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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 81-218
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of	:	<u>JULY 14, 1981</u>
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THE HONORABLE NORMAN S. WATERS, ASSEMBLYMAN,
SEVENTH DISTRICT, has requested an opinion on the following question:

Is the SOFAR Coordinating Committee, which is composed of less than a quorum of the El Dorado County Board of Supervisors, as ex officio of the governing board of the El Dorado County Water Agency, and of less than a quorum of the governing board of the El Dorado Irrigation District, subject to the open meeting requirements of the Ralph M. Brown Act?

CONCLUSION

The open meeting requirements of the Ralph M. Brown Act are not applicable to the SOFAR Coordinating Committee if the “committee” is in fact two subcommittees of the governing boards of the water agency and the irrigation district. If, however, the committee is an independent, separate committee which has been established

by the two governing boards, the open meeting requirements of the Ralph M. Brown Act are applicable. Whether the committee is two subcommittees or is a single, independent committee is a factual question which cannot be resolved by a legal opinion.

ANALYSIS

The El Dorado County Water Agency, whose governing body is ex officio the county board of supervisors, and the El Dorado Irrigation District, which has a completely independent board of directors, jointly propose to develop for energy and other purposes the South Fork of the American River, known as the SOFAR project.

The governing boards of each agency have separately appointed less than a quorum of each board to a SOFAR Coordinating Committee. Thus two members of the board of supervisors and three members of the district board meet to discuss matters relating to the SOFAR project. The question presented is whether the open meeting requirements of the Ralph M. Brown Act, Government Code section 54950 *et seq.*, apply to these meetings.¹ That act requires that meetings of “legislative bodies” of “local agencies” as defined therein hold their meetings open to the public unless specifically exempted therein, or otherwise exempted by another provision of law such as the attorney-client privilege. (See §§ 54951–54951.7, 54952, 54952.3, 54952.5, 54953, 54957, 54957.6; *Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.* (1968) 263 Cal. App. 2d 41.)

Both an irrigation district and a county water agency are “local agencies” for purposes of the act. (§ 5495 1.) Furthermore, “legislative body” for purposes of the act need not necessarily be the actual legislative body of the entity. Thus, as pertinent to our inquiry herein, section 54952 provides:

“As used in this chapter, ‘legislative body’ means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation.” (Emphases added.)

¹All section references are to the Government Code unless otherwise indicated.

Despite the broad language of section 54952 with respect to a “committee,” this office has throughout the years determined that the open meeting requirements of the act are not applicable to committees composed of less than a quorum of the governing body. This determination has been upheld by the courts. (See discussion in *Henderson v. Board of Education* (1978) 78 Cal. App. 3d 875, 880–883.) Furthermore, as to advisory committees set up by formal action of a local agency, the legislature has specifically codified the less than a quorum exception with respect to advisory bodies consisting of less than a quorum of the governing body itself. Thus, section 54952.3 provides:

“As used in this chapter ‘legislative body’ also includes any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a governing body or member of such governing body of a local agency.

“Meetings of such advisory commissions, committees or bodies concerning subjects which do not require an examination of facts and data outside the territory of the local agency shall be held within the territory of the local agency and shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting.

“If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide bylaws, or by whatever other rule is utilized by that advisory body for the conduct of its business for the time and place for holding such regular meetings. No other notice of regular meetings is required.

“ ‘Legislative body’ as defined in this section does not include a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body.

“The provisions of Sections 54954, 54955, 54955.1, and 54956 shall not apply to meetings under this section.” (Emphasis added.)

Accordingly, whether the SOFAR Coordinating Committee is subject to the open meeting requirements of the Ralph M. Brown Act depends upon whether it is a single “committee” upon which members of each local agency, the water agency and the irrigation district, serve in their official capacity within the meaning of section 54952, or whether it is in reality two subcommittees of two local agencies consisting of less than a quorum of each governing board within the meaning of section 54952.3 or the general

exception carved out by this office with regard to such committees.

For example, in an unpublished opinion of this office issued in 1976 (I.L. 76–174) we were presented with the question whether the open meeting requirements of the Ralph M. Brown Act were applicable to meetings which were held between representatives of Lake County and Yolo County to discuss mutual water problems. As we understood the facts, two supervisors (less than a quorum) from each county, along with certain staff personnel, met for such purposes. The staff personnel included the county counsels as well as two water district managers. After analyzing the pertinent provisions of the Ralph M. Brown Act, including sections 54952, 54952.3 and 54952.5,² we ultimately concluded as follows:

“In summary, it is the conclusion of this office that the meetings between representatives of Lake and Yolo Counties are meetings between two subcommittees of the boards of supervisors of the respective counties, each consisting of less than a quorum of the respective boards. As such, each subcommittee falls within the general less than a quorum exception to the Ralph M. Brown Act first . . . [enunciated] by this office in 1958, and which has not been nullified by the Legislature since such date. Therefore, there has been no meeting of a ‘legislative body’ of a ‘local agency’ within the meaning of the Act to bring these meetings within the open meeting requirements of section 54953. See also, I.L. 64–50, Joint Study Committee of nonpermanent nature consisting of two city councilmen and city manager for city and three persons appointed by Stanford to study Palo Alto-Stanford Hospital: less than a quorum exception applied by analogy. Compare I.L. 70–91 wherein less than a quorum of the governing bodies of cities and the county served on a *single* county-wide organization apparently established as a single-formal-joint body; less than a quorum exception not applicable.”

² Section 54952.5 provides that “. . . ‘legislative body’ also includes, but is not limited to, planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency.

This section was analyzed because of its potential applicability because of the presence of personnel other than the supervisors themselves, but was rejected on two bases: (1) that the other personnel were not members of any committee, but were present only to provide technical assistance as required, and (2) that the “committee” or “committees” were not permanent in nature, but were appointed on an ad hoc basis for a single purpose.

Additionally, section 54952.3 was rejected for the reason that the “committee” or “committees” were not formed by formal action of the board of supervisors. Additionally, the presence of the other personnel as merely “staff” also mooted such problem since only “less than a quorum” of each board was present.

(I.L. 76–174, at p. 9.)

With respect to SOFAR, we have been presented with two characterizations of the coordinating committee. The attorney for the El Dorado Irrigation District advises us that the coordinating committee is in reality two subcommittees of the respective governing bodies which are sent to meet with each other and do nothing but report back with information to their respective boards to avoid the necessity of the full boards jointly meeting all the time. The county counsel agrees with this description. In sharp contrast, the local newspaper takes the position that the coordinating committee is a single committee which has generally acted like a “unitary body” such as by having elected a chairman and having directed staff members to compile information for their single committee. Which of these characterizations of the “committee” is correct resolves itself into a factual question. However, as we noted in earlier opinions with respect to the Ralph M. Brown Act:

“ ‘The function of this office is not to resolve factual disputes, or disputes as to conflicting inferences which may arise from such facts, but to tender opinions on legal questions.’ (*Id.* at I.L. 75–282 p.3)” (62 Ops. Cal. Atty. Gen. 150, 163 (1979).)

Accordingly, whether the SOFAR Coordinating Committee is subject to the open meeting requirements of the Ralph M. Brown Act depends upon the resolution of the factual question whether it is in fact two subcommittees of the parent bodies or is a single committee having independent existence, duties and functions. If it is the former, the “less than a quorum” exception applies. If it is the latter, section 54952, *supra*, would appear to apply.³

³We note that the additional requirement of section 54952 that the “committee . . . is supported in whole or in part by funds provided by such agency [or agencies]” would also have to be met.