

# Closed Session Exception for Labor Discussions Does Not Apply to Project Labor Agreement

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The Attorney General's Office recently opined that the Brown Act's exception allowing discussion of labor negotiations in closed session is exclusively for discussions concerning agency employees. The exception may not be used for discussions concerning individuals over whom the governing board does not exercise control, specifically contractors and laborers that would be covered by a Project Labor Agreement (PLA).

## Opinion

School districts and community college districts sometimes enter into PLAs, which are collective bargaining agreements between construction project owners and one or more labor organizations setting terms and conditions of employment for work on public construction projects. A community college district considering a PLA asked the Attorney General for an opinion regarding whether it could discuss the matter in closed session with its PLA negotiator. (\_\_\_ Ops. Cal. Atty. Gen. \_\_\_ (Sept. 18, 2015) [Opinion No. 14-302].)

The Attorney General's Office concluded that the discussions could not be conducted in closed session under the labor negotiations exception, noting that the labor negotiations exception authorizes a legislative body to hold closed session discussions with its negotiator about the salaries and benefits of the body's own employees. Applying reasoning from an earlier opinion of Legislative Counsel, the Attorney General's Office concluded that contractors entering into PLAs are independent contractors that do not function as officers or employees of the agency.

Based on this reasoning, the Attorney General's Office concluded that "construction contractors are not, and do not function as, officers or employees of the local public entities under project labor agreements." Therefore, "the labor negotiations exception to the open-meeting requirements of the [Brown Act] does not permit a community college district's governing board to meet in closed session with its designated representative to discuss the negotiation of a project labor agreement because the contractors and laborers covered by such an agreement are not district employees."

## Impact



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Opinions of the California Attorney General are not binding precedent in the State of California, but they are regarded as persuasive authority by courts. This opinion concludes that governing boards may not use closed session to discuss negotiation of a Project Labor Agreement. Such a discussion must occur in open session, absent another exception that might apply in the particular circumstances. Notwithstanding this conclusion, staff members may provide updates on independent contractors and PLA negotiations to governing board members outside of meetings and may receive direction from less than a majority of the governing board without running afoul of the Brown Act. This opinion stresses how narrowly closed session exceptions can be interpreted, and it may be helpful to consult with counsel on closed session items if there is any ambiguity. Please contact us if we can be of assistance to you in advising on Brown Act closed session discussions.

## **PRACTICE AREAS**

- Board Ethics, Transparency and Accountability