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GEORGE DEUKMEJIAN
Attorney General

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of	:	<u>DECEMBER 30, 1982</u>
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GEORGE DEUKMEJIAN	:	
Attorney General	:	
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Clayton P. Roche	:	
Deputy Attorney General	:	
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THE HONORABLE ELIHU M. HARRIS, MEMBER OF THE CALIFORNIA ASSEMBLY, has requested an opinion on the following questions:

1. Is the California Community College Student Government Association (CCCSGA) subject to the open meeting requirements of the Bagley-Keene Open Meeting Act (Gov. Code, § 1120 et seq.)?

2. If the CCCSGA is a private association which is not subject to the Bagley-Keene Open Meeting Act, can its representatives sit on committees that administer student travel funds pursuant to section 71040 of the Education Code?

3. Can community college students be reimbursed for travel to CCCSGA meetings pursuant to section 71040 of the Education Code?

CONCLUSIONS

1. Meetings of the State Board of the California Community College Student Government Association (CCCSGA) are subject to the open meeting requirements of the Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.) by virtue of section 11121.7 of that act. Whether meetings of the various committees of the CCCSGA are subject to the open meeting requirements of the act requires an analysis of the origin of the committee, its composition, and its duties in light of sections 11121.2, 11121.7, and 11121.8 of the act.

2. Whether or not the CCCSGA is subject to the Bagley-Keene Open Meeting Act has no bearing upon whether its representatives may sit on committees that administer travel funds allowed pursuant to section 71040 of the Education Code.

3. Community college students may not be reimbursed for travel to meetings of the CCCSGA pursuant to section 71040 unless all the special criteria set forth in that section for such reimbursement are met.

ANALYSIS

I

The Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.) requires that meetings of "state bodies" as defined therein be open to the public, except as may be expressly excepted therein, or as may be excepted by other confidentiality provisions of law such as the attorney-client privilege. (Gov. Code, §§ 11121, 11121.2, 11121.5, 11121.7, 11121.8, 11123, 11126; cf. *Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41.)¹ With certain exceptions not material herein (e.g., judicial agencies provided by Cal. Const., art. VI), the act essentially imposes its open meeting requirements upon state boards, commissions, committees or similar *multimember* bodies, including advisory bodies.

¹ All section references are to the Government Code unless otherwise indicated. This act was originally added to the Government Code in 1967 (Stats. 1967, ch. 1656) to impose upon "state agencies" similar open meeting requirements as required of local agencies by the Ralph M. Brown Act, Government Code section 54950, et seq. The "Brown Act" was enacted in 1953 (Stats. 1953, ch. 1588), and the state agency act was clearly modeled upon it. By amendments in 1981 (Stats. 1981, ch. 968), the "state agency act" was renamed the "Bagley-Keene Open Meeting Act" and the term "state agency" was changed to "state body" throughout the act.

Since 1974 (see Stats. 1974, ch. 1179, § 1, p. 2527) the act has also specifically included within its scope certain official student body organizations of public colleges in California. Thus, section 11121.5 presently reads:

"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." (Emphasis added.)

Additionally, section 11121.2 provides that "state body" means any multimember body which exercises delegated authority of a "state body." It provides:

"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."

Furthermore, section 11121.7 provides with respect to boards, commissions or committees upon which a member of a "state body" serves:

"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 Sections 11121, 11121.2 *or* 11121.5 serves in his or her official capacity as a representative of such state body 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." (Emphasis added.)

Finally, section 11121.8 provides that certain "advisory committees" of "state bodies" are themselves "state bodies." It states:

"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."

It is in the context of sections 11121.2, 11121.5, 11121.7 and 11121.8, *supra*, that we must analyze the CCCSGA and its organizational structure to determine whether it as an entity, or any of its boards and committees are "state bodies" within the meaning of the Bagley-Keene Open Meeting Act.

