

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 82-505
	:	
of	:	<u>JUNE 24, 1982</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Clayton P. Roche	:	
Deputy Attorney General	:	
	:	

THE HONORABLE JAMES P. BOTZ, COUNTY COUNSEL, COUNTY OF SONOMA, has requested an opinion on the following question:

Do the open meeting requirements of the Ralph M. Brown Act apply to that portion of a retirement board meeting held pursuant to the County Employees Retirement Law of 1937 which involves the discussion of medical records which are submitted in connection with an application for disability retirement?

CONCLUSION

The open meeting requirements of the Ralph M. Brown Act do not apply to that portion of a retirement board meeting held pursuant to the County Employees Retirement Law of 1937 which involves the discussion of medical records which are submitted in connection with an application for disability retirement.

ANALYSIS

The Ralph M. Brown Act (Gov. Code, § 54950 et seq.)¹ requires that meetings of "legislative bodies" of "local agencies" as defined therein be open to the public except as may be expressly provided in the act or as may be implied from other provisions of law. (See generally, §§ 54951, 54951.1, 54951.7, 54952, 54952.2, 54952.3, 54952.5, 54953, 54957, 54957.6; *Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41; 62 Ops.Cal.Atty.Gen. 150, 156-161 (1979).) A county retirement board, as a permanent board or commission of a "local agency," falls within the requirements and proscriptions of the act. (§ 54952.5.)

The question presented is whether the open meeting requirements of the Ralph M. Brown Act apply to that portion of a retirement board meeting held pursuant to the County Employees Retirement Law of 1937 (§ 31450 et seq.) which involves the discussion of medical records described as falling within the "zone of privacy" where such records are submitted in connection with an application for disability retirement. We are advised that "[f]requently the reports include psychological assessments, references to alcoholism, sexual problems, marital problems, and similar matters of a very private nature."

Initially, it is to be noted that section 31532 of the 1937 retirement law states:

"Sworn statements and individual records of members shall be confidential and shall not be disclosed to anyone except insofar as may be necessary for the administration of this chapter [the 1937 act] or upon order of a court of competent jurisdiction, or upon written authorization by the member."

In 60 Ops.Cal.Atty.Gen. 110 (1977) we analyzed this section in the context of the California Public Records Act (§ 6250 et seq.) and concluded that records falling within the scope of this section, including medical reports, "are confidential and not subject to inspection by the public or the press." (60 Ops.Cal.Atty.Gen. at p. 114; see also, § 6254, subd. (k).) In 62 Ops.Cal.Atty.Gen 150, 156-161, *supra*, this office reviewed the case law and opinions of this office spanning two decades involving the interaction of the Ralph M. Brown Act and *other* laws relating to privilege and confidentiality. We concluded, *inter alia*:

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

"3. Where by law, records themselves are confidential, then the actions which they memorialize, *or a discussion of them*, should be in executive session." (*Id.* at p. 159, emphasis added.)

And we stated overall:

"In sum, we affirm this office's consistent approach for two decades that the Brown Act is not, in the words of Justice Friedman in the *Sacramento Newspaper Guild* case, *supra*, 'a microcosm' but interacts with, and must be read in conjunction with, other provisions in our laws relating to privilege and confidentiality." (*Id.* at p. 161.)

Accordingly, based upon the prior opinions of this office we conclude that section 31532, *supra*, provides adequate authority for discussing the medical records in question in an executive or "closed session" to protect their confidentiality despite the general open meeting requirements of the Ralph M. Brown Act.

Additionally, section 54957, which provides the so-called "personnel exception" to the open meeting requirements of the Ralph M. Brown Act, is germane. It provides that a legislative body may hold "closed sessions . . . to consider the appointment, *employment*, or dismissal of a public employee." (Emphasis added.) In 63 Ops.Cal.Atty.Gen. 151, 156 (1980) this office reaffirmed its position that the "personnel exception" found in section 54957 "'is broad enough to allow public agencies . . . to consider all personnel matters relating to an individual employee at executive sessions.' . . ." (See also, generally, 61 Ops.Cal.Atty.Gen. 283, 287 (1978); 59 Ops.Cal.Atty.Gen. 532, 535 (1976).) Consequently, section 54957, the "personnel exception" of the Ralph M. Brown Act, itself would provide the authority for discussing the medical records at issue herein in closed session.

From the foregoing, it is evident that we need not delve into whether medical records may be discussed in closed session by the retirement board because they fall within the so-called "zone of privacy" created by the physician-patient privilege "which falls within the protective umbrella of the right of privacy afforded by the California Constitution, article 1, section 1 (as amended Nov. 1974)." (*Pating v. Board of Medical Quality Assurance* (1982) 130 Cal.App.3d 608, 618: see also, generally, *Board of Medical Quality Assurance v. Gherardini* (1979) 93 Cal. App.3d 669.) Sufficient independent grounds exist for our conclusion without reaching this constitutional issue.

In sum, the open meeting requirements of the Ralph M. Brown Act do not apply to that portion of a retirement board meeting which involves the discussion of medical records which are submitted in connection with an application for disability retirement under the County Employees Retirement Law of 1937. The confidentiality

provisions of section 31532 as well as the "personnel exception" set forth in section 54957 of the Ralph M. Brown Act provide ample authority for discussing such records in closed session.
