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Brown Act: The Importance of Sticking to Your Agenda

A recent Court of Appeal decision, *Olson v. Hornbrook Community Services District*, serves as an excellent reminder of the importance of preparing accurate agenda item descriptions, and the danger of taking action on an item that is not on the agenda. In this case, Plaintiffs allege the District's Board of Directors (the "Board") violated the Brown Act (the "Act") by failing to adequately describe on its agenda several items it acted on over the course of three District meetings, and for unreasonably limiting public comment. Plaintiffs sought to invalidate the Board's resulting actions pursuant to section 54960.1 of the Act, but also to obtain a declaration to determine the applicability of the Act to the Board's actions pursuant to section 54960.

The Facts: The Agenda Descriptions and Board Actions

In August 2016, the District included the following item on its meeting agenda: "RE: State Compensation Insurance Fund. Discussion, direction and possible motion to approve payment in the amount of \$285.75 for quarterly premium due 8/25/16 for rating period 7/29/16 – 7/29/17." During the meeting, the District changed and approved the amount of the payment in question. For its September 2016 meeting, the District included the following item on its consent agenda: "Approve bills and authorize signatures on Warrant Authorization Form for" various bills listed in the agenda. At the meeting, when the consent agenda came up for discussion, the District secretary announced that she had received an additional bill from AT&T that she wanted to add to the agenda as a consent item. The Board approved the consent item with the added payment. For its January 2017 meeting, the District included the following item on its consent agenda: "Approve bills and authorize signatures on Warrant Authorization Form for District expenses received through January 24, 2017." The agenda did not list specific bills or amounts to be paid or warrants to be authorized. The Board approved the consent item.

Adequacy of Agenda Descriptions and Nullification under Section 54960.1

After sending cease and desist letters to the District and receiving no response, Plaintiffs filed suit and sought to nullify the District actions based on its alleged failure to adequately describe these matters in the agenda. The Court of Appeal noted that to achieve substantial

compliance with Act and avoid nullification pursuant to section 54960.1 of the Act, agenda drafters must give the public a fair chance to participate in matters of particular or general concern by providing the public with more than mere clues from which they must then guess or surmise the essential nature of the business to be considered by a local agency. With regard to the August 2016 agenda, the court found that the amount of the payment, which was listed incorrectly in the agenda, was a technical error. Those who were interested in the payment had notice that it was going to be discussed, could attend and act upon it at the District's August meeting, and would have been able to participate in the Board's action regardless of the amount to be paid. The essential nature of the Board's action was communicated and did not prevent public participation that would have otherwise occurred had the amount been accurately described. Similarly, with regard to the January 2017 agenda, the court found that the description left no confusion as to the essential nature of the District's action, which was to approve bills and authorize signatures for all expenses in the District received through January 24, 2017. Those interested in the District's expenses would know from the agenda description that they needed to attend the meeting to participate in that discussion and action.

As to the September 2016 agenda, the court found that the District did not substantially comply with the Act. Contrary to the agenda description for January 2017, on the September 2016 agenda, the Board indicated it would be approving a specific and exhaustive list of payments. Those interested in payments not listed, like the AT&T payment that was added at the time of the meeting, would not know to attend the September 2016 meeting so they would not be able to comment on the subject. Accordingly, the court found that Plaintiffs had stated a cause of action under section 54960.1 in their complaint challenging the District's September 2016 agenda description. However, Court of Appeal made no holding as to whether the action to was proper under 54954.2(b)(2), which permits a legislative body to take action on items of business not appearing on the agenda based on specific findings. Nor did the court make a determination on whether prejudice existed to nullify the Board's action.

Declaratory and Injunctive Relief Under Section 54960

Plaintiff also sought relief pursuant to section 54960 to obtain a declaration and injunction from the court to force the District to comply with the Act in the future and admit it had not complied with the Act in the past. The Court found that unlike a cause of action under 54960.1 to nullify a prior legislative action, a local agency's substantial compliance with the Act does not bar a plaintiff from obtaining declaratory or injunctive relief. Thus, in the case of the August 2016 agenda, while this description substantially complied with the Act and the Board's action could not be nullified, the court did

not find that it complied with the Act as contemplated in section 54960 because the local agency took an action different from the action described on the agenda. Those interested in this item would know to attend the August 2016 meeting to participate in the Board's action; however, those interested in the particulars of the Board's action may be persuaded not to attend the meeting in reliance on the agenda's statement regarding the amount of the proposed payment. Accordingly, the court found that Plaintiffs stated a cause of action in their complaint challenging the District's August 2016 agenda under section 54960 for declaratory and injunctive relief.

Validity Public Comment Policy

Lastly, Plaintiffs challenged the District policy of limiting public comment on items described in the agenda to the time when those items are being considered by the Board as being in violation of the Act. However, the Court of Appeal found that it was not an unreasonable regulation. It ensured the Board had a clear and complete understanding of the public concern regarding an item of business on the agenda at the time that item was to be transacted or discussed. Because the District provided the public comment periods required by the Act and its restrictions regarding those comment periods were reasonable, Plaintiff has failed to allege a violation of section 54960 based on the District's public comment policy.