1. Organizational Structure of the CCCSGA

We are informed that the CCCSGA was originally founded in 1945 and is a private, nonprofit organization which is *neither* campus-based nor formed by action of the Board of Governors of the California Community Colleges or the Chancellor of the California Community Colleges.² Its present membership is exclusively composed of student body associations which are established at community college campuses pursuant to section 76060 of the Education Code,³ although under recent amendment to its constitution it is authorized to have "individual student members." We are further informed that the CCCSGA is financed almost exclusively from the treasuries of the campus-based student body associations, although in some instances the community college districts have chosen to pay the dues of the colleges within their district.

We have been supplied with and have examined the current constitution and bylaws of the CCCSGA to determine its organizational structure. It has eight officers in addition to the state board chairperson, that is, a president, treasurer, alumni representative, secretary, legislative director, public information officer, conference steering committee chairperson and representative of the student advisory committee to the California Postsecondary Education Commission. (Const., art. IV, sec. 1.1.)⁴ Although the constitution does not specifically require that the officers be members of *local* student associations,⁵ the constitution requires that the last named officer "be appointed by the President from among the voting members of the State Board." (Const., art. IV, § 2.9.) As will be developed *post*, this fact may be significant in determining whether the officers, while sitting as the "executive committee" of the CCCSGA, are subject to the open meeting requirements of the Bagley-Keene Open Meeting Act. The particular officers are elected

² We are informed that it was originally established by a number of junior college "advisers" to student body organizations. (See Ed. Code, §§ 71060, 71063.)

³ Section 76060 of the Education Code provides:

"Any group of students may organize a student body association within the community colleges with the approval and subject to the control and regulation of the governing board of the community college district. Any such organization shall have as its purpose the conduct of activities on behalf of the students approved by the school authorities and not in conflict with the authority and responsibility of the student community colleges officials. Any student body organization may be granted the use of community college premises and properties without charge subject to such regulations as may be established by the governing board of the community college district."

⁴ Article references are to the CCCSGA current constitution or bylaws.

⁵ It only states that they must be students at a California community college enrolled in at least six units and maintaining a 2.0 grade point average.

at the "general assembly," selected by the state board, or appointed by the president, subject to confirmation of the state board as may be provided in the constitution. (Const., art. IV, § 2.)

An examination of the composition and method of appointment of the state board of the CCCSGA highlights the rather unique organizational structure of the CCCSGA. The constitution provides that the state is divided into ten areas which "are designated regional subdivisions of the CCCSGA." These "[a]reas form the basis for the composition of the CCCSGA State Board." "The purpose of the areas is to provide a mechanism through which students on a regional level can work to achieve the purpose and goals of the CCCSGA." Each area elects "two representatives to the State Board." (Const., art. III, § 2.) The state board also includes four members who are elected by the minority caucuses (i.e., ethnic, physically limited, and women), giving the state board twenty-four voting members. "The State Board shall be the executive governing body of the CCCSGA when the General Assembly is not in session." The officers of the CCCSGA also serve ex-officio on the state board as nonvoting members. (Const., art. III, § 3.)

We are advised that each of the ten areas of the state has its own organization, and hence, may be characterized as semiautonomous. Accordingly, "[a]rea representatives must file current Area Constitutions and a current list of officers, committee representatives, alternates and active member colleges with the CCCSGA President and Secretary." (Bylaws, art. III, § 3.) It is significant, as will be developed *post*, that the qualifications for election as "area representatives" to the state board are not uniform. Thus, although the CCCSGA is currently composed solely of local community college student associations, and is financed almost exclusively by such local student associations, we are advised that the "area representatives" elected to the state board are required to be members of local college student associations in some areas, but not in others. Thus, it is possible in some areas to select as a CCCSGA state board member a faculty member or other school employee, or even a student from a community college which has no student association.⁶

With respect to committees, the CCCSGA has six "standing committees"⁷ and three permanent "special committees."⁸ Also "[o]ther special or adhoc committees may be established as deemed necessary by the State Board." (Bylaws, art. III, §§ 5 & 6.) As to the above permanent committees which have their origins in the CCCSGA bylaws, the duties of each committee are set forth therein. Additionally, and particularly significant

⁶ Such an example was cited to us with respect to Vista College which has no local student association.

⁷ The executive, conference steering, legislation, finance, information, and bylaws committees

⁸ The alumni, advisors, and student trustee committees.

for our purpose herein, as to the legislative, finance, information, and bylaws committees, they are required to "perform any other duties designated by the State Board." (*Ibid.*) "[T]he purpose of the standing committees shall be to carry out specific tasks as directed by the State Board." (Const., art. III, § 5.)

With respect to the composition of the "standing committees" and the "special committees" of the CCCSGA, we note initially that "[e]ach State Board member shall serve on a Standing Committee." (Bylaws, art. 3, § 3.5.) The "standing committees" may also have "area representatives" in addition to the required state board members.⁹ With respect to the alumni, advisors, and student trustees "special committees," the first two are composed of nonstudents. The latter committee consists of "any California Community College student trustees interested in maintaining a relationship with CCCSGA."

The CCCSGA is required to hold two state conferences annually. (Const., art. III, § 8.) As to the state board and some of the committees, the CCCSGA constitution specifically requires that they meet during the state conferences. Thus, the constitution provides that "[t]he State Board shall meet at least twice at each CCCSGA State Conference." (Const., art. III, § 3.7.) The constitution also contemplates that the state board will meet alternately in Northern and Southern California. (Bylaws, art. III, § 3.8.) Requirements with respect to holding meetings at the state conferences are also specified with respect to the three minority student caucuses. (Const., art. III, § 4.4.) With regard to other committees, we find nothing specified in the constitution or bylaws as to when they are to meet.

Finally, with respect to the CCCSGA's organizational structure, there are meetings of the "general assembly" twice a year designated to be during the semiannual state conferences of the CCCSGA. Each local college student association in good standing (not each area) is entitled to send a delegation to this assembly. The purpose of the general assembly is "to set the goals and philosophy of the CCCSGA." (See Const., art. II, § 1; Bylaws, art. III, § 1.) Each "organizational member," that is, each local student association (not each area), is entitled to one vote on all matters submitted to the general assembly.

2. Is the CCCSGA Subject to the Bagley-Keene Open Meeting Act?

The first question presented for determination in this opinion request is whether the CCCSGA is subject to the open meeting requirements of the Bagley-Keene

⁹ For example, the Bylaws in article III, section 5.4.1 provide:

"The Finance Committee shall consist of the Treasurer, and six voting State Board members. Any Area or Caucus not already represented may appoint an ex-officio representative."

Open Meeting Act. Section 11123 of that act provides that "[a]ll meetings of a *state body* shall be open and public . . . except as otherwise provided in this article."¹⁰

As noted at the outset, the Bagley-Keene Open Meeting Act encompasses not only true "state bodies," but also (1) certain student organizations of public colleges including the California Community Colleges (§ 11121.5); (2) boards, commissions or committees upon which "members" of a "state body" serve in their official capacity, and which are financed in whole or in part by funds provided by such state body (§ 11121.7); (3) boards, commissions or committees which exercise delegated authority of a "state body"; and (4) advisory boards, commissions and committees (including subcommittees) of a state body formed by formal action of the state body or a member thereof (§ 11121.8).

In analyzing whether the CCCSGA is subject to the Bagley-Keene Open Meeting Act, we will do so by considering first the CCCSGA as an entity. Then we will consider the CCCSGA's state governing board. Finally, we will consider the committees of the CCCSGA.

a. The CCCSGA as an Entity

In determining whether the CCCSGA as an entity is a "state body" the potentially applicable section is 11121.5 regarding certain "official student organizations."

It is concluded that section 11121.5, set forth at the outset, does not encompass the CCCSGA, because the CCCSGA is *not* the official student body organization "*at any campus . . . of the California Community Colleges*" as required by that section. It is a statewide organization having its locus at no particular campus. In short, section 11121.5 would appear to contemplate those individual campus-based student organizations which are formed pursuant to section 76060 of the Education Code (see note 3, *supra*), and which have the official sanction of and are regulated by the governing boards of the particular school districts. CCCSGA is not such an association.

