



# The Brown Act and Social Media Interactions

Presented by

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# The Ralph M. Brown Act

## “Open Meeting Laws”



- “All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of the local agency.”
- (Gov. Code § 54953)

# General Rules of the Brown Act

- A majority may not consult outside a properly noticed meeting open to the public.
- Key concepts:
  - What constitutes a meeting?
  - E.g., Serial meetings.
- Narrow exceptions for certain kinds of events.
  - But only as long as a majority does not consult among themselves.



# What is a Meeting?

- Means of Communication:
- A meeting includes *any use of direct communication, personal intermediaries, or technological devices* which are employed by a *majority* of the members of the legislative body *to develop a collective concurrence* on action to be taken by members of the legislative body.
- (Gov. Code Section 54952.2)



# Ways of Creating a Serial Meeting

- Traditionally:
  - In Person
  - Telephone
  - Letters
- Today:
  - Emails
  - Text Messages
  - Social Media (via Facebook, etc.)



# Agenda: General Rule

- A written agenda must be prepared and posted for each meeting of each legislative body.
- Action or discussion on any item not appearing on the posted agenda is generally prohibited.



# Public Participation

- Anyone can attend open meetings.
- Cannot require names, questionnaires, or conditions to attend.
- Public may record proceedings by video or audio.
- **LIMITED EXCEPTION:**
  - If meeting is willfully interrupted or order cannot be restored by removing only the disrupting individuals, may order the room cleared.



# The Brown Act and Social Media

- Social media platforms (e.g. Facebook) can be beneficial resources for cities
  - Connect with constituents
  - Easily share information
- Law has not caught up to technology
  - No case law on Brown Act requirements and social media
- Same serial meeting requirements likely apply to online conduct





# Navigating the Brown Act online

- Board members are still able to digitally interact with their constituents
- Potential Brown Act violations when other board members engage in the same posts
- Discussions online can be considered a meeting under the Brown Act
- Even if the information is publically available
- Much easier to create and engage in serial meetings
- Potential “hub-spoke” and “daisy chain” communications
- Information becomes widely broadcast online



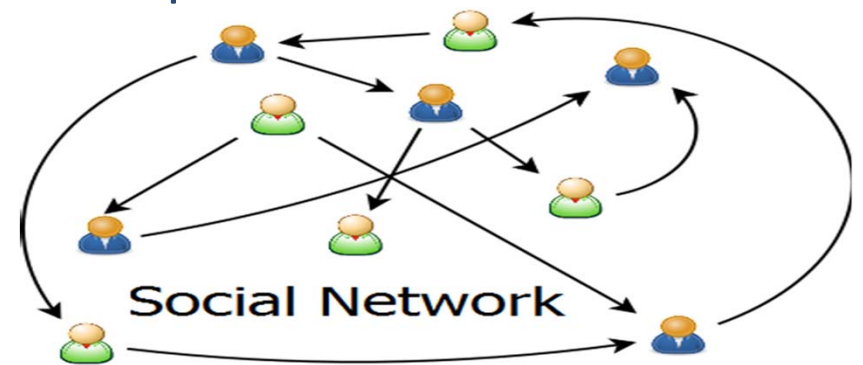


Commenting, Messaging, Liking, and Sharing Posts

# **INTERACTIONS ON FACEBOOK**

# Facebook Basics

- Users on Facebook may write comment (“comment”) on photos, status updates, or walls of other users
- Users may send a private message (“message”) to other users or to a group of users through Facebook Messenger
- Users may also click the “like” button (“like”) on another user’s Facebook post
- Users may also “share” another user’s post



# Are Facebook comments or conversations considered a meeting?

- Messenger conversations: most likely yes
  - No existing case law yet
  - Analogous to private emails or letters between board members
- Facebook comments: also likely yes
  - No existing case law yet
  - Creates a serial meeting
  - No way of preventing other board members from seeing the comments



# Hypothetical Scenarios: Facebook Comments

- What if one board member comments on a Facebook post about an upcoming agenda item?
  - What if another board member comments?
  - What if another board member comments to correct a mistake about the meeting time/location?
- What if a board member sends a message to another through Facebook Messenger?
  - What if the message is forwarded to another board member?
  - What if the entire board uses Facebook Messenger to discuss agenda items?



# “Liking” a Post



- “Likes” are a way of communicating approval
- “Likes” are considered speech. *Bland v. Roberts*, 730 F.3d 368, 386 (4th Cir. 2013)

# Hypothetical Scenario: Facebook “likes”

- What if a board member “likes” a post that addresses an upcoming agenda item?
  - Does it matter if the post was written by another board member or a citizen?
- What if a group of board members independently “like” the same post about an upcoming agenda item?



# Sharing a Post



- What if a board member shares a post about an upcoming agenda item?
  - Does it make a difference if the post's original author is a citizen or another board member?
- Analogous to a Daisy Chain



# Potential Implications

- Facebook interactions with other board members likely fall under the Brown Act
- Posting, liking, commenting, and sharing are all means of direct communication
- Interactions between board members on Facebook can be considered a meeting

# Best Practices

- Treat Facebook interactions like in-person interactions
- Consider your audience
- Limit online interactions with other board members
- Avoid posting, responding, or interacting with posts that concern substantive agenda items or issues within subject matter jurisdiction



# Questions?

