

Opinion No. 83-304—July 28, 1983¹

SUBJECT: OPEN MEETING REQUIREMENTS—Meetings of the academic senate or faculty council of a California community college are subject to the open meeting requirements of the Ralph M. Brown Act.

Requested by: MEMBER, CALIFORNIA SENATE

Opinion by: JOHN K. VAN DE KAMP, Attorney General Clayton P. Roche, Deputy

The Honorable David Roberti, Member of the California Senate, has requested an opinion on the following question:

Are meetings of the academic senate or faculty council of a California community college subject to the open meeting requirements of the Ralph M. Brown Act?

CONCLUSION

Meetings of the academic senate or faculty council of a California community college are subject to the open meeting requirements of the Ralph M. Brown Act.

ANALYSIS

The Ralph M. Brown Act, Government Code section 54950 et seq., requires that "legislative bodies" of "local agencies" as defined in the act hold their meetings open to the public unless expressly excepted by the act, or unless impliedly excepted by some other confidentiality provision of the law such as the attorney-client privilege. (63 Ops. Cal. Atty. Gen. 820, 821 (1980).) "Local agency" includes a school district, including a California community college district. (See Gov. Code, § 54951; Atty. Gen. Unpub. Opn. I.L. 76-222.) "Legislative body" for purposes of the act is not restricted to the actual governing board or body of a local agency. It includes as well (1) "any board or commission thereof, or other body on which officers of a local agency serve in their official capacity" (Gov. Code, § 54952); (2) boards, commissions or committees "which exercise any [delegated] authority of a legislative body" (Gov. Code, § 54952.2); (3) "planning commission, library boards, recreation commission, and other permanent boards or commissions of a local agency" (Gov. Code, § 54952.5); and (4) "any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body of a local agency" (Gov. Code, § 54952.3).

As will be evident from an examination of the functions of an academic senate or faculty council (hereinafter "academic senate"), the basic issue presented is whether an academic senate is an advisory commission, committee or body within the meaning of section 54952.3 of the Government Code. Stated otherwise, is a community college academic senate an advisory body of the community college district board, and has it been formed by "formal action" of that board as contemplated by the Ralph M. Brown Act.

California community colleges are established pursuant to division 7 of title 3 of the Education Code. (Ed. Code, §71000 et seq.) At the state level, there is a Board of Governors of the California Community Colleges which essentially oversees all community college districts in the state. (Ed. Code, §§ 71000-71095.) Individual districts and their governing boards are established pursuant to section 72000 et seq. of the Education Code. With respect to the statewide Board of Governors, section 71079 of the Education Code provides:

"The board of governors shall establish minimum procedures to be used by district governing boards to insure faculty and students the opportunity to express their opinions at the campus level and to insure that these opinions are given every reasonable consideration."

Then, with respect to each individual district governing board, section 72292 of the Education Code provides:

¹ ATTORNEY GENERAL'S OPINIONS VOLUME 66 (pages 252 – 256)

"The district governing board shall establish rules and regulations governing student conduct. The district governing board shall establish procedures not inconsistent with those established by the board of governors to insure faculty and students the opportunity to express their opinions at the campus level."

Thus, the statewide board of governors is to establish certain minimum procedures to be used by district governing boards and district governing boards are to establish local procedures not inconsistent therewith which grant faculty and students the opportunity to voice their opinions.

The statewide Board of Governors has carried out its legislative mandate as above stated by adopting sections 53200-53206 of title 5 of the California Administrative Code. These sections provide for the establishment of academic senates at the district level, and provide for their powers, duties and functions.

Section 53200, subdivision (b) of these administrative regulations defines the terms "academic senate" and "faculty council" to mean ". . . an organization formed in accordance with . . . [the regulations'] *whose primary function is*, as the representative of the faculty, *to make recommendations* to the administration of a college and *to the governing board of a district* with respect to academic and professional matters." (Emphasis added.)

Similarly, section 53203 of the administrative regulations provides:

"After consultation with the administration of its community college, *the academic senate or faculty council may present its written views and recommendations to the governing board*. The governing board shall consider and respond to such views and recommendation." (Emphasis added.)

Accordingly, it is clear that an academic senate is an advisory body to the local governing board of a California community college district, the "legislative body" of such a district. Thus, an academic senate meets the initial test of section 54952.3 of the Ralph M. Brown Act of being "an advisory commission, advisory committee, or advisory body of a local agency," that is, of the community college district.

