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GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 81-805
of	:	DECEMBER 11, 1981
GEORGE DEUKMEJIAN Attorney General	:	
Rodney O. Lilyquist Deputy Attorney General	:	

THE HONORABLE BARRY KEENE, MEMBER OF THE CALIFORNIA STATE SENATE, has requested an opinion on the following questions:

1. Are the Regents of the University of California subject to the provisions of the Bagley-Keene Open Meeting Act that are not in conflict with the provisions of Education Code section 92030?

2. Are the provisions of section 9(g), article IX of the California Constitution and Education Code section 92030 applicable to bodies that advise or exercise authority delegated to them by the Regents of the University of California?

CONCLUSIONS

1. The Regents of the University of California are not subject to the provisions of the Bagley-Keene Open Meeting Act.

2. The provisions of section 9(g), article IX of the California Constitution and Education Code section 92030 are inapplicable to bodies that advise or exercise authority delegated to them by the Regents of the University of California.

ANALYSIS

The Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120–11131[1] (hereafter "Act") was enacted by the Legislature with the intent "that actions of state agencies be taken openly and that their deliberation be conducted openly." (§ 11120.)

Among its provisions the Act requires that "[a]ll 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" (§ 11123), "[n]o person shall be required to fulfill any condition precedent to his or her attendance" (§ 11124), "[a]ny person attending an open and public meeting of the state body shall have the right to record the proceedings. . . ." (§ 11124.1), "[t]he state body shall provide notice of its meetings. . . ." (§ 11125), "agendas of public meetings and other writings, when distributed to . . . the members of a state body . . . for discussion or consideration at a public meeting of such body, are public records under the California Public Records Act. . . ." (§ 11125.1), "[e]ach member of a state body who attends a meeting of such body in violation of any provision of this article, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor" (§ 11130.7), and "[n]o state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex. . . ." (§ 11131.)

The first question presented for analysis is whether the Regents of the University of California (hereafter "Regents") are subject to the various requirements of the Act that are not in conflict with the provisions of Education Code section 92030. We conclude that the Act's provisions are inapplicable to the Regents.

Education Code section 92030 provides:

> "All meetings of the Regents of the University of California shall, except as otherwise provided in this section, be open to the public. The corporation shall establish the time and place for holding regular meetings, but may, as occasioned by necessity, hold special meetings. Public notice shall be given for such meetings. Such notice shall be given by notifying any

[1]All statutory references hereafter are to the Government Code unless otherwise indicated.

newspaper of general circulation or any television or radio station, and shall be delivered personally or by mail so that the notice may be published or broadcast at least 24 hours before the time of such meeting.

"The Regents of the University of California may also hold closed sessions when it meets to consider or discuss: (a) matters relating to or affecting the national security; (b) the conferring of honorary degrees or other honors or commemorations; (c) those matters involving gifts, devises and bequests; (d) matters involving purchase and sale of investments for endowment and pension funds; (e) matters involving litigation when discussion in open session concerning such matters would adversely affect or be detrimental to the public interest; (f) matters involving acquisition and disposition of property; (g) matters relating to the appointment, employment, performance, compensation, or dismissal of officers and employees, excluding individual regents other than the president of the university; and (h) matters relating to complaints or charges brought against officers or employees of the university, excluding individual regents other than the president of the university unless such officer or employee requests a public hearing. There also may be excluded from any such public or closed meeting during the examination of a witness, any or all other witnesses in the matter being investigated."

The language of Education Code section 92030 is virtually identical to the legislation that was enacted (stats. 1969, ch. 1224) to implement an amendment to the California Constitution in 1970 that required the meetings of the Regents to be open to the public. What is now section 9(g) of article IX was added to the Constitution to provide as follows: "Meetings of the Regents of the University of California shall be public, with exceptions and notice requirements as may be provided by statute.

In determining whether the provisions of the Act are applicable to the Regents, we must first examine the constitutional basis underlying the Legislature's authority to control the university's affairs. The general constitutional principle is that "[u]nlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature." (*Methodist Hosp. of Sacramento* v. *Sayler* (1971) 5 Cal. 3d 685, 691.) One important consequence of this fact is that the Legislature " 'may exercise any and all legislative powers *which are not expressly, or by necessary implication denied to it by the Constitution*.' " (*Pacific Legal Foundation* v. *Brown* (1981) 29 Cal. 3d 168, 180.)

Here, a distinction may be drawn between the three systems of public higher education in California. Both the California State University and Colleges and the California Community College systems were created by statutory enactment, with governance powers set forth by legislative act and subject to ultimate legislative control. (See Ed. Code, §§ 71000–88263, 89000–90512.)