¹⁰ Interestingly, article III, section 7 of the CCCSGA Constitution provides:

"Section 7. Open Meetings

"7.1 All CCCSGA meetings are open and no member shall be prevented from attending any meeting of the General Assembly, the State Board, an Area, a Caucus, or a committee, except for personal [sic] sessions of the State Board and Executive Committee meetings."

b. The State Governing Board of CCCSGA

Although we have concluded that the CCCSGA *as an entity* is not a "state body" within the meaning of the Bagley-Keene Open Meeting Act, in our opinion the governing board of the CCCSGA is a "state body" within the meaning of section 11121.7, also set forth in full at the outset herein. That section makes a board or commission a "state body" if:

1. A *member* (not necessarily an "officer")¹¹ of a body which is a "state body" pursuant to, *inter alia*, section 11121.5 serves on that body.

2. The "member" serves in an official capacity as a representative of his parent body on that body; and

3. That body is supported in "whole or in part" by the member's parent "state body," whether or not that body is organized or operated by the state body or by a *private corporation*.¹²

Applying the foregoing criteria of section 11121.7 to the twenty-four member governing board of the CCCSGA we find:

1. Two members of official student associations at community colleges, that is, members of "state bodies" pursuant to section 11121.5, the parent bodies, are and must be selected from at least some of the ten regions in the state to serve on the CCCSGA state governing board.

2. *These* state board members essentially serve in a dual capacity. Although they are elected as "representatives" of their regions, they of necessity represent the local student associations in their regions. This is so because the only members of the

¹¹ Compare section 54952, the similar provision of the Ralph M. Brown Act, requiring that an *officer* of a local agency sit on a second board or commission in his official capacity in order that the ancillary board or commission be a "legislative body" for purposes of the open meeting requirements of that act.

¹² It is to be recalled that the CCCSGA is an unincorporated association. However, we do not believe that the Legislature intended that the fact of incorporation or not of a private organization be controlling in applying section 11121.7. Such section is based upon the similar provision found in section 54952 in the Ralph M. Brown Act, which is applicable to local agencies. We believe that the Legislature, in using the terminology "private corporation," merely intended to distinguish private *organizations* from municipal or other forms of public *corporations*. If the fact of incorporation or not were controlling, serious equal protection problems would arise.

CCCSGA are the local student associations. The "semi-autonomous" regional associations are not CCCSGA members. Accordingly, *these* state board members serve in their "official capacity," as members of local student associations, and represent their own local student associations, as well as others, on the CCCSGA state board.

3. The CCCSGA state governing board, as part of the CCCSGA, is supported almost exclusively by contributions from the member student associations of which it is composed, which includes those student associations in regions from which CCCSGA board members are selected where student association membership is mandatory for selection.

Accordingly, despite the fact that not all members of the governing board of the CCCSGA must be members of local student associations, and despite the fact that such members are selected by an intermediary "semiautonomous" student association, we conclude that the governing board meets the requirements of section 11121.7 to make it a "state body" within the meaning of that section. As such, it is subject to the open meeting requirements of section 11123, *supra*, of the Bagley-Keene Open Meeting Act. We believe this conclusion is in accord with the clear legislative intent, which is apparent on the face of section 11121.5 itself, that when a second body is financed by a "state body," and a member thereof *qua* member serves on that second body, the open meeting requirements attach to and follow that member to the second body. This conclusion is also in accordance with the rule that remedial legislation is to be liberally construed to effectuate its purposes. (*Alford v. Pierro* (1972) 27 Cal.App.3d 682, 688.)