Less clear is whether an academic senate, as such an "advisory body," meets the second requirement of section 54952.3 of the Government Code. Such requirement is that it be "created by charter, ordinance, resolution or by any similar formal action of a legislative body or member of a legislative body of a local agency." Section 53201 of title 5 of the California Administrative Code states:

"In order that the faculty may have formal and effective procedure for participating in the formation of district policies on academic and professional matters, an academic senate or faculty council may be established at the college and/or district level."

Section 53202 of title 5 of the California Administrative Code then sets forth the procedure for forming an academic senate. It provides:

"The following procedure shall be used to establish an academic senate or faculty council:

"(a) The faculty of a community college shall vote by secret ballot to form an academic senate or faculty council.

"(b) In multi-college districts, the faculty of the district colleges may vote whether or not to form a district academic senate. Such vote shall be by secret ballot.

"(c) The governing board of the district shall recognize the academic senate or faculty council and authorize the faculty to:

"(1) Fix and amend by vote of the faculty the composition, structure, and procedures of the academic senate or faculty council.

"(2) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate or faculty council.

"(d) The faculty may provide for the membership of part-time faculty members in the academic senate or faculty council.

"(e) In the absence of any full-time faculty members in a community college, the part-time faculty of such community college may form an academic senate or faculty council with the same functions as stated in 53200(b) and 53201."

Accordingly, an academic senate is not formed "by charter, ordinance or resolution" of the district board in the sense that a single act of the board, ipso facto, establishes the body. Thus, the ultimate issue is whether it can be said to have been formed "by any similar formal action" of the "legislative body." that is, the district governing board within the meaning of the Ralph M. Brown Act.

At first blush, one might conclude that an academic senate is formed not by the district board, but by vote of the faculty of the community college or colleges. However, reference to section 53202 of title 5 of the California Administrative Code, subdivision (c)(1) and (2), *supra*, discloses that certain steps or actions are also required of the district board after the faculty vote. Furthermore, it is to be recalled that the administrative regulations with respect to formation of these bodies, as well as locally mandated regulations (see Education Code, sees. 71079 and 72292, *supra*), have been adopted and are adopted to satisfy requirements of the law. These requirements are that procedures be established "to be used by district governing boards" which provide for the expression of opinions of faculty and students. Consequently, it can be said that the establishment of an academic senate is attributable to the district board as well as to the faculty by its vote.

In this respect, the following language in the recent decision, *Joiner v. City of Sebastopol* (1981) 125 Cal. App. 3d 799, 805, is germane. It sets forth the approach to be taken as to the interpretation of "formal action" as used in section 54952.3 of the Government Code. Such is that the section be construed broadly. (*Id.* at p. 805, fn.5.) The court reasoned:

"We conclude also on the basis of undisputed facts that the proposed committee was 'created by ... formal action' of the city council. Respondent concedes that the city council, though it did not formally adopt a resolution, nevertheless took 'formal action' when it designated two of its members to meet with two planning commission members. It follows (since that designation was pursuant to a unanimously approved plan) that the city council also took 'formal action' when it adopted the proposed agenda for the meeting, i.e., that the group which was to meet would interview applicants and report back to the city council with recommendations. And, since the city council instigated that procedure as a means of fulfilling its responsibility to fill a vacancy on the planning commission, the 'creation' of the committee must be attributed to the council's action. The fact that the procedure was contingent upon the planning commission's compliance does not detract from that conclusion. A contrary view would lead to the unacceptable conclusion that a legislative body which desired to evade the strictures of Government Code section 54952.3 could do so simply by declaring that the existence of an advisory committee including nonmembers of the governing body was contingent upon the nonmembers being willing to serve."

Accordingly, by a parity of reasoning, it would seem that the legally mandated joint action to be taken by the faculty of a community college and a district board in establishing an academic senate constitutes the requisite "formal action" contemplated by section 54952.3 of the Government Code. We, therefore, conclude that an academic senate of a California Community College is an advisory body within the meaning of section 54952.3 of the Government Code, and its meetings fall within the open meeting requirements of the Ralph M. Brown Act.

We therefore do not reach or discuss the question whether, if it is not such an "advisory body," it would, however, meet another definition of "legislative body" set forth in the Ralph M. Brown Act. (See Gov. Code, §§ 54952, 54952.2, 54952.5.)