TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

JOHN K. VAN DE KAMP
Attorney General

OPINION	:	No. 83-912
of	:	MARCH 8, 1984
JOHN K. VAN DE KAMP Attorney General	:	
CLAYTON P. ROCHE Deputy Attorney General	:	

THE HONORABLE LLOYD G. CONNELLY, MEMBER OF THE CALIFORNIA ASSEMBLY, has requested an opinion on the following question concerning the agenda item for the July 14, 1983, meeting of the State Board of Food and Agriculture pertaining to the Tuolumne River and the action taken by the board at such meeting to oppose the designation by Congress of the Tuolumne River as Wild and Scenic and the designation of the Tuolumne River Canyon as a Wilderness Area:

1. Did such agenda item comply with the "specific agenda" requirements of the Bagley-Keene Open Meeting Act, Government Code section 11120 et seq?

2. Was the resolution of the State Board of Food and Agriculture adopted at its July 14, 1983, meeting invalid, or are the provisions of the Bagley-Keene Open Meeting Act directory and not mandatory?

CONCLUSIONS

1. The agenda item did not comply with the "specific agenda" requirements of the Bagley-Keene Open Meeting Act, Government Code section 11120 et seq.

2. The provisions of the Bagley-Keene Open Meeting Act are directory, not mandatory, and accordingly the resolution in question was not invalid.

ANALYSIS

For its meeting on July 14, 1983, the State Board of Food and Agriculture ("Board") prepared in advance and distributed as required by law an "Agenda" which contained eleven items. The eighth item read as follows, followed by the name of an attorney and her law firm who apparently was to be heard on the item:

"8 Tuolumne River

San Joaquin River Flood Control Problem

"[Attorney's Name and Law Firm]"

Thereafter, at its meeting on July 14, 1983, the Board adopted a resolution concerning the Tuolumne River which, after numerous "whereas" clauses, stated:

> "RESOLVED, that the Board strongly opposes any Congressional action to designate the Tuolumne River as a Wild and Scenic River or to include the Tuolumne River Canyon in the National Wilderness Preservation System until the studies under the FERC preliminary permit are completed; and be it further
>
> "RESOLVED, that the President of this Board shall testify at Senate Hearings scheduled to commence on July 28, 1983 regarding the California Wilderness Legislation; and be it further
>
> "RESOLVED, that a copy of this resolution be immediately sent Senator Wilson, Senator Cranston, and members of the California Congressional Delegation."

Although the Tuolumne River is a tributary of the San Joaquin River, it is seen that the resolution appears to have had nothing to do with the latter river, nor, as we understand it, flood control problems.

We are asked whether the eighth agenda item complied with the "specific agenda" requirements of the Bagley-Keene Open Meeting Act, Government Code section 11120 et seq.,[1] and if not, whether that fact invalidated the Board's resolution.

1. The "Specific Agenda" Requirement of the Act.

The Bagley-Keene Open Meeting Act essentially requires that "state bodies" as defined therein hold their meetings open to the public except as otherwise provided in the act. (See generally, §§ 11121-11121.8, 11123.)

Section 11125 sets forth the basic notice requirements of the act. Subdivision (b) thereof provides the "specific agenda" requirements which are the focus of this opinion.[2] It states:

---

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

[2] Section 11125 provides in full:

"(a) The state body shall provide notice of its meeting to any person who requests such notice in writing. Notice shall be given at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The notice requirement shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public, provided, however, that no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

"(b) The notice of a meeting of a body which is a state body as defined in Section 11121, 11121.2, 11121.5, or 11121.7, shall include a specific agenda for the meeting, which shall include the items of business to be transacted or discussed, and no item shall be added to the agenda subsequent to the provision of this notice.

"(c) The notice of a meeting of an advisory body, which is a state body as defined in Section 11121.8, shall include a brief, general description of the business to be transacted or discussed, and no item shall be added subsequent to the provision of the notice.

"(d) Notice of a meeting of a state body which complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

"(e) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of

"(b) The notice of a meeting of a body which is a state body as defined in Section 11121, 11121.2, 11121.5, or 11121.7, shall include a specific agenda for the meeting, which shall include the items of business to be transacted or discussed, and no item shall be added to the agenda subsequent to the provision of this notice."