In so concluding, we note the suggestion that a different result should obtain because the CCCSGA is financed by nonstate funds. However, section 11121.7 in no way requires that the funds which support the second board or commission be state funds or even public funds in the true sense of the word. The Legislature merely requires that such funds be those of the first "state body," which clearly includes official student organizations of community colleges by virtue of section 11121.5. In short, the Legislature in enacting section 11121.7 anticipated that "state bodies" as contemplated therein might well be financed in whole or in part by funds of student associations.¹³

In so concluding we also note the further suggestion that had the Legislature intended to include the CCCSGA in the Bagley-Keene Open Meeting Act, it could easily have done so, since the CCCSGA has been in operation since 1945. In response to this

¹³ We also note parenthetically that the Legislature has undertaken to regulate both the conduct of and the use of funds of official student associations which are formed pursuant to the provisions of section 76060 of the Education Code in sections 76060 through 76065 of that code. Regulation of the CCCSGA meetings through the Bagley-Keene Open Meeting Act is merely analogous regulation.

suggestion we point out that neither in the Bagley-Keene Open Meeting Act nor in the Ralph M. Brown Act upon which it is patterned has the Legislature undertaken to name *particular entities* which fall within its scope. It has merely established legal criteria for or descriptions of such entities. In our case, the state board of the CCCSGA meets one such description, the one set forth in section 11121.7.

c. Committees of the CCCSGA

In our exposition of the organization of the CCCSGA we pointed out that the organization has "standing committees" and "special committees" which are of "constitutional" origin. Additionally, it may have "ad hoc" committees.

It is beyond the scope of this opinion for us to attempt a definitive determination as to whether each and every committee of the CCCSGA is a "state body" within the meaning of the Bagley-Keene Open Meeting Act. We conclude, however, that many committees are potentially "state bodies" under the criteria set forth in sections 11121.2, 11121.7, and 11121.8 of the act.

For example, section 11121.7 has just been applied above to the state board of CCCSGA. Similarly, as to most "standing committees," those committees must have as members a certain number of voting members of the state board. If such voting members are elected from an area where membership in a local student association is a qualification for selection, essentially the same reasoning which has been just applied to the state board would be applied to the particular standing committee. Similarly, where appointments are made directly from one of the ten areas, if membership in a local student association is necessary for appointment, the reasoning just applied to state board members would again apply.

Additionally, section 11121.2 is germane. That section makes a board, commission, or committee a "state body" if it has been delegated any of the authority of a "state body." It is to be recalled that as to most "standing committees," they are required to perform any "additional" duties designated by the state board. Conceivably, such designation of additional duties to a standing committee, or any other committee of the CCCSGA could, and probably would, bring into operation section 11121.2 since "[t]he State Board shall be the executive governing body of the CCCSGA when the General Assembly is not in session."

With respect to ad hoc committees, such committees could bring into play section 11121.8. That section makes an "advisory committee" of a "state body" also a "state body" for purposes of the Bagley-Keene Open Meeting Act if the advisory committee is "created by formal action of a state body or of any members of a state body,

and if the advisory body so created consists of three or more persons. The criteria set forth in this section would have to be applied to determine if a particular ad hoc committee of an advisory nature is a "state body" within the meaning of the law.

In short, in determining whether CCCSGA's committees are or are not "state bodies" for the purposes of the open meeting requirements of the Bagley-Keene Open Meeting Act, each committee must be analyzed individually with respect to its source or origin, its composition, and its functions and duties, and their source.

In sum, as to the CCCSGA, we conclude that as an entity it is not a "state body." We conclude, however, that its state governing board is. Finally, we conclude that its committees may also be "state bodies" depending upon a proper application of the criteria set forth in sections 11121.2, 11121.7 and 11121.8 of the act to its committees.

II

If CCCSGA Is Not A "State Body," May Its Representatives Sit On Committees That Administer Student Travel Funds?

The second question presented is whether, if the CCCSGA is a private association which is not subject to the Bagley-Keene Open Meeting Act, its representatives may sit on committees that administer student travel funds allowed pursuant to section 71040 of the Education Code. That section provides:

"The [state] *board of governors* [of the California Community Colleges] may allow actual and necessary traveling expenses to community college students who serve on study teams, task forces or similar groups formed by the [state] board of governors or by the chancellor's office *and* who, as official student representatives, attend meetings of any association, organization, or agency which has as its principal purpose the study of matters pertinent to education or to a particular field or fields of education relevant to community colleges.

