

TOP 10

Compliance Questions from Special District Board Secretaries and Clerks

Are you in compliance?

Meyers Nave attorneys Richard Pio Roda and Alex Mog presented “Staying in Compliance: Understanding Fundamental Special District Laws” at the 2020 California Special Districts Association’s virtual Board Secretary/Clerk Conference. From the questions asked during and after the program, Rich and Alex created this Top 10 Compliance Q&A reference sheet to help keep Special Districts up-to-date on issues that are of greatest concern to Board secretaries and clerks. The information in the Q&A reference sheet is provided as answers to general questions and different factual scenarios may generate different answers. Please consult an attorney to obtain legal advice for your unique situation. If you need legal assistance, please contact Rich (rpioroda@meyersnave.com) and Alex (amog@meyersnave.com).



Q #1: How should public comment be conducted during virtual meetings?

Based on principles of transparency and open government included in the Brown Act and the Public Records Act, Boards should consider a virtual platform that allows the public to provide oral comment because it most resembles public comment during a traditional in-person public meeting. If remote oral technology is not available, then written comments can be accepted via email and read into the record during the public comment period of the agenda. The email should be read within the time limit and exactly how the commenter submitted it to avoid questions of interpretation, bias, or error. Reading a summary and including the full email in the minutes is not suggested. Note that Governor Newsom’s Executive Order N-29-20 requires public agencies to provide notice of the means by which the public may observe the virtual meeting and offer public comment.

Q #2: Can Boards vote via email to add urgent items to posted agendas?

A 2/3 vote is required to add an urgent item to a posted agenda when there is a need for immediate action and the need to take action came to the attention of the agency after the agenda was posted. That vote must take place during the meeting and before the urgency item is presented, discussed and/or acted upon. The vote cannot take place via email prior to the meeting. It is also important to note that the 72-hour public notice requirement for agendas includes weekends and holidays. For example, the agenda for a regular meeting on a Monday night must be posted no later than the previous Friday. The notice and agenda can be posted as one PDF on the district’s website.

**Q #3: Are meetings between Board members and the General Manager subject to the Brown Act?
Are there limits on Board members making public comments?**

A meeting among two Board members and a General Manager (with or without representatives of another public agency) is generally considered an individual contact, and not a meeting of a legislative body subject to the Brown Act. However, if the two Board members are meeting as a standing committee appointed by the Board then that is a meeting of a legislative body subject to the Brown Act (unless the committee is an ad hoc committee). It is important to note that if a Board member attends a standing committee meeting as a member of the public, the Board member may attend as an observer but may not participate or make public comment.

**Q #4: What happens when there is a vacancy on the Board?
Can the Board continue to operate normally when a vacancy occurs?**

Notice of a vacancy on the elected Board must generally be given to the County elections official under Cal. Govt. Code section 1780 within 15 days of the date the Board receives notice of the vacancy, or the effective date of the vacancy, whichever occurs later. Within 60 days of the vacancy, the Board may either make an appointment or call a special election to fill the seat. A Board can continue to operate normally with a vacancy, as long as there is still a quorum of the Board.

Q #5: Is the Board held legally accountable to its approved policy or rule?

Boards may only pass and act upon policies that do not conflict with the district's principal act or other generally applicable State law (i.e., the Brown Act, the Public Contract Code, the Public Records Act, to name a few). If a Board passes a rule or policy where the principal act and State law are silent or have not occupied the field of regulation, then it would be the Board's own policies and rules related to violations of such rules and policies that would apply to hold Board members or the body as a whole accountable.

Q #6: Are scholarships to attend educational offerings required to be disclosed as gifts?

A scholarship to a public official is generally considered a gift, but there is an exception for gifts awarded through a "bona fide competition." It is not a gift if it is awarded based on merit and has characteristics of a competitive award. Also, scholarships to a public official's family members are generally not considered gifts, unless it is from a lobbyist or an entity that has business with the district.

Q #7: Do mass mailing restrictions apply to the district and/or an agency supported by the district?

Mass mailing restrictions apply to the district; they do not apply to an agency supported by the district. Therefore, if an agency that is supported by the district requests assistance in the distribution of that agency's mailer, it is not a mass mailing regulations question but rather a gift of public funds question as to whether there is a public purpose for the district to mail a newsletter of a separate agency that is supported by the district. The legality of this type of gift of public funds action could also depend on whether the Board is able to make specific findings and articulable reasons that the use of district funds to mail a newsletter for an agency that is supported by the district is for a legitimate public purpose.

Q #8: Is the Board liable if Form 700 is filled out incorrectly or incompletely?

It is the responsibility of the Board member or staff member to complete that individual's own Form 700. A district generally does not have any liability if an individual submits an inaccurate or incomplete Form 700.

Q #9: Must compensation increases for an Executive Director take place in open session?

Board action on any changes to compensation for agency executives must occur in open session at a regular meeting, even if, for example, the only increase is in vacation time and a COLA adjustment. An oral report summarizing the increase must occur prior to Board approval.

Q #10: What new teleconferencing rules were established in Governor Newsom's COVID-19 Brown Act Executive Orders signed in March?

Governor Newsom signed three Executive Orders that changed various limitations and restrictions of the Brown Act. Executive Orders N-29-20 and N-25-20 established the following new teleconferencing rules for the COVID-19 environment.

Local legislative or state bodies are allowed to hold public meetings via teleconference without providing a physical location from which members of the public may observe the meeting and offer public comment, as long as members of the public are allowed to observe and address the meeting telephonically or otherwise electronically, subject to specified notice and accessibility requirements.

The Executive Orders set forth the following less restrictive teleconference rules:

- Physical presence of members of the legislative body or of the public are not required as a condition of participation in or quorum for a public meeting.
- Notice is not required of each teleconference location from which a member will be participating in a public meeting.
- Teleconference location does not have to be accessible to the public.
- The possibility of members of the public addressing the body at each teleconference conference location is not required.
- Agendas do not have to be posted at all teleconference locations.
- During teleconference meetings, at least a quorum of the members of the legislative body are not required to participate from locations within the boundaries of the territory over which the legislative body exercises jurisdiction.
- All votes must be conducted by roll call.



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