Thus it is seen that the act requires that the notice of a meeting contain a "*specific* agenda" which is to include all items of business to be transacted or discussed by the state body.

It is evident that the purpose of subdivision (b) is to provide *advance* information to interested members of the public concerning the state body's anticipated business in order that they may attend the meeting or take whatever other action they deem appropriate under the circumstances. As stated by the court in *Carlson* v. *Pasadena Unified Sch. Dist.* (1971) 18 Cal.App.3d 196, 199-200 with reference to the agenda requirements of the Education Code for school boards:[3]

". . . Decisions of local governing bodies of school districts may directly affect parents and teachers alike, as well as the students themselves. Thus, it is imperative that the agenda of the board's business be made public *and in some detail* so that the general public can ascertain the nature of the business. It is a well-known fact that public meetings of local governing bodies are sparsely attended by the public at large *unless* an issue vitally affecting their interests is to be heard. *To alert the general public to such issues*, *adequate notice is a requisite*. . . ." (First and Third emphases are added.)

By the same token, where the law clearly provides that certain members of the public are *entitled* to be apprised of some or all of a state body's business in advance, "adequate notice is a requisite." To make notice meaningful, a state agency must set forth an agenda item "in some detail."

---

only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

"(f) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911."

[3] Section 996 of the Education Code provided that

"(b) A list of items that will constitute the agenda for all regular meetings shall be posted at a place where parents and teachers may view the same at least 48 hours prior to the time of said regular meeting.

See now, Education Code section 35145.

Furthermore, we note that section 11125 as originally enacted merely provided for the preparation and dissemination of an "agenda." (See Stats. 1967, ch. 1656, p. 4026.) In 1981, when the section was amended to its present form, the Legislature *added* the adjective "specific" to the agenda requirements. In Webster's Third New International Dictionary, Unabridged (1961), the pertinent definition of the word "specific" is:

> ". . . 4a: characterized by precise formulation or accurate restriction . . .: free from such ambiguity as results from careless lack of precision or from omission of pertinent matter . . . ."

Accordingly, we have little hesitancy in concluding that the eighth item of the Board's agenda for its July 14, 1983, meeting was inadequate, and hence did not comply with the "specific agenda" requirements of section 11125. A member of the public would have to have been either clairvoyant or have had collateral information to know that the Board intended to consider the resolution which it actually did at its July 14, 1983, meeting.

Furthermore, the eighth agenda item was not only noninformative but possibly even misleading. A proposed matter concerning the Tuolumne River of an undesignated nature was combined apparently with another item relating to San Joaquin River flood control problems. Since, as noted, the former river is a tributary of the latter, one could have surmised that flood control problems relating to *both* rivers was to be discussed. This, apparently, was not the case. Certainly, a misleading agenda item also would not comply with the requirements of section 11125, which we conclude requires "adequate notice."

In short, as to the July 14, 1983, meeting of the Board, members of the public interested in the *specific* proposals of Congress to designate the Tuolumne River "wild and scenic" and the "Tuolumne River Canyon" a "wilderness area" would have had to guess whether they should attend the meeting, or seek additional information from the board. We believe that section 11125 was and is intended to nullify the need for such type of guesswork or further inquiry on the part of the interested public.

2. Is The Bagley-Keene Open Meeting Act Mandatory or Directory?

The second question is whether the provisions of the Bagley-Keene Open Meeting Act are directory or mandatory. The California Supreme Court recently stated the meaning of this distinction in *Edwards* v. *Steele* (1979) 25 Cal.3d 406, 409, stating:

> "As we recently explained, '. . . the "directory" or "mandatory" designation does not refer to whether a particular statutory requirement is "permissive" or "obligatory," but instead simply denotes whether the failure

> to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates. [Citations.]' . . . ."

Accordingly, if the provisions of the Bagley-Keene Open Meeting Act are mandatory, the failure to comply with the "specific agenda" requirements of the act would invalidate the action taken with regard to the particular item of business. Conversely, if the provisions of the act are merely directory, then failure to follow the "specific agenda" requirements would not invalidate the action taken. The fact that a provision is directory does not, however, mean that a state agency is free to ignore the provision. The dichotomy merely determines the effect of the failure to comply with the act "after the fact." Stated otherwise, a conclusion that a statute is directory but otherwise obligatory does not authorize action in violation of the statute.

