

Failure to Post Agenda Online Due to Technical Difficulties Does Not Violate the Brown Act

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Technology can help school and community college districts provide greater public access to information. The Brown Act requires districts with websites to post meeting agendas online for 72 hours before a regular meeting. But technology is not without its glitches, and in a recent opinion, the California Attorney General made clear that the failure of an agency to meet online posting requirements for the full 72-hour notice period due to technical difficulties with its website, did not necessarily prohibit the meeting from being held and action from being taken. (___ Ops. Cal. Atty. Gen. ___ (Jan. 19, 2016, No. 14-1203).) ⁽¹⁾

Opinion

The Attorney General concluded that while a failure to meet the website posting requirement technically could be a violation of the Brown Act, provisions of the Brown Act uphold agency actions if the agency has “substantially complied” with agenda posting requirements. The Attorney General reasoned that the more relevant question in this situation is whether a local agency has substantially complied with the posting requirements and provided the public with adequate notice in other ways. Thus, absent facts suggesting that the public is uninformed or misinformed about the meeting, the meeting may proceed despite the failure to meet the online posting requirement.

Impact

In determining whether a meeting can still be held if technical difficulties prevent the district from posting a meeting agenda online prior to a meeting, the Attorney General suggests the relevant question is whether those looking for a meeting notice or agenda may have been misled or confused by the technical difficulties of an agency’s website. Where the duration of the difficulties is short, and the district takes additional steps to ensure that community members are informed of the meeting, or there are other facts to suggest the risk of misinformation is low, the meeting may be held. If there are circumstances suggesting a higher risk of misinformation or confusion about the meeting, the better course may be to reschedule the meeting. Given the fact-specific nature of this analysis, if school and community college districts experience such difficulties it would be advisable to consult with legal counsel to ensure compliance with the Brown Act.



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Please contact us if we can be of assistance to you in addressing any concerns regarding complying with the Brown Act.

PRACTICE AREAS

- Board Ethics, Transparency and Accountability