OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

May 5, 2003

Greg Nelson, General Manager
Department of Neighborhood Empowerment.
305 East First Street
Los Angeles, CA 90012

Re: The Brown Act and Neighborhood Councils

Dear Mr. Nelson:

This letter is in response to two e-mail inquiries from you received by this office regarding the Brown Act (also, "Act"). In your first e-mail, you inquired under what circumstances members of neighborhood councils may communicate with a majority of City Council or Council Committee members on a matter coming before them. In framing this question, you identified four categories of people who might be implicated by this advice: "1) officers of the neighborhood councils 2) stakeholders who are not officers 3) people who the neighborhood councils may contract with to help them voice their opinions and 4) people who would volunteer to help the neighborhood councils voice their opinions."

In a subsequent e-mail, you inquired whether the Brown Act would apply to a meeting of less than a quorum of several neighborhood council board members who would meet "from time to time" to discuss issues of interest and take their ideas back to their own neighborhood councils for discussion and recommendation.

We have taken the liberty of framing your questions as follows:

QUESTION NO. 1

May certified neighborhood councils communicate with a majority of the City Council or a Council committee regarding a particular issue?

ANSWER

No. As part of the City family, and an officially recognized advisory body to the City, neighborhood councils must adhere to the same requirements under the Brown Act, as other members of City staff and personnel, board members and commissioners. In answering this question, "certified neighborhood councils" mean the officers and/or board members that constitute the Governing Body of a Certified Neighborhood Council under the Plan for a Citywide System of Neighborhood Councils. Below, we also discuss the other categories of individuals about which you inquire.

DISCUSSION

The question you pose relates to the rule under the Brown Act that prohibits "serial meetings." A serial meeting is a series of communications, each of which involves less than a quorum of the legislative body, but which ultimately results in a communication among a majority of that legislative body that occurs outside the public forum. The Act specifically defines these types of communications as meetings and prohibits "any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body." Gov't. Code § 54952.2 (b). However, "individual contacts or conversations between a member of a legislative body and any other person" is not considered a meeting covered under the Act.

This office has taken the longstanding position that City staff and personnel, including City commissioners and board members, fall into the category of "intermediaries" if they engage in communications with a majority of members of a legislative body on a matter coming before that body. These communications are not exempted under the Act as individual contacts. The Attorney General also takes this position. In its Brown Act pamphlet, the Attorney General concludes that while the individual contacts exemption "exempts from the Act's coverage conversations between board members and members of the public, it does not exempt conversations among board members, *or between board members and their staff."* (Emphasis added) See, *The Brown Act, Open Meetings For Local Legislative Bodies, Office of the Attorney General*, 2003 publication.

While neighborhood council board members are not City employees or considered City staff, like our City commissioners and board members they are

members of official governmental agencies, and have a status separate and apart from solely being members of the public. Thus, in our view a neighborhood council board member would be considered an "intermediary" for the purposes of the Act if he or she attempted to communicate with a majority of Council or Council Committee members (or any legislative body) on a particular item coming before that legislative body.

Accordingly, neighborhood councils may not engage in these types of communications that the Brown Act would treat as serial meetings. Of course, as contemplated by the City Charter, the vehicle to communicate neighborhood council recommendations to the City's decision-makers is via the public forum, either by appearing before the body or sending a written communication to the decision-makers.[1]

The other categories of individuals that you identified, lobbyists[2] and stakeholders who are not members of the Governing Body, would be free under the "individual contacts" exemption of the Act to communicate even with a majority of their City decision-makers as long as those contacts were not orchestrated by the legislative body. See, *The Brown Act, Open Meetings For Legislative Bodies, Office of the Attorney General,* 2003 Publication, at p. 13. However, we do not believe that the Act would prevent the neighborhood council board from encouraging its stakeholders to discuss a particular matter with their decision-makers.[3] The board, however, cannot coordinate or orchestrate those individual communications.

As a general rule, lobbyists hired by members of the public fall into the individual contacts exemption under the Act. However, because neighborhood councils are local governmental agencies and do not fall under the individual contacts exemption, they

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[1] As this office has noted, "sending or receiving a written communication to or by a majority of the board members (including an e-mail) does not result in a serial meeting in violation of the Act if the communication becomes a public record and there is no *exchange* of these communications among board members on a substantive issue. . ." See, *The Brown Act and Neighborhood Councils*, Congress of Neighborhoods, April 5, 2003, page 3.

[2] We have assumed, for the purpose of this discussion, that the individuals you have described, those who assist neighborhood councils to voice their opinions either voluntarily or by hire, are a type of lobbyist acting on behalf of the neighborhood council, but are neither board members nor stakeholders of the neighborhood council, and are otherwise unaffiliated with the neighborhood council.

[3] Thus, for example, we believe that a neighborhood council could make a recommendation on a particular matter and at the close of the item, invite its stakeholders to communicate the stakeholders' views on that matter to the relevant City decision-makers and/or invite its stakeholders to advise the City's decision-makers as to the position the neighborhood council took on an item, without violating the Act.

should refrain from engaging the services of lobbyists, either by contract or through donated services, to communicate messages to a majority of the City's decision-makers outside of the public forum. This would likely be perceived as an attempt to improperly circumvent the rules of the Brown Act.

QUESTION NO. 2

Does the Brown Act apply to a meeting of less than a quorum of several neighborhood council board members who would meet from time to time to discuss issues of interest and then take their ideas back to their own neighborhood council for discussion and recommendation?

ANSWER

Much will depend upon whether these "gatherings" are created by their respective neighborhood councils, or other legislative body, as a joint committee. As a general rule, based upon the facts you have described, gatherings of less than a quorum of several board members from different neighborhood councils would not be subject to the open meeting requirements of the Act.

DISCUSSION

The Brown Act sets forth rules governing meetings of legislative bodies and generally defines a meeting as a gathering of a majority of members of that body. Certain types of committees are also governed by the Act. Standing committees are covered by the Act, but ad hoc and some types of advisory committees are not covered so long as the committee is composed of less than a majority of the board.

Joint or advisory committees comprising members of different boards or commissions may come under the provisions of the Act if created by the action of a legislative body. See, *Joiner v. City of Sebastian* (1981) 125 Cal App. 3d 799. As the *Joiner* court noted, "a meeting between representatives of two legislative bodies, both of which had responsibility for the subject matter under discussion, in order to discuss their 'mutual' problems and, presumably, to report back to their respective bodies" would not be a legislative body under the Act. *Id.* at 804. However if an independent, separate committee has been created by one or more governing boards, the open meeting requirements of the Act would apply. *Ibid*, relying on *64 Ops. Cal.Atty.Gen 856* (1981).

Your proposed scenario involving less than a quorum of several neighborhood councils, which meets to discuss ideas and brings back those discussions to their own neighborhood councils, does *not* constitute a legislative body subject to the Act according to *Joiner*. This assumes that one of more of the governing boards of a neighborhood council (or some other legislative body) did not create such a group as "an independent separate committee." *Ibid.*

If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

GWENDOLYN R. POINDEXTER
Managing Assistant
Neighborhood Council Advice Division

(89314)

cc: Each member of
the Board of Neighborhood Commissioners