



COUNTY OF SONOMA
OFFICE OF THE DISTRICT ATTORNEY

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JILL RAVITCH
District Attorney

March 9, 2022

Robert H. Pittman, Esq.
Sonoma County Counsel
County Administration Center
575 Administration Drive, Room 105A
Santa Rosa, CA 95403
By Hand Delivery

Re: Claims of Brown Act Violations

Dear Mr. Pittman:

In a letter dated December 13, 2021, you asked my office to independently review the Sonoma County Board of Supervisors' decision under the Brown Act to hold a closed session on November 19, 2021, in response to an alleged threat of litigation. As you are aware, there have also been a number of additional Brown Act complaints raised surrounding the Board's actions with respect to the redistricting process. Our review included those complaints as well. However, another claim was received on Monday; that claim will be handled separately.

We appreciate the responsiveness of your office and other county representatives to our requests for additional information in the form of written responses to questions, pertinent documents, and an interview of a county staff member. We reviewed that information along with the numerous Public Records Act requests and responses, agendas for the respective board meetings, and pertinent portions of the recordings of those meetings.

Our review has determined that violations of the Brown Act occurred as outlined below.

1. Alleged Threat of Litigation as Basis for the Closed Session Held on November 19, 2021

This was the Board's decision that you specifically requested our office review. After reviewing the documents related to the alleged threat of litigation and your office's response to our questions on this topic, we have concluded a Brown Act violation did occur when the specific threat of litigation was not disclosed to the public in the closed session agenda packet, or otherwise, as required in order to invoke this basis for a closed session. (See Gov. Code § 54956.9(e)(5) and *Fowler v. City of Lafayette* (2020) 46 Cal.App.5th 360.) While it is arguable that your handwritten notes were sufficient documentation of the litigation threats, since Chair Hopkins was the person who purported to receive the threats, we believe she should have

memorialized them in a writing. Either way, the documentation of the threats should have been provided to the public under Government Code section 54956.9(e)(5).

In order to remedy this violation, the threat of litigation that your office and the Board relied on to add the item to the closed session should be shared with the public. Further, the Brown Act training that we recommend at the end of this letter should include a discussion of the public noticing and agenda requirements for holding closed sessions to ensure compliance in the future.

2. Alleged Serial Meeting Between November 16 and 29, 2021

A complaint was made that the Board held an inappropriate “hub-spoke” serial meeting between the November 16, 2021, Board Meeting and the November 29, 2021, Workshop. After our review of your office’s response to our questions on this topic, staff’s correspondence with each of the Supervisors about their input for the redistricting maps, and other pertinent documents, we conclude that a Brown Act violation occurred when the comments from the Supervisors were summarized in a document and shared with the Board prior to the November 29, 2021, Workshop. This document was labeled as an “Attorney-Client Privileged Communication” but does not appear to have been prepared by an attorney or contain legal advice.

However, it appears that the comments summarized in the document were discussed at the workshop and the public had ample opportunity to weigh in on the subject matter and thus there appears to have been no prejudice since no action was taken at the workshop. As a remedy for this violation, we feel that this document needs to be shared with the public on the County’s redistricting site.

Further, we believe that the contacts by staff with the individual Supervisors outside a public meeting via email, although not leading to action or deliberation, were phrased in such a way that additional violations could have easily occurred had the supervisors responded differently. Specifically, staff should not have asked, on or about November 18, 2021, for “additional comments” or concurrence as to the “Koenigshofer’s border” for the districts. Instead, staff should have made it clear in the emails that all that was sought of the Supervisors was clarification of comments made in the November 16, 2021, Board Meeting. The Brown Act training we recommend should also include a discussion of serial meetings under Gov. Code § 54952.2.

Conclusion

Although we find no prejudice either because no formal action was taken or because there was substantial compliance with the Brown Act, the manner in which the County proceeded led to a public perception that violations occurred. The public should be able to see all deliberations undertaken by the board. (See *Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41.) Additionally, the public should have been provided with (1) the

documents constituting the “threats” of litigation prior to the closed session, and (2) the “Attorney-Client Memo” summarizing whether the “new maps” met the concerns raised by the Supervisors in the November 16, 2021, Board Meeting.

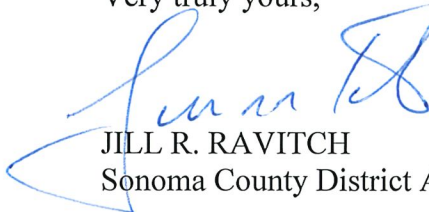
No criminal or civil action is warranted because no action was taken in the closed session, at the workshop, or as a result of the perceived serial meeting between the public meeting of November 16 and the workshop on November 29. The public had further ample time to comment at the subsequent meetings of December 7 and December 14.

We however believe that the Board and staff who work directly with the Board should be provided with updated Brown Act training, taking in to account the issues raised by this review and the public concerns raised.

Please provide our office with proof that such training has been completed. Upon satisfactory proof of the completion of the training outlined above, and provided no further violations are reported, we will close our file in this matter.

If you should have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jill R. Ravitch", is written over the typed name.

JILL R. RAVITCH
Sonoma County District Attorney