (Government Code, section 54950 *et seq.*)¹ That section was added to the act in 1975, and later amended to its present form in 1977. (See Stats. 1975, ch. 959, § 9, p. 2242; Stats. 1977, ch. 89, § 1, p. 506.) It states:

“The legislative body of any local agency shall publicly report at its next public meeting *any action taken*, and the roll call vote thereon, *to appoint, employ, or dismiss* a public employee arising out of any executive session of the legislative body.” (Emphasis added.)

We are asked whether this section requires a board of directors of a hospital district formed pursuant to section 32000 *et seq.* of the Health and Safety Code to announce at its next public meeting action taken by it in an executive session to set the compensation of its hospital administrator.

The Ralph M. Brown Act requires “legislative bodies” of “local agencies,” as defined therein (which includes “districts”), to hold meetings which are open and public, unless otherwise excepted in the act or by some other overriding legal principle, such as the attorney-client privilege. (See, generally, §§ 54951.1, 54951.7, 54952–54952.5, 54953, 54957, 54957.1, 54957.6; *Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.* (1968) 263 Cal. App. 2d 41.) Section 54957.1 is supplementary to section 54957, which contains the so-called “personnel exception” to the open meeting requirements of the Ralph M. Brown Act. As material to our consideration herein it provides:

“Nothing contained in . . . [the act] shall be construed to prevent the legislative body of a local agency . . . from holding executive sessions during a regular or special meeting to consider the appointment, employment or dismissal of a public employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing”

This “personnel exception” has been in the act in substantially the manner set forth above since 1957, with the exception that in 1975 the Legislature, as part of Statutes of 1975, Chapter 959, *supra*, restricted its applicability to “employees” as defined therein, instead of to both public officers and public employees.²

¹ All section references are to the Government Code unless otherwise indicated.

² For the original form of section 54957, see Stats. 1953, ch. 1588, § 1, p. 3271 which applied to the “employment or dismissal” of public officers or employees. In 1957, the section was

In 61 Ops. Cal. Atty. Gen. 283, 291 (1978) this office concluded that the primary purpose of the “personnel exception” was “to protect the employee from public embarrassment,” with an ancillary purpose being “to permit free discussion of personnel matters by a local governing body.” In the same opinion, in resolving the issue whether section 54957 and its “personnel exception” permits executive session to discuss specific salaries and job performance of county employees,³ we had the occasion to summarize some of our prior opinions, both published and unpublished, which highlight and bring into relief the liberal interpretation which we have given to section 54957 *in order to protect the confidentiality of discussions concerning particular employees*. We thus stated:

“This office has previously held that specific salaries and job performance are proper subjects for discussion in executive session under section 54957. Thus, in 59 Ops. Cal. Atty. Gen. 532, 533 (1976), this office concluded that ‘[t]he governing board of a school district is authorized by the provisions of Government Code section 54957 to meet in an executive session to discuss and to evaluate the performance of its superintendent.’ We noted arguments against such holding, but then stated:

‘Nevertheless, this office consistently has advised public agencies that the purpose in permitting an executive session concerning personnel matters is to avoid undue publicity and embarrassment to the affected employee. See, e.g. 33 Ops. Cal. Atty. Gen. 32 (1959); *Cf., Krausen v. Solano County Junior College Dist*, 42 Cal. App. 3d 394, 404 (1974); *Lucas v. Board of Trustees*, 18 Cal. App. 3d 988, 991 (1971).

‘In a letter dated October 9, 1970, to the San Diego County Counsel, we concluded that the term “employment” contained in section 54957 . . . is broad enough to allow local public agencies, including governing boards of school districts, to consider all personnel matters relating to an individual

amended to include the “appointment” of public officers and employees as well (Stats. 1957, ch. 1314, § 1, p. 2633.)

For a comprehensive analysis of the 1975 amendment to section 54957, see 59 Ops. Cal. Atty. Gen. 266 (1976). Paragraph two of section 54957.1 presently sets forth a partial definition of “employee” for purposes of the section to include certain nonelective positions which in the most part would be “offices.” No issue is presented herein as to the propriety of including a hospital administrator of a hospital district within the term “employee.”

³ Insofar as the salaries of specific county employees were concerned, we concluded that section 25307 governed over the general provisions of the Ralph M. Brown Act. Section 25307 provides that “[a]ll meetings conducted by the board [of supervisors] pertaining to salaries of county employees shall be open and public except as provided in Section 54957.6. . . .”

employee at executive sessions and not simply matters relating to initial employment or final discharge.” (59 Ops. Cal. Atty. Gen., *supra*, at page 535.)