On the other hand, section 9 of article IX of the Constitution delegates to the Regents a substantial measure of exclusive powers of governance over the University of California. Specifically, the Regents are granted "full powers of organization and government" and "all the powers necessary or convenient for the effective administration of its trust" in operating the university, with the further directive that "[t]he university shall be entirely independent of all political . . . influence . . . in the administration of its affairs . . ." (Cal. Const., art IX, § 9; see *San Francisco Labor Council* v. *Regents of University of California* (1980) 26 Cal. 3d 785, 788–789; *Regents of University of California* v. *Superior Court* (1976) 17 Cal. 3d 533, 537; *Regents of University of California* v. *Superior Court* (1970) 3 Cal. 3d 529, 534; *California State Employees' Assn.* v. *Flournoy* (1973) 32 Cal. App. 3d 219, 233; *California State Employees' Assn.* v. *State of California* (1973) 32 Cal. App. 3d 103, 109; *Ishimatsu* v. *Regents of University of California* (1968) 266 Cal. App. 2d 854, 859–860; *Cal. State Employees' Assn.* v. *Regents of University of California* (1968) 267 Cal. App. 2d 667, 671; *Goldberg* v. *Regents of the University of California* (1967) 248 Cal. App. 2d 867, 874.)

Although "the University is intended to operate as independently of the state as possible" (*Regents of University of California* v. *Superior Court*, *supra*, 17 Cal. 3d 533, 537, fn. omitted; accord, *San Francisco Labor Council* v. *Regents of University of California*, *supra*, 26 Cal. 3d 785, 789), it is to be noted that, besides the specific provisions set forth in section 9 of article IX of the Constitution, (1) the Legislature is vested with the power of appropriation (*California State Employees' Assn.* v. *Flournoy*, *supra*, 32 Cal. App. 3d 219, 233), (2) general police power regulations governing private persons and corporations may be applied to the university (*Regents of University of California* v. *Superior Court*, *supra*, 17 Cal. 3d 533, 536–537), and (3) legislation regulating public agency activity not generally applicable to the public may be made applicable to the university when the legislation regulates matters of statewide concern not involving internal university affairs. (*Tolman* v. *Underhill* (1952) 39 Cal. 2d 708, 712.)

Pursuant to its express and implied constitutional authority, the Legislature has enacted numerous laws applicable to the university. (See, e.g., Ed. Code §§ 92000–92673.) With regard to regulating the meetings of the Regents insofar as notice requirements are concerned and as to when the meetings may be closed to the public, clearly the Legislature has constitutional authority to act and has done so through Education

Code section 92030.

The issue presented is whether the Legislature has taken the additional step of controlling the activities of the Regents through the various requirements of the Act not in conflict with Education Code section 92030.[2] We believe this question may be answered by applying well recognized rules of statutory construction.

The fundamental rule to be applied is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Select Base Materials* v. *Board of Equal.* (1959) 51 Cal. 2d 640, 645; accord, *California Teachers Assn.* v. *San Diego Community College Dist.* (1981) 28 Cal. 3d 692, 698.)

In determining legislative intent, we first turn to the words of the statute (*Moyer* V. *Workmen's Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230), giving the language its usual and ordinary import. (*People* v. *Belleci* (1979) 24 Cal. 3d 879, 884.)

In this case, the Act specifies that its provisions are applicable to every "state body," the basic definition of which is contained in section 11121 as follows:

> "As used in this article 'state body' means every state board, or commission, or similar multimember body of the state which is required by law to conduct official meetings and every commission created by executive order, but does not include:
>
> (a) State agencies provided for in Article VI of the California Constitution.
>
> (b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the provisions of the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of this code.
>
> (c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act, Sections 9020 *et seq*., of this code.

[2]"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 provison relates. (*Rose* v. *State of California* (1942) 19 Cal. 713, 723–724.) (*People* v. *Tanner* (1979 24 Cal. 3d 514, 521.)"

(d) State agencies when they are conducting proceedings pursuant to Section 3596 of this code.

(e) State agencies provided for in Section 1702 of the Health and Safety Code, except as provided in Section 1720 of the Health and Safety Code.