No cases or opinions of this office have determined the consequences of failure to comply with the provisions of the Bagley-Keene Open Meeting Act. Admittedly, several cases have held that the Legislature intended that the agenda requirements of the Education Code with respect to school boards are mandatory in nature. Thus these cases have held actions taken in violation of such requirements to be invalid. (See *Santa Barbara School District* v. *Superior Court* (1975) 13 Cal.3d 315, 332-336; *Carlson* v. *Paradise Unified Sch. Dist.*, *supra*, 18 Cal.App.3d 196.) We decline to follow those cases by way of analogy, however, since to do so would in our opinion be contrary to the intent of the Legislature with respect to the Bagley-Keene Open Meeting Act. As stated by the California Supreme Court in *People* v. *Caudillo* (1978) 21 Cal.3d 562, 576:

> "Although the decisional law has established many rules of statutory construction, they are all basically guides in the quest to determine the Legislature's intent so that the purpose of the legislation may be effectuated. Thus, we have said that 'we must apply every statute in the case according to our best understanding of legislative intent; . . . '"

Accordingly, we construe the "specific agenda" requirements of the Bagley-Keene Open Meeting Act according to our best understanding of the intent of the Legislature.

The law which is currently known as the Bagley-Keene Open Meeting Act was first enacted in 1967. (Stats. 1967, ch. 1656.) It was clearly patterned upon the Ralph M. Brown Act, sections 54950 et seq., which generally requires meetings of *local* agencies to be open and public. That act was first enacted in 1953. (Stats. 1953, ch. 1588.) Thus, the Assembly Interim Committee on Government Organizations, which was constituted in September, 1964, to review the accessibility to the public of both records and meetings of public agencies, recommended as follows with respect to state agencies and their meetings:

"COMMITTEE RECOMMENDATIONS

"*The committee recommends the enactment of a comprehensive open meeting law applicable to all state agencies that is similar to the Ralph M. Brown Act for local legislative bodies*.

"This would eliminate much of the present confusion over whether or not specific boards and commissions are required by law to conduct their meetings open to the public. In addition, when new agencies are created they would automatically be covered by the law unless some specific justification exists for permitting executive sessions.

"Presently, the open meeting statutes of the majority of state agencies which are covered by law simply state that 'all meetings shall be open and public.' As a result there are no uniform standards such as are specified in the Brown Act for holding open meetings. In some cases this limited language has hampered the operations of state agencies because it does not clearly indicate when closed meetings might be permissible, such as personnel sessions permitted by the Brown Act.

"The committee concludes that a uniform open meeting law applicable to all state agencies that is similar to the Ralph M. Brown Act for local legislative bodies will be of significant benefit to the state agencies and the public." (See 12 Assem. Interim. Com. Rep. (1965) No. 10, Government Organization, p. 82, - hereinafter "The Right To Know".)

Accordingly, we believe that an examination of the history of the Ralph M. Brown Act is significant in ascertaining the intent of the Legislature with respect to whether the Bagley-Keene Open Meeting Act is directory or mandatory. " . . . we consider the legislative history of the statute as well as the historical circumstances of its enactment in determining the intent of the Legislature. . ." (*People* v. *Black* (1982) 32 Cal.3d 15.)

Until 1961, the Ralph M. Brown Act contained no sanctions for the violation of the provisions. In *Adler* v. *City Council* (1960) 184 Cal.App.2d 763 the court considered, inter alia, what the effect of violating the open meeting requirements of the act were, that is, did it invalidate action taken at the meeting?[4] In this respect the court stated:

[4].Many other points considered in *Adler* have been supplanted by subsequent legislation or later case law. See, e.g., 42 Ops.Cal.Atty.Gen. 61 (1963) analyzing 1961 amendments to the Ralph M. Brown Act and *Sacramento Newspaper Guild* v. *Sacramento County Bd. of Suprs*. (1968) 263 Cal.App.2d 41 (luncheon gathering of board of supervisors "meeting" within meaning of the act).