“Likewise in letter opinions this office has held that discussion of salaries of specific employees is the proper subject for an executive session. Thus, in I.L. 65–78 we held that the salary and job performance of employees of a hospital district could be discussed in executive session. It was noted that such discussions relate to continued ‘employment.’ As to specific salaries, it was held:

... [T]he question of ... [an] individual’s salary is an integral part of an evaluation of that individual’s past performance and the terms or conditions of his future employment. Such discussions, dealing solely with an evaluation of an employee’s performance, may properly be conducted in executive session.’ (*Id.* at p. 3.)” (61 Ops. Cal. Atty. Gen. at pp. 286–287.)

The narrow issue presented herein is thus whether any or all of the terms “to appoint, employ or dismiss” with respect to a public employee in section 54957.1 are to be given a limited construction according to their plain import, or are to be given a construction which encompasses other personnel matters such as the setting of a specific employee’s salary. We conclude for a number of reasons that section 54957.1 should be construed according to its plain import. Accordingly, we construe it to apply only to action taken to actually appoint, employ or dismiss a public employee.⁴

1. First or all, it is to be noted that section 54957 speaks in terms of holding an executive session “*to consider* the appointment, employment or dismissal of a public employee” whereas section 54957.1 speaks in terms of action *taken* “to appoint, employ or dismiss” such an employee. We deem the difference in language significant. Except where a literal interpretation would produce harsh or absurd results (*County of San Diego v. Muniz* (1978) 22 Cal. 3d 29), “[i]n engaging in statutory interpretation we are to accord words their usual, ordinary, and common sense meaning based on the language the Legislature used and the evident purpose for which the statute was adopted.” (*In re Rojas* (1979) 23

⁴ “Action taken” for purposes of the Ralph M. Brown Act is defined in section 54952.6 as follows:

“As used in this chapter, ‘action taken’ means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.”

Cal. 3d 152, 155.) The Legislature, in enacting section 54957.1, did not provide that all “action taken” *with respect* to the appointment, employment or dismissal of an employee be reported at the legislative body’s next public meeting, but provided that action taken to appoint, employ or dismiss an employee be so announced.

In short, as to the actual wording used by the Legislature in enacting section 54957.1, we conclude that the Legislature has failed to indicate that it desired that section 54957.1 should be accorded anything other than its natural import, that is, that the actual appointment, employment or dismissal of a public employee should be announced at the next public meeting of a legislative body.

2. Secondly, the history of section 54957.1 as it moved through the legislative process provides some indication that it was not to apply to personnel matters in general. As noted at the outset, section 54957.1 was added as part of Senate Bill No. 1, 1975 Regular Session. As initially proposed, the substance of the amendment was initially proposed as an addition to the California Public Records Act, as section 6254.5, subdivision (b) thereof. Thus, the April 16, 1975 amendment to the bill added proposed subdivision (b) as follows:

“(b) The legislative body of any state or local agency shall, at each meeting which is open and public pursuant to the provisions of this chapter, read the minutes of any meeting held since the preceding open and public meeting of such agency.”

The April 24, 1975 amendment to Senate Bill No. 1 modified such proposal to read:

“(b) The legislative body of any state or local agency shall publicly report any *action taken*, and the rollcall vote thereon, *in any prior executive session*.” (Emphasis added.)

Thus, at this juncture, the proposed law would have required the reporting of any action taken at an executive session. Thereafter, on May 5, 1975, Senate Bill No. 1 was amended so as to transfer the substance of proposed section 6254.5(b) to proposed section 54957.1, as subdivision (b) thereof, but amended to state:

“(b) The legislative body of any local agency shall publicly report at a subsequent public meeting any action taken, and the rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any executive session of the legislative body.”

Proposed subdivision (a) of section 54957.1 was subsequently deleted from the bill, and it was this wording which was enacted as section 54957.1.

“The changes made in a statute as it progressed through the Legislature may be used to aid in the ascertainment of the intent of the Legislature.” (See 59 Ops. Cal. Atty. Gen. 266, 270 (1976) and cases cited therein.) We recognize that no conclusive inference arises from the change in language in the forms of Senate Bill No. 1 as set forth above.⁵ However, we believe that the changes from the all encompassing initial proposal to very restrictive language, instead of to language of an intermediate nature (e.g., “action taken on all personnel matters”), is a strong indication that the Legislature intended section 54957.1 to be accorded its usual import and apply only to the actual act of appointing, employing or dismissing a public employee. In short, the Legislature could easily have amended the bill so as to clearly state a contrary intent if it so desired, instead of indirectly relying upon the prior construction which has been given to the “parent section,” section 54957.

