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Individuals Had Valid Claims Challenging the Adequacy of District's Meeting Agendas.

Roger Gifford and Kimberly Olson sued the Hornbrook Community Services District regarding various issues with the District's posted agendas for three Board meetings. First, for the District's August 16, 2016 meeting, the agenda indicated that the District would be considering payment of the quarterly premium for the State Compensation Insurance Fund. The agenda indicated that the quarterly premium amounted to \$285.75. However, when the item came up for discussion at the August meeting, the Board Secretary indicated that she had received additional communications from the State Compensation Insurance Fund and that the amount of the quarterly premium would be higher than the amount stated on the agenda. Without offering any explanation as to why the amount changed, the Secretary insisted the District approve the new demand for payment.

Second, for the District's September 20, 2016 meeting, the agenda indicated that the District would be approving and authorizing signatures for various bills listed on the agenda. The list included payment to an individual for his services for an unspecified amount, but did not include an AT&T bill. At the meeting, the Secretary announced that she had received a bill from AT&T that she wanted to add to the agenda. The Secretary also filled in the amount of the payment for an employee on a blank space of the agenda, without any motion or vote to do so.

Third, for the District's January 24, 2017 meeting, the agenda allowed for public comment at the start of the meeting "on any matter within the jurisdiction of the [District] that is NOT ON THE AGENDA . . . Any person wishing to address the [District] on an item ON THE AGENDA will be given opportunity at that time." (Emphasis in original.) The agenda also indicated that the District would be approving bills and authorizing signatures for District expenses received through January 24, 2017. Members of the public objected that the District was violating the Brown Act because individuals who wished to comment on agenda items were required to sit through the entire meeting until those items came up for discussion.

Following each meeting, the individuals each sued the District for violating the Brown Act. They claimed that the District failed to adequately describe several items it acted on, and unreasonably limited public comment. The trial court dismissed all of their claims, and they appealed.

The Brown Act guarantees the public's right to attend and participate in meetings of local legislative bodies. The Act requires that agendas for the meetings of legislative bodies contain a brief general description of each item of business the governing board will discuss. The Act

generally prohibits the legislative body from taking action or discussing any item that does not appear on the posted agenda. Further, the Brown Act requires that every agenda for regular meetings provide an opportunity for members of the public to address the legislative body on any item of interest to the public and to comment on each agenda item before or during the time the governing board considers the item.

Under the Brown Act, a legislative body's actions cannot be nullified if it "substantially complied" with the agenda requirements. On appeal, the District argued that the challenges to the three agendas must fail because the District provided a general description of the items. The District also argued that even if the general description was not sufficient, it still substantially complied with the agenda requirements.

The Court of Appeal disagreed, and concluded that the individuals had valid claims as to the August and September 2016 agendas, but not as to the January 2017 agenda. For the January 2017 agenda, the Court found that the description indicating that the District would be approving bills and authorizing signatures for District expenses received through January 24, 2017 left "no confusion as to the essential nature of the District's action." Further, the Court of Appeal noted that nothing in the Brown Act prohibits the District from restricting comment on items appearing on the agenda until the governing board considers the items.

For the August 2016 agenda, the Court reasoned that the District's agenda adequately communicated the essential nature of its action – to discuss and approve payment to the State Compensation Insurance Fund. The court noted that a difference in the payment amount was insignificant because "[t]hose interested in the payment had notice that it was going to be discussed and acted upon . . . and could attend the meeting and participate in the Board's action regardless of the amount to be paid." However, the Court determined that even though the agenda description was in compliance, the individuals could still pursue the allegation that the District took an action different from what placed on the agenda by authorizing a higher payment for the premium. The Court noted that while those interested in this item would know to attend the August 2016 meeting, "those interested in the particulars . . . may be persuaded not to attend the meeting in reliance on the [District's] assurance of the scope of the action it would take."

With regard to the September 2016 agenda, the Court found that the individuals could challenge the sufficiency of the agenda description because it specifically stated that the District would be approving a specific list of payments but approved an additional expense. The court reasoned that those interested in payments not listed would not know to attend the September 2016 meeting so they could comment on the subject.

Olson v. Hornbrook Community Services District (2019) 33 Cal.App.5th 502.

NOTE:

Public agencies can fall out of compliance with the intricate requirements of the Brown Act. LCW attorneys can provide your agency a Brown Act compliance review.

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