

Public Law Update – Attorney General Issues Opinion Regarding State of the City Events and Brown Act

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The Attorney General issued a formal opinion on April 18, 2024 that State of the City addresses held by private organizations are subject to the Brown Act if a quorum of the City Council attends. While this formal opinion is not binding law on public agencies, the Attorney General Opinion gives important guidance to public agencies on how the Brown Act would likely be interpreted by the courts.

The Ralph M. Brown Act is California's open meeting law and requires local agencies to permit members of the public to attend public meetings and comment on the public's business. The Brown Act prohibits a legislative body from conducting a meeting in a facility where members of the public may not be present without making a payment or purchase or have to provide their name or other information to attend. The Brown Act broadly defines a "meeting" as occurring when (1) a majority of the members of a legislative body gather together at the same time and location; (2) to hear, discuss, deliberate, or take action; (3) on any item that is within the subject matter jurisdiction of the legislative body. There are exceptions to the Brown Act's requirements for open and public meetings for conferences, community meetings, and purely social or ceremonial events.

At the request of the Ventura City Attorney, the Ventura County District Attorney asked for a formal opinion from the Attorney General after the Mayor of Ventura gave a State of the City address at an annual breakfast held by the Ventura Chamber of Commerce. The Ventura Chamber of Commerce is a private, voluntary association that promotes commercial interests in and around Ventura. Members of the public could attend the event in person, but only if they purchased a ticket from the Chamber of Commerce. There was no other way for the public to watch the address in real time. The District Attorney asked the Attorney General for advice on whether the breakfast would constitute a Brown Act meeting if a majority of the Ventura City Council attended the breakfast.

The Attorney General's formal opinion is based on the principle enshrined in the California Constitution that the Brown Act should be interpreted liberally. Based off that principle, the Attorney General opined that if a majority of the City Council were to attend the

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Chamber of Commerce event, it would be a Brown Act meeting because all three elements of what constitutes a meeting would be met. First, the Council members would be gathered in the same place at the same time. Second, the Attorney General stated that a State of the City would involve both hearing—sitting in the audience as the Mayor gave the address—and a broad interpretation of discussing as the Mayor of Ventura is a member of the City Council and the Attorney General relied on a common definition of a "discussion" as meaning the consideration of a question or topic presented by the speaker as opposed to a back-and-forth dialogue. Third, the Attorney General found that the address was in the City Council's subject matter jurisdiction because the Council had the authority to take action by passing ordinances related to the topics covered in the address.

The Attorney General also considered some of the exceptions to meetings (or non-meetings) identified in the Brown Act. The Attorney General opined that a State of the City address would not qualify for the conference exception to the Brown Act. The conference exception requires the (1) gathering to be open to the public; and (2) involves a discussion of issues of general interest to the public or to public agencies in general. The Attorney General reasoned that the conference exception would not apply because while the State of the City address was open to the public it did not involve an issue that would be of interest outside the City as required by the exception. The Attorney General focused on the fact that a single speech does not meet common definitions of a "conference" where opinions are exchanged between attendees.

The Attorney General also opined that the Chamber of Commerce's event would not qualify under the community meetings exception because the Chamber's event required attendees to purchase tickets which restricted attendees to those who were willing and able to pay to attend and the exception requires community meetings to be open to the public without restriction.

Lastly, the Attorney General noted that State of the City addresses do not qualify for the Brown Act exception for purely social or ceremonial events because while a State of the City address does involve a degree of social interaction and ceremony, it also can have a significant effect on a city's legislative process and, therefore, is not purely social or ceremonial.

Although the Attorney General's opinion is non-binding it is persuasive in how courts interpret the Brown Act as the Attorney General is the chief law enforcement officer in California. Local public agencies should, therefore, consider whether they are complying with this opinion and the Attorney General's interpretation of the exceptions to the Brown Act meeting requirements when scheduling State of the City addresses or considering other events where a majority of

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members of a legislative body are gathering.

Attorneys at Burke regularly advise clients on legal matters related to the Brown Act.

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