3. Finally, and most importantly, to construe section 54957.1 similarly to section 54957 so as to include all personnel matters could, in effect, impliedly repeal, or at least amend away, much of section 54957 and its purpose.

As noted at the outset of this opinion, the primary reason for the “personnel exception” to the Ralph M. Brown Act is to avoid undue publicity and embarrassment to the affected employee. It is patent that to require a public report on all action taken” in executive session on “personnel matters” could effectively destroy the “personnel exception”? For example, a report would be required that it had been decided not to dismiss an employee even if the possible dismissal was not a matter of public knowledge. Such an announcement would run completely counter to the purpose of section 54957 with respect to personnel executive sessions *Cf.* 44 Ops. Cal. Atty. Gen. 147, 148 (1964) regarding disclosure of the minutes of executive sessions:

“To require that the minutes of an executive session held pursuant to Government Code section 54957 for the limited purpose of considering the appointment, employment or dismissal of employees or to hear charges or complaints against an employee must be open to public inspection would destroy the very purpose of section 54957.”⁶

⁵ For example, one could argue that the all encompassing initial proposal was modified to prevent the disclosure of otherwise confidential communications, such as would attach to attorney-client communications made between a local legislative body and its attorney.

⁶ “See now section 54957.2, added by Stats. 1976, ch. 1363, § 1, p. 6207:

“The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act . . . and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at an executive session, to a court of general jurisdiction wherein the local agency lies. . . .”

There is, of course, a presumption against repeals by implication. (*Hays v. Wood* (1979) 25 Cal. 3d 772, 784.) Additionally, “[w]here a statute is susceptible of two constructions, the one which leads to the more reasonable result will be followed.” (*Clements v. T. R. Bechtel Co.* (1954) 43 Cal. 2d 227, 232–233.) We believe that to retain the integrity of the “personnel exception,” the more reasonable construction of section 54957.1 is that it was intended only to require public announcement of the actual appointment, employment or dismissal of a public employee.

In so concluding, we are aware of the policy declaration of section 54950 that “[i]t is the intent of the . . . [Ralph M. Brown Act] that . . . [public boards’ and commissions’] actions be taken openly and that their deliberations be conducted openly” and that “[t]he people insist on remaining informed so that they may retain control over the instruments they have created.” However, it is to be recalled that the narrow issue presented herein is whether section 54957.1 shall be construed similarly to section 54957. The liberal construction given to section 54957 has been given *to protect confidentiality* where the Legislature has determined it is proper. To construe section 54957.1 in a similar fashion would run completely counter to such purpose and would produce the anomalous result of destroying, instead of protecting, the requisite confidentiality.

“It is well settled that the words of a statute must be given such interpretation as will promote rather than defeat the general purpose of the law.” (*In re Lynwood Herald American* (1957) 152 Cal. App. 2d 901, 909: see also, e.g., *Judson Steel Corp. v. Workers’ Comp. Appeals Bd.* (1978) 22 Cal. 3d 658, 669; *Candlestick Properties, Inc. v. San Francisco Bay Conservation Etc., Com.* (1970) 11 Cal. App. 3d 557, 569.)

Accordingly, we conclude that section 54957.1 does not require the board of directors of a hospital district to report at its next public meeting action taken by it in executive session to set the compensation of its hospital administrator. That action would not be action taken “to appoint, employ or dismiss a public employee” within the meaning of section 54957.1.

4. Despite the foregoing conclusion with respect to a hospital board’s duties under the Ralph M. Brown Act, section 6254.8 of the Government Code, contained in the California Public Records Act, would make the hospital administrator’s salary a matter of public record. That section provides:

“Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255 [which set forth the grounds for nondisclosure].”

The compensation received by a hospital administrator would necessarily constitute a term of his employment contract. Accordingly, whatever confidentiality might otherwise attach to the administrator's salary because the decision was made in an executive session (see, e.g., § 54957.2 at note 6, *supra*) would be controlled by section 6254.8 under the principle that "[a] specific provision relating to a particular subject will govern a general provision, even though the general provision standing alone would be broad enough to include the subject to which the specific relates." (*People v. Tanner* (1979) 24 Cal. 3d 514, 521.)

Accordingly, a hospital district must provide for the disclosure of a hospital administrator's salary in some manner pursuant to the mandate of the Public Records Act.
