

The Ralph M. Brown Act Firsthand

by Steven B. Quintanilla

It may come as a surprise to some people that the adoption of today's open and public meetings law, the Ralph M. Brown Act, was actively supported by the League. Richard "Bud" Carpenter, former League executive director and legal counsel, recently described the events in Sacramento during the early 1950s leading to the passage of the Brown Act and its amendments.



As Carpenter explains it, the "anti-secret meetings" law surfaced in response to the perception of the press and public that local governments were conducting secret meetings to suppress information.

Carpenter was an active participant in the passage and drafting of the text of AB 339 of 1953 — the bill that would eventually become the Brown Act. AB 339 required that all local agency meetings of a legislative body be conducted in public, and the meetings be preceded by public notice.

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"At first, there was some opposition from cities, but the League pointed out in its *Legislative Bulletin* that the legislation's impact on cities would be minimal to nonexistent," says Carpenter.

He explains further that the proposed legislation was not considered controversial among the League's leadership, because section 36808 of the Gov't. Code provided that, "Meetings of the council shall be held within the corporate limits of the city at a place designated by ordinance. Meetings shall be public." This mandate applied to both regular and special meetings, and was based on an 1883 statute.

"The Brown Act as first enacted was pretty straightforward," says Carpenter. "It did not differ from the existing city charters. In fact, the proposed regulations looked exactly the same as many of the big city charters. And with respect to general law cities, the Municipal

Corporations Code at that time already required open and public meetings."

Cities Accused of Conducting Secret Meetings

As Carpenter recalls, cities were routinely assaulted by the press in the early 1950s for alleged violations of "open meeting" laws. Such relentless and, in many cases, unfounded accusations against the cities by the press led the public to believe that cities were the focus of the proposed open meetings regulations of AB 339. Contrary to the general public's perception, however, the real purpose of the proposed legislation was not to make city councils do anything different. Rather, it was to expand the scope of the open meetings policy to encompass all local public agency decision-making bodies.

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Local Districts Were the Real Target

Prior to the mid-1950s, a large number of boards of local public agencies, such as school districts and irrigation districts, were permitted to deliberate and make decisions behind closed doors, although city councils could not. In response to such blatant unfairness, Carpenter, in his capacity as legal counsel for the League, sent a letter to then-Governor Earl Warren's office in 1953, complaining that certain public agencies were legally allowed to conduct secret meetings while cities were expressly required to hold all of their meetings in public. Carpenter also requested in his letter that the governor support passage of AB 339. Recalling that letter 45 years later, Carpenter emphatically states, "Frankly, the League believed there was no reason why cities should continue to take the brunt of the constant press criticism over alleged secret meetings. Districts were really the largest violators. Although districts held meetings that the public was allowed to attend, they would routinely go into private sessions, discuss official business in private, deliberate in private and then meet in public only to announce decisions they had made privately."

The Press as Impetus for AB 339

A 1956 law review article, "Secrecy and the Access to Administrative Records," stated that during the years prior to the enactment of the Brown Act, "newspaper editors across the country were expressing anxiety over a 'growing tendency' of government officials to suppress public information." That article described the American Society of Newspaper Editors' view of restrictions on the flow of public information during the early 1950s. The practice of closed secret meetings was seen as the undemocratic practice of news suppression.

The real impetus for AB 339, however, arose from a 10-part series of investigative articles, "Your Secret Government," which appeared in the *San Francisco Chronicle* in May and June, 1952. Reporter Mike Harris revealed that many local public agencies routinely conducted secret meetings — supporting the commonly held perception of public agencies doing the public's business behind closed doors. Carpenter describes Harris as a "good newsman" who found a number of local public agencies ignoring the existing open meeting laws. Yet Harris did not find cities generally to be at fault. Even so, the *San Francisco Chronicle* series heightened the anxiety of newspaper publishers concerned about the suppression of public information, and provided justification that the media's long-held suspicions were not entirely unfounded.

The California Newspaper Publishers Association was one group of publishers who campaigned vigorously for AB 339. Carpenter considered the association to be the backbone

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of local newspapers. Dean Leshar, one of its executive officers, published a widely circulated newspaper in Merced. He was also a very influential political supporter of Assembly Member Ralph M. Brown. According to Carpenter, Leshar is the one who deserves to be credited with soliciting Brown's support of the bill.

The League Addresses the Perceived Problem

Soon after the *San Francisco Chronicle* series was published, Carpenter and Richard Graves (the League's then-executive director) addressed the perceived "secret meetings" problem via the state legislative process.

According to Carpenter, the League aligned itself with the California Newspaper Publishers Association to draft the act's initial language. John Long (an executive officer of the association), Harris and Graves collaborated on drafting the infamous preamble for AB 339, which reads in part:

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants their right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

Carpenter helped draft the balance of the bill, and patterned it after similar and somewhat generic provisions contained in many big city charters and the Municipal Corporations Act.

Brown Not a Zealous Supporter

Contrary to common belief, Brown was not a zealous supporter of the act that bears his name. Carpenter remembers Brown as a very modest country lawyer from the farming community of Modesto. "He had a reputation as an outstanding lawyer; however, he was not par-

ticularly interested in pushing for any particular piece of legislation," Carpenter remarks. Brown's legacy, according to Carpenter, was his local courts reorganization bill, not the anti-secret meetings bill. Brown, Carpenter purports, was politically connected with Leshar, who naturally believed that Brown, as speaker of the Assembly, was the most obvious choice to shepherd the bill through the Legislature.

Other Politicians Jump On the Bandwagon

As Carpenter describes it, other elected officials seemed more interested in the anti-secret meeting legislation than did Brown. For instance, an assembly member from the San Diego area attempted to gain political mileage from the popularity of the issue by "picking the bill up for two or three sessions in the Legislature." However, the legislator offered some unpopular amendments to the bill, including the addition of severe criminal penalties. So, when opposition to the amendments mounted, and it looked as though the amended bill did not have the votes necessary for passage, the amendments were abandoned. The bill was introduced again for adoption in essentially the same form as had been previously proposed by the League.

Opposition From Irrigation Districts

The only fierce opposition to the bill came from the Irrigation Districts Association, which labeled the proposed law "bad legislation" in a 1953 letter to then-Governor Warren. In that letter, the association expressed two main concerns. First, an agency's act, made in full compliance with the law, could be invalidated by an obscure provision of the bill. Second, the 24-hour-notice requirement for special meetings would preclude irrigation districts from continuing their practice of calling meetings with just a few minutes' or few hours' notice. The irrigation association vehemently argued that if there were violations of the public trust by public bodies, the proper method for correcting the situation was at the ballot box.

According to Carpenter, while the bill was being considered by the Senate, the irrigation association offered amendments to the bill that would have lessened the special meeting restrictions. For a time, the bill was tabled by the Senate Local Government Committee in response to the irrigation association's requested amendments. However, proponents of the bill insisted that removing the special meetings provisions would "defeat the purpose of the act." The bill was later removed from the table and passed by the Senate without the irrigation association's proposed amendments.

Political Correctness a Factor In Bill's Passage

Political correctness limited opposition to the passage of AB 339. A 1953 legislative memorandum to the governor from the governor's legislative secretary indicates concern that anything short of a recommendation for approval would result in being "classed with those who favor secret transaction of public business." This comment seems to summarize the general position of public agencies at the

time. Other than the irrigation districts, there was no concerted effort by any other public agency organizations to defeat the bill and it passed easily. AB 339 received a unanimous vote from the Assembly and a unanimous-less one-vote by the Senate.

Highlights of the Brown Act

As initially reported to the governor in 1953, AB 339 did not add much new to existing laws as they applied to cities. The main provisions of the initial Brown Act were:

- All meetings of the legislative body of a local agency had to be open and public;
- "Legislative body" was defined as a governing board, commission, directors or body of a local agency or any board or commission thereof;
- "Local agency" was defined as a county, city, city and county, town, school district, municipal corporation, district, political subdi-

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Brown Act Update for City Officials

Recent press accounts of statements made at the League's July 1998 executive forum session have created confusion about the League's and city officials' views on the Ralph M. Brown Act, the state's open meeting law for local government.

The account of the July 1998 executive forum session, reported by some members of the press, was misleading. The session was intended as a thought-provoking discussion of a variety of ethical issues and challenges faced by city officials. One of the issues included for discussion was how to comply with a complex and changing law that has a laudable goal of promoting open government, but at the same time restricts one-on-one human interaction.

For city officials who may be asked to respond to this account, the League offers the following information, which may be helpful in clarifying this issue for others.

The League Has Been an Active Force In Promoting Brown Act Compliance

The League was one of the original co-sponsors of the act (see "The Ralph M. Brown Act Firsthand," page 15) and provides training for city officials on how to fully comply with its requirements. These are always among the best attended sessions at League functions, as local officials are diligent in their efforts to understand and comply with the act's requirements.

The League was one of the leading participants in both the original publication and 1994 update of *Open and Public: A User's Guide to the Ralph M. Brown Act*. As the publication's title suggests, *Open and Public* strives to make this complex law understandable and accessible to local public

officials and others. The League collaborated closely with the California Newspaper Publishers Association, the California First Amendment Coalition, the League of Women Voters and others in producing *Open and Public*. The League plans an update in 1999 to reflect recent amendments to, and interpretations of, the Brown Act.

City Attorneys: Part of the Solution

City attorneys in California routinely and regularly counsel their clients to comply with not only the letter, but the spirit, of the Brown Act. Such counsel is based on the recognition that compliance is not only required, but is the right thing to do. Usually the agencies that experience the most difficulty with Brown Act compliance issues are those with less access to counsel. The League's City Attorneys Department has consistently taken a leadership role in training and publication projects that address the Brown Act.

A Complex and Sometimes Frustrating Law

The Brown Act has become an increasingly complex law in the 45 years since its original enactment. What started as a 686-word statute has ballooned to 12,845 words, as the statute has been amended 53 times in 45 years — sometimes multiple times within a single legislative session. City officials have been presented with changes to the law every year since 1984. The section on the Brown Act in the League's *California Municipal Law Handbook*, which is also part of the League's educational materials about the act, is 27 pages.

This complexity is not surprising, since the Brown Act undertakes to regulate one of the most complicated and varied aspects of life: human interaction. Stripped to its most essential terms, the Brown Act tells local officials

with whom they may communicate and under what circumstances. Areas of concern under the Brown Act have included under what circumstances citizens may talk individually with their elected representatives, and to what extent elected officials may attend community meetings where issues that may come before the local governing body are discussed.

City Government Is About Responsiveness to Citizen Concerns

City government is the level of government closest to the people. One of its greatest strengths is that citizens can interact with their elected officials and share their concerns in casual interactions at the supermarket and community meetings, such as the local Rotary Club.

City officials and their legal advisors spend a great deal of energy and resources analyzing the Brown Act's various requirements and determining how best to comply with both their letter and spirit while conducting city business. The League offers active assistance in these efforts through its training programs and publications. For more information, check the program announcements of the City Attorneys Spring Conference, the Executive Forum and the League's annual conference. Announcements are available online at www.cacities.org in the "Education and Training" area, and can be requested by calling (916) 449-3254. The League's publication *Open and Public II* is a resource about the Brown Act for city officials, and can be ordered by calling the League's fax-on-demand line at (800) 572-5720 and requesting document 11, the publications order form.

vision, or any board, commission or agency thereof, or other local public agency;

- Legislative bodies were required to provide, by ordinance or other means, the time for holding regular meetings;
- Only the presiding officer or a majority of the members of the legislative body were authorized to call a special meeting;



Since the press was very interested in the Brown Act, all a legislator needed to do to get press coverage was propose an amendment to it.




- Notice of special meetings was required to be distributed to each local newspaper of general circulation, radio or television station upon request; and
- An executive session of the legislative body was authorized to consider employment, dismissal and complaints against officers and employees, unless the officers and employees requested a public hearing.

Early Attempts To Amend the Act

The Brown Act, as initially passed, differed significantly from what it is today. From the start, there were attempts to amend the act during nearly every legislative session. As Justice Joseph A. Rattigan, then a member of the Senate and chairman of the Senate's Local Government Committee, recalls, there was always some legislator who wanted to get his name in the paper. Since the press was very interested in the Brown Act, all a legislator needed to do to get press coverage was propose an amendment to it.

During Rattigan's tenure in the Senate, the League, then under Carpenter's leadership, staunchly defended successive newspaper attempts to expand the reach of the Brown Act. Justice Rattigan remembers a time in the early 1960s when Assembly Member Milton Marks of San Francisco authored a series of amendments, which were pushed by a Marin County newspaper publisher and sponsored by the publishers association. Although the bill easily passed the Assembly, it did not survive the Senate's Local Government Committee, despite a vigorous attempt by the publishers association to win approval. A major newspaper publisher was assigned to lobby each of the 13 committee members to impress upon them the importance of the bill to the press. Rattigan

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recalls the political terror he experienced when he realized his vote to defeat the proposed amendments was the deciding committee vote.

Interpretation of the Act Continues

As reported in the League's 1994 publication *Open & Public II*, the Brown Act has undergone a tremendous amount of change throughout its 45-year history.

In addition to the legislative amendments, the state courts and the attorney general have interpreted a variety of the act's provisions. These amendments and interpretations have expanded the scope of the Brown Act to specify how items must be described on an agenda and in a public notice. The term "meeting," which officials had taken for granted to mean simply a congregation of a majority of the legislative body, was finally defined by the act in

1994 as "any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains." The law has also been further refined to prohibit "any use of direct communication, personal intermediaries or technological device that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by members of the legislative body."

The Evolution Continues

Despite its many substantive changes, the scope of the act's application has remained substantially the same. Today, the Brown Act continues to cover meetings conducted by a variety of legislative bodies. As the California attorney general's office observes in its publication, *Open Meeting Laws*, "The act [continues to] represent the Legislature's determination of how the balance should be struck between public access to meetings of multi-member public bodies on the one hand and the need for confidential candor, debate and information gathering on the other." Although the original Brown Act has drastically changed in form since its inception, the "soul" of the act has remained fully intact.



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