"The board of governors shall not allow traveling expenses to student lobbyists or for student travel out of the state." (Emphasis added.)

Additionally, section 71091 of the Education Code provides for discretionary delegation of the state board of governors' powers and duties, as follows:

"The chancellor shall serve at the pleasure of the appointing power. He shall execute such duties and responsibilities as may be delegated to him

by the board. Wherever in this code a power is vested in the board, the board, by a majority vote, may adopt a rule delegating such power to the chancellor or any officer, employee or committee as the board may designate. The rule shall prescribe the limits of the delegation."

The second question as framed appears to presuppose that (1) *if* the CCCSGA is subject to the Bagley-Keene Open Meeting Act, then as a "state body" it could be invested with power to perform state functions but (2) *if* the CCCSGA is not subject to the act, its status is that of any other private association which cannot perform official state functions.

The premises upon which the second question is framed are, in our view however, faulty. The Bagley-Keene Open Meeting Act merely designates certain student associations and other boards and committees upon which its representatives may serve (§§ 11121.2, 11121.5, 11121.7, 11121.8) to be "state bodies" *for the purpose of that act*. It in no manner purports to declare that student associations are "state bodies" in the sense that they are invested with state powers and hence may perform state functions as do officers and employees of the state. In short, the act merely states that these organizations shall be treated the same as "state bodies" *insofar as the rights of the public to attend their meetings are concerned*.

As a practical matter, we are informed that a state employee in the chancellor's office actually administers the student travel funds which are allowed pursuant to section 71040.¹⁴ It may be that from time to time the chancellor's office has requested the "advice" or "input" from students regarding the allowance of these funds. We see no objection to such procedure. The Bagley-Keene Open Meeting Act, however, would have no bearing upon such a procedure.

III

May Students Be Reimbursed For Travel to CCCSGA Meetings?

The third question presented is whether community college students may be reimbursed pursuant to section 71040 of the Education Code for travel to CCCSGA meetings.

Section 71040 of the Education Code has been set forth in full in the discussion under question two. It is to be noted that there are *two* basic requirements or criteria under that section before reimbursement may be allowed: (1) the students must

¹⁴ Discussions with counsel for the California Community Colleges.

"serve on study teams, task forces, or similar groups formed by the [state] board of governors or by the chancellor's office"; *and* (2) the students must, "as official student representatives, attend meetings of any association, organization, or agency which has as its principal purpose the study of matters pertinent to education or to a particular field or fields of education relevant to community colleges."

Since the CCCSGA, or its governing board, is not formed by either the board of governors of the community colleges or the chancellor's office, then, as a general proposition, students may not be reimbursed for attending meetings of the CCCSGA. However, it is conceivable that the board of governors or the chancellor's office could form a study group or task force to attend CCCSGA meetings as their official student representatives. Section 71040 of the Education Code could then come into play *if* the purposes of the CCCSGA meet the criteria of the second portion of section 71040 of the Education Code, as outlined above.

The purpose of the CCCSGA, as set forth in article 1, section 2 of its constitution, is as follows:

"The purpose of the CCCSGA shall be to encourage student participation in student government, assist students in the formation and operation of student body associations, provide a forum for the discussion of issues pertaining to community college students, and represent the members in arenas where their rights and interests may be secured, enhanced, or challenged."

This purpose appears to us to be broad enough to meet the criteria of the second portion of section 71040 of the Education Code. However, since section 71040 is couched in the *conjunctive*, it is clear that community college students may not be reimbursed for travel to CCCSGA meetings unless they meet the criteria of being on an official study group or task force which has been formed by the state board of governors or the chancellor's office. In short, community college students may not be reimbursed for travel to meetings of the CCCSGA pursuant to section 71040 unless all the special criteria set forth in that section for reimbursement are met.
