

Yvonne Spence

From: Sandra Brock <s.l.brock@live.com>
Sent: Wednesday, April 12, 2017 11:55 AM
To: Clerk
Subject: Fw: Retirement System compliance with open meeting laws, and communication issues

Dear Ms. Spence,

Please include this further email exchange in the Council communication, as an attachment to the email I directed to you this morning. It was received while I was composing my email to you.

Thank you.

Sandra Brock

From: Robert Theller <Robert.Theller@fresno.gov>
Sent: Wednesday, April 12, 2017 11:46 AM
To: Sandra Brock
Subject: RE: Retirement System compliance with open meeting laws, and communication issues

RECEIVED
2017 APR 26 AM 9 56
CITY CLERK, FRESNO CA

Good morning Ms. Brock,
It was an administrative call that in retrospect did not achieve the result we intended.

Regards,

Robert Theller, Esq.
Retirement Administrator
City of Fresno Retirement Systems
Robert.Theller@Fresno.gov
[REDACTED]

From: Sandra Brock [mailto:[REDACTED]]
Sent: Wednesday, April 12, 2017 10:52 AM
To: Robert Theller
Subject: Re: Retirement System compliance with open meeting laws, and communication issues

Mr. Theller:

I don't know why it would be more "convenient" for staff to post the off-site meeting agenda on the "communications" page rather than the web pages where all Retirement Board agendas have been posted for many years. Could you explain how posting the agenda(s) in the unusual place was more convenient?

Thank you for the advice to call the Retirement Office for information, but...I don't know if you have tried to call in to the Retirement office lately. My experience has been pretty frustrating trying to use the main incoming line. I consistently land in "voice mail jail," and most of the time I need to follow up with email because return calls are so delayed. I know your staff is busy, or it may be a

problem with how the lines were set up (in the City phone system, special arrangements have to be made for callers to be able to escape "voice mail jail" by dialing 0, and then other numbers in that delegation chain would also need to be set up with call forwarding so that a person might be able to reach a live human eventually). But it's frustrating (and I anticipate all the more frustration when elderly retirees start missing their mailed statements).

And thank you for your promise to properly post agendas in the future. I hope this commitment extends to properly agendizing all matters for which Retirement Board(s) will, are recommended to, or may seek actions (including the action of directing staff to do something).

Sincerely,

Sandra Brock

From: Robert Theller <Robert.Theller@fresno.gov>
Sent: Wednesday, April 12, 2017 8:50:43 AM
To: Sandra Brock
Cc: