LEAGUE OF CALIFORNIA CITIES

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September 22, 2010

Via Electronic and U.S. Mail

Marc J. Nolan, Deputy Attorney General
California Attorney General's Office
300 Spring Street, Suite 1702
Los Angeles, CA 90013
Email: Marc.Nolan@doj.ca.gov

Re: Opinion No. 10-702

Dear Mr. Nolan:

I write on behalf of the League of California Cities in response to your solicitation of views of interested parties regarding Opinion No. 10-702, which will interpret the Brown Act's real estate exception.

The League is an association of 474 California cities united in promoting the general welfare of cities and their citizens. The League is advised by its Legal Advocacy Committee (LAC), which is comprised of 24 city attorneys representing all 16 divisions of the League from all parts of the state. The LAC monitors appellate litigation affecting municipalities as well as requests from the Attorney General for views on pending requests for legal opinions. In addition, the League is advised by its Brown Act Committee, comprised of several city attorneys, which monitors litigation, legislation, and requests for views from the Attorney General on Brown Act matters. Both the LAC and Brown Act Committee reviewed the Attorney General's request on Opinion No. 10-702 and offer the following response.

DISCUSSION

Prompting the Attorney General's consideration of Opinion No. 10-702 is a letter from the City of Burbank that seeks an opinion on the legality of a majority of the City Council attending a tour of a facility outside of its jurisdictional limits. The facility is owned by Metropolitan Water District, which includes the City of Burbank among its 26 members. The League will comment on two issues presented in the letter.

A. LACK OF PUBLIC ACCESS TO THE FACILITY

As correctly identified in the City's request to the Attorney General, Government Code Section 54953(a) requires that all meetings of a local governing body be open and public and that all persons be permitted to attend. The information provided in the letter indicates that the public is not allowed inside the facility that will be toured. Unless members of the public are allowed to accompany the City Council on the proposed tour, the tour could not be noticed as a meeting of either the Burbank City Council or the Metropolitan Water District Board, nor would it fall within any of the exceptions contained in Government Code Section 54952.2(c).

As the public is excluded from the potential meeting location, no legal meeting can take place. The Committee believes that this is dispositive of the request, and recommends that the opinion, if one is to be issued, be limited to this issue.

B. INTERPRETATION OF GOVERNMENT CODE SECTION 54954(b)(2)

In setting out exceptions to the requirement that meetings of a legislative body be held within the jurisdictional boundaries of the local agency, Government Code Section 54954(b)(2) identifies the following exception:

> "Inspect real or personal property which cannot be conveniently brought *within the boundaries of the territory over which the local agency exercises jurisdiction* provided that the topic of the meeting is limited to items directly related to the real or personal property" (emphasis added)

The League is concerned that Burbank's request can be read to suggest that the highlighted language only allows inspection when the "real or personal property" in question is within the local agency's jurisdiction (for example, by virtue of the agency's ownership of property located outside its territorial jurisdiction). The League interprets this provision more broadly to allow inspection of real or personal property outside a local agency's territorial jurisdiction when the meeting topic pertains to such real or personal property.

First, the plain reading of Section 54594(b)(2) makes the words "over which the local agency exercises jurisdiction" descriptive of the noun "territory," not "real or personal property." If a contrary interpretation was intended, the section would read . . . "Inspect real or personal property over which the local agency exercises jurisdiction, which cannot be conveniently….[etc.]". It does not, and the reading of the text should not be strained beyond its plain and grammatically correct meaning. Courts favor plain and grammatically correct interpretations of statutory language. (*E.g., Roland v. Superior Court* (2004) 124 Cal.App.4th 154, 163-64.)

Second, two other provisions in Section 54954(b) use the exact phrase "the territory over which the local agency exercises jurisdiction" and give that phrase the same plain meaning that should

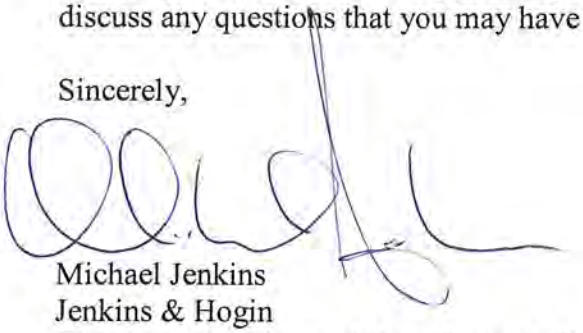
be ascribed to it in Section 54954(b)(2). Section 54954(b) begins by stating the general rule that meetings may not be held outside the territorial boundaries that define the limits of the local agency's governmental authority, e.g., city limits for a city: "Regular and special meetings of the legislative body shall be held *within the boundaries of the territory over which the local agency exercises jurisdiction,* except ..." (emphasis added). And the fourth exception, Section 54954(b)(4), permits an extra-teritorial meeting "in the closest meeting facility if the local agency has no meeting facility *within the boundaries of the territory over which the local agency exercises jurisdiction* ...." (emphasis added). Courts presume that when a term or phrase is used in the same statute more than once, and particularly when it is used in the same statutory section more than once, it has but one meaning. (*E.g., Miranda v. National Emergency Services, Inc.*(1995) 35 Cal.App.4th 894, 905.)

Finally, the purpose of the exception in Section 54954(b)(2) would be undermined if its plain meaning is disregarded. Under the interpretation suggested in the request to the Attorney General, the only time an extra-territorial meeting of the legislative body would be possible under this exception would be when the property in question belongs to or is under the legal control of the local agency. That interpretation would preclude a legislative body from visiting, as part of an open and noticed meeting, a completed project in another jurisdiction (e.g., a stadium or other public facility) to assist in its evaluation of whether the design of that facility would work in their own city. Similarly, it would preclude a legislative body from inspecting large public works equipment that cannot be easily transported into the territory of the local agency, when the legislative body wishes to inspect the machinery or observe it in operation before deciding to acquire such equipment.

As noted above, the League believes that you need not reach this issue at all, but if you do, we respectfully submit that you stay true to the plain meaning of the statute and not adopt an unduly narrow reading.

The League appreciates the opportunity to comment on these issues and will be available to discuss any questions that you may have regarding this submittal.

Sincerely,



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