"[1b] We think *Turk* v. *Richard*, *supra*, 47 So.2d 543, correctly reflects the spirit of our Brown Act and we conclude that the dinner gathering of June 13, 1958, did not violate the statute, even upon the assumption that that law did apply to charter cities at the time in question.

"[5a] *But if the contrary were true it would not follow that the action of the zoning commission* (*much less that of the city council*) *in granting a conditional zone change was invalidated by the commission's violation of the act*.

"It provides no penalty for infraction and no method of enforcement. Ordinarily this implies absence of intent to make the statute mandatory, existence of intent to leave it in the discretionary class. [6] 'The requirements of a statute are directory, not mandatory, unless means be provided for its enforcement.' (*Gowanlock* v. *Turner*, 42 Cal.2d 296, 301 [267 P.2d 310].) See also *Whitley* v. *Superior Court*, 18 Cal.2d 75, 80 [113 P.2d 449]; *Abbott* v. *City of San Diego*, 165 Cal.App.2d 511, 524 [332 P.2d 324]; *Jefferson Union Sch. Dist.* v. *City Council*, 129 Cal.App.2d 264, 266 [277 P.2d 104]. Of course, violation of a directory statute does not result in invalidity of the action so taken (see 82 C.J.S., § 374, p. 869).

"[5b] However, in view of the public purpose of the Brown Act, which is directed toward the conduct of public officials, we believe that section 1222, Government Code, and section 177, Penal Code, are here applicable and give mandatory complexion to the act. Government Code, section 1222: 'Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor.' Penal Code, section 177: 'When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.'

"*This is one of those instances in which the prescribed penalty for violation of the law precludes all others* (cf. *John E. Rosasco Creameries* v. *Cohen*, 276 N.Y. 274 [11 N.E.2d 908, 909, 118 A.L.R. 641]; *Luchini* v. *Roux*, 29 Cal.App. 755, 759 [157 P. 554]; *Marconi W.T. Co.* v. *North P.S. Co.*, 36 Cal.App. 653, 658-659 [173 P. 103]; *Vick* v. *Patterson*, 158 Cal.App.2d 414, 417 [322 P.2d 548]; *In re Peterson's Estate*, 230 Minn. 478 [42 N.W.2d 59,

---

Under this latter case (and numerous opinions of this office) the dinner gathering would have violated the act.

> 63]; 55 A.L.R.2d annotation at 487), and leaves private persons, though taxpayers, without any right to declaratory relief or injunction incidental thereto. (*Oppenheimer* v. *Clifton's Brookdale, Inc.*, 98 Cal.App.2d 403, 404-405 [220 P.2d 422]; *Triangle Ranch, Inc.* v. *Union Oil Co.*, 135 Cal.App.2d 428, 434-437 [287 P.2d 537].)" (*Id.*, at pp. 774-775, emphasis added.)[5]

Since the decision in *Adler* v. *City Council* the courts have uniformly held that a violation of the open meeting requirements of the Ralph M. Brown Act would not invalidate action taken at such meeting, but would only subject the violators to possible criminal penalties. (See *Griswold* v. *Mt. Diablo Unified Sch. Dist.* (1976) 63 Cal.App.3d 648, 656-658; *Greer* v. *Board of Education* (1975) 47 Cal.App.3d 98, 120-122; *Strobling* v. *Mailliard* (1970) 6 Cal.App.3d 470, 474; *Old Town Dev. Corp.* v. *Urban Renewal Agency* (1967) 249 Cal.App.2d 313, 329; *Claremont Taxpayers Assn.* v. *City of Claremont* (1963) 223 Cal.App.2d 589, 593.)

