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Governor vetoes bill limiting staff briefings of public officials

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Governor Arnold Schwarzenegger has vetoed Senate Bill 964 (Romero), which would have modified California's open meetings law (the Ralph M. Brown Act) to limit certain communications between individuals (including governmental staff) and legislative officials. The bill proposed to amend section 54952.2 of the Government Code relating to the issue of "serial communications" that may result in local agency officials making public policy decisions outside of noticed public meetings.

The Governor's veto message, while acknowledging the value of openness and transparency of local government decision making, disapproved of the wording of the measure, saying it would have imposed impractical standards for compliance on local officials, potentially inhibiting communication among officials and agency staff.

The proposed legislation sought to solve a perceived defect in the Brown Act highlighted by the court's holding in *Wolfe v. City of Fremont* (2006) 144 Cal. App. 4th 533, 545, fn. 6. In *Wolfe*, the Court of Appeal held that serial briefings by City staff providing information to individual council members did not violate the Brown Act, even where a majority of Council members received the individual briefings. In order to find a violation, the *Wolfe* opinion required evidence that a collective concurrence had actually occurred as a result of the serial communications in order for there to be a Brown Act violation.

Thus, based on *Wolfe*, members of legislative bodies may discuss a matter with staff, and even with each other in separate, one-on-one conversations, but they may not meet among themselves serially to discuss a matter, if such discussions lead to a "collective concurrence." This is so even where the collective concurrence was not purposeful or intended. Some observers felt that the language of Senate Bill 964 would have made any briefings on matters within the subject jurisdiction of a body potential violations of the Brown Act. In issuing his veto, the Governor cited the need of public officials to receive effective communications.

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Public agency staff members frequently ask whether they may privately brief individual members of legislative bodies on City operations, policies and upcoming agenda items. With the veto of Senate Bill 964, the lessons garnered from *Wolfe* are still applicable.

- Informational briefings to the members of a legislative body do not violate the Brown Act, provided that such briefings are not used to develop a "collective concurrence" of the body.
- Staff members should refrain from polling members of legislative bodies, apprising members how other members view a matter, or acting as an intermediary between members.
- Members of legislative bodies should not discuss matters amongst themselves in a way that results in a collective concurrence of the body.

However, the Governor's veto of Senate Bill 964 will not likely be the end of the discussion on the permissible scope of serial briefings under the Brown Act. The matter is likely to return to the Legislature, either as an attempt to override the veto or perhaps as new proposed legislation.

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