(f) State agencies provided for in Section 11770.5 of the Insurance Code."[3]

Since none of the express exceptions involve the Regents,[4] it may be argued that the Regents would come within the broad definition of "state body." The Regents have been variously characterized as "a public corporation" (*Regents of University of California* v. *Superior Court*, *supra*, 17 Cal. 3d 533, 536), "a governmental institution and an instrumentality of the state" (*Estate of Royer* (1899) 123 Cal. 614, 624), and "an institution of the state, a public corporation, a governmental agency, and a public entity" (*Regents of University of California* v. *Superior Court*, *supra*, 3 Cal. 3d 529, 534; see also *Libow* v. *Regents of University of California* (1975) 54 Cal. App. 3d 215, 218–219; *California State Employees' Assn.* v. *Flournoy*, *supra*, 266 Cal. App. 2d 854, 863–864; 63 Ops. Cal. Atty. Gen. 132, 133–135 (1980); 58 Ops. Cal. Atty. Gen. 84, 85–86 (1975); HOROWITZ, *The Autonomy of the University of California under the State Constitution* (1977) 25 UCLA L. Rev. 23, 27–28).

Nevertheless, we are cognizant of the fact that when the Act was first enacted, it was not intended to cover the activities of the Regents. This was amply demonstrated when the electorate was informed concerning the addition of the open

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[3]The "article VI," state agencies are part of the judicial branch; the "article IV" state agencies are part of the legislative branch, section 3596 refers to labor negotiations involving the Regents, the directors of Hastings College of the Law, and the trustees of the California State University and Colleges; Health and Safety Code section 1702 pertains to the Cancer Advisory Council of the State Department of Health Services; and Insurance Code section 11770.5 concerns the directors of the State Compensation Insurance Fund. Because of the conclusion we reach, we do not address the issue of whether the Regents are "required by law to conduct official meetings."

[4]While it is true that section 11121 refers to section 3596 which may at times be applicable to the Regents, we are not persuaded by the argument that the Regents are generally covered by the Act because of this specific exclusion. Put simply, the argument is that the Legislature would not exclude the Regents from the Act's requirements in a limited area (labor relations), if it intended for the Regents to be excluded generally. The focus of section 3596, however, is not upon the Regents but upon the subject matter of labor relations, and the Legislature appears to have merely drafted subdivision (d) of section 11121 in the most concise manner without thought of the significant issue of Legislature-Regent division of constitutional authority.

meeting provision to the Constitution in 1970. The voters were told that all other public, tax-supported agencies in the State are required to hold open meetings, either through the Brown Act, which applies to local agencies, or the State Open Meetings (Bagley) Act, which includes the State College Board of Trustees and all other State agencies." (Ballot Pamp., Proposed Amends, to Cal. Const., Gen. Elec. (Nov. 3, 1970) p. 8.)[5] The ballot proposition was the Legislature's proposal (Assem. Const. Amend. No. 12 (1969 Reg. Sess.)) and was expressly to be implemented by the language of Education Code section 92030 rather than including the Resents under the broad provisions of the Act.

It is thus apparent that the Legislature did not intend for the Regents to be governed by the Act's provisions when the Act was first enacted in 1967 nor in 1970 when the constitutional amendment was added and implemented by what is now Education Code section 92030. Has the Legislature expressed a different intent since 1970? We believe not.

As originally codified, the Act covered state agencies defined as "every state board, or Commission, or similar multimember body of the state which is required by law to conduct official meetings, but does not include state agencies provided for in Article VI of the California Constitution nor districts or other local agencies whose meetings are required to be open to the public pursuant to the provisions of Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of this code." (Stats. 1967, ch. 1656, § 122)[6] It would appear that the original coverage of the Act was broader and had fewer exceptions than the current version.

The Act has also been amended, however, to specifically include certain entitles. Of some significance is section 11121.5 (added stats. 1974, ch. 1179, § 1; amended stats. 1981, ch. 968, § 5.3) which states: "Under the provisions of this article, the official student body organization at any campus of the California State University and Colleges, or of the California Community Colleges, shall be treated in the same manner as a state body." No similar provision was added concerning student body organizations at the University of California, thus suggesting that the latter was not intended to be covered by the Act's provisions.[7] The Act also expressly mentions the California State University and

[5]Where the enactment follows voter approval, the ballot summary and arguments and analysis presented to the electorate in connection with a particular measure may be helpful in determining the probable meaning of uncertain language. (*Amador Valley Joint Union High Sch. Dist.* v. *State Bd. of Equalization* (1978) 22 Cal. 3d 208, 245–246.)

[6]We again point out that "Article VI" agencies are part of the judicial branch.

[7]The appropriate maxim is *expressio unius est exclusio alterius* (the expression of one excludes the other). (See *Wildlife Alive* v. *Chickering* (1976) 18 Cal. 3d 190, 195; *People* v. *Hacker Emporium, Inc.* (1971) 15 Cal. App. 3d 474, 477.)

Colleges in section 11126, subdivisions (a) and (i). No reference is made in the Act to the Regents or the University of California to cover similar circumstances.

On the one hand, the Legislature could have expressly excluded the Regents from coverage of the Act as it has done in other statutory schemes. (See, e.g., §§ 12511, 14790, 14824.) On the other hand, the Legislature could also have specifically included the Regents if such had been its intent after 1970. (See, e.g., § 10209 ["The University of California, all State agencies and other official State organizations, and all persons connected therewith shall give the Legislative Counsel ready access to their records. . . ."].)

Given the legislative history of the Act and the historical circumstances surrounding the Constitutional amendment,[8] we believe that an express inclusion of the Regents under the Act's provisions would be necessary to demonstrate a *change* of known legislative intent.[9]

We conclude in answer to the first question, therefore, that the Regents are not now subject to the provisions of the Act.

The second question presented is whether the open meeting requirements of the Constitution and Education Code section 92030 are applicable to bodies that advise or exercise authority delegated to them by the Regents. We conclude that they are not.

Section 9(f) of article IX of the Constitution authorizes the Regents, as the administering corporation of the university, "to delegate to its committees or to the faculty of the university, or to others, such authority or functions as it may deem wise." (See *Coleman* v. *Regents of University of California* (1979) 93 Cal. App. 3d 521, 525.) Hence, no issue arises as to whether the Regents must perform their constitutional mandate while acting as a single body.

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[8]"[T]he legislative history of the statute and the wider historical circumstances of its enactment are legitimate and valuable aids in divining the statutory purpose." (*California Mfgs. Assn.* v. *Public Utilities Com.* (1974) 24 Cal. 3d 836, 844.)

[9]In 58 Ops. Cal. Atty. Gen. 273, 275 (1975), we stated that "the provisions of the [Act] do not apply to executive sessions conducted by the Board." This construction of the Act must be presumed to have come to the attention of the Legislature (see Henderson v. Board of Education (1978) 78 Cal. App. 3d 875, 883; *Lucas* v. *Board of Trustees* (1971) 18 Cal. App. 3d 988, 991), and " 'if it were contrary to the legislative intent that some corrective measure would have been adopted in the course of many enactments on the subject in the meantime.' " (*California Correctional Officers' Assn.* v. *Board of Administration* (1978) 76 Cal. App. 3d 786, 794.) We have found no such "corrective measure."

The language of the Constitution and statute in question appears to be plain and unambiguous. Only the "meetings of the Regents" are specified. If meetings of committees that have been delegated authority by the Regents were intended to be covered, the constitutional and statutory language could easily have so provided. A constitutional or statutory provision should be construed "in accordance with the natural and ordinary meaning of its words" (*Amador Valley Joint Union High Sch. Dist.* v. *State Bd. of Equalization*, *supra*, 22 Cal. 3d 208, 245), and where the "language is thus clear and unambiguous there is no need for construction" (*Solberg* v. *Superior Court* (1977) 19 Cal. 3d 182, 198).

Consistent with this Interpretation are the historical circumstances surrounding the application of the Act's provisions to advisory committees. It was not until 1980 that the Act specifically applied to such advisory bodies. (Stats. 1980, ch. 1284, § 5.) The key statutes now provide as follows:

> "As used in this article, 'state body' also means any board, commission, committee, or similar multimember body which exercises any authority of a state body delegated to it by that state body." (§ 11121.2.)
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> "As used in this article, 'state body' also means any board, commission, committee, or similar multimember body on which a member of a body which is a state body pursuant to Section 11121, 11121.2, or 11121.5 serves in his or her official capacity as a representative of such state body and which is supported, in whole or in part, by funds provided by the state body, whether such body is organized and operated by the state body or by a private corporation." (§ 11121.7.)
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> "As used in this article, 'state body' also means any advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons." (§ 11121.8.)

These amendments to the Act brought it into substantial conformity with the Ralph M. Brown Act (§§ 54950–54961) governing local agencies which also had been amended to specifically include advisory bodies. (See §§ 54952–54952.5.)

Given the practice of the Legislature to expressly cover committees in other similar statutory schemes, we believe that the failure to do so in Education Code section 92030 indicates a contrary intent.

In answer to the second question, therefore, we conclude that the provisions of section 9(g), article IX of the Constitution and Education Code section 92030 are inapplicable to bodies that advise or exercise authority delegated to them by the Regents.

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