The foregoing case law, besides being the progeny of *Adler* v. *City Council*, is also the progeny of action taken during the 1961 legislative session. This action is summarized in *Griswold* v. *Mt. Diablo Unified Sch. Dist.*, *supra*, 63 Cal.App.3d at page 657 as follows:

> "After *Adler* was decided the Legislature amended the Brown Act to add section 54959 which provides: 'Each member of a legislative body who attends a meeting of such legislative body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.' The Governor vetoed the first bill that would have added section 54959 because the bill contained a provision making any action taken at a meeting in violation of the Brown Act void. The Governor stated in his veto message, 'I believe that this bill would seriously imperil the finality of all local legislative decisions.' (Assem. Daily J. (May 8, 1961) p. 3430.) Thereafter, the Legislature passed and the Governor signed a bill which added section 54959 but eliminated the provision that would have made void any action taken at nonpublic meetings. (*Stribling* v. *Mailliard* (1970) 6 Cal.App.3d 470, 474-475 [85 Cal.Rptr. 924]; 42 Ops.Cal.Atty.Gen. 61, 66.)

---

[5] The test set forth in *Adler* that a statute generally may be said to be directory or mandatory depending upon whether or not sanctions have been provided for its violation, and oft repeated in subsequent case law (e.g., *Griswold* v. *Mt. Diablo Unified Sch. Dist.* (1976) 63 Cal.App.3d 648, 656), has apparently been disapproved by our Supreme Court. (See *People* v. *McGee* (1977) 19 Cal.3d 948, 962, fn. 5.)

"Thus, the holding in *Adler* has not been rendered invalid by subsequent legislative enactments. . . ."[6]

It was against this background that the act, now denominated the Bagley-Keene Open Meeting Act, was enacted in 1967, and patterned upon the Ralph M. Brown Act. Significantly, although as originally enacted this state agency act provided in section 11130 for its enforcement through mandamus or injunction (later amended to include declaratory relief) in language similar to section 54960, set forth below, it was not until 1980 that the act was amended to provide in section 11130.7 for any criminal sanctions.[7] (See Stats. 1980, ch. 1284, § 16; Stats. 1969, ch. 494, § 1; Stats. 1967, ch. 1656, § 122.)

Thus, the Legislature in 1967 was clearly aware of the decision in *Adler* v. *City Council*, *supra*, 184 Cal.App.2d 763 to the affect that violation of the Ralph M. Brown Act did not invalidate action taken. It was also aware of the action of the Governor vetoing legislation which would have invalidated such action taken. (See the "Right To Know", *op. cit.*, *supra*, at pp. 22-23, 48.) It is also presumed to have been aware of the subsequent case law which continued and continues to hold as did *Adler* on that point and which discusses the Governor's veto in 1961 of contrary legislation. (See *Bailey* v. *Superior Court* (1977) 19 Cal.3d 970, 977-978, fn. 10.) It even *added* sanctions in 1980.

In our opinion, with this background, had the Legislature intended that a violation of the Bagley-Keene Open Meeting Act, or any of its specific provisions such as the "specific agenda requirements," was to result in the invalidation of action taken, it would have specifically so stated in unmistakable language. Its failure to have done so leads us to conclude that the provisions of the Bagley-Keene Open Meeting Act, including the "specific agenda" requirements of section 11125, subdivision (b), are directory not mandatory.

---

[6] Additionally, in 1961 the Legislature added section 54960 (amended in 1969 to add provisions regarding declaratory relief), which provides:

"Any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body."

(Added by Stats. 1961, c. 1671, § 6. Amended by Stats. 1969, c. 494, § 2.)

[7] Section 11130.7 provides:

"Each 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."

In so concluding, we note that the Ralph M. Brown Act has no agenda requirements similar to those contained in section 11125. (See discussion in 61 Ops.Cal.Atty.Gen. 323-325 (1978).) We, however, do not consider this distinction significant since the reason for the holdings of the case law, as well as the reason for the Governor's veto, would be applicable to *any* violation of either the Ralph M. Brown Act or the Bagley-Keene Open Meeting Act, that is, to ensure stability of governmental action.[8]

*****

[8] Accordingly, we do not discuss the fact that subsequently the board reheard the matter under consideration herein, having first given notice in great detail of its resolution, and ratified its prior action. With respect to the effect of ratification upon prior action taken in violation of acts similar to the Ralph M. Brown Act and the Bagley-Keene Open Meeting Act, see Annot. 38 A.L.R.3d 1070, 1089-1090.

We also note the provisions in section 11126 specifically providing that disciplinary action taken against an employee without giving the statutory notice "*shall be null and void*," thus demonstrating the Legislature's ability to express itself in this regard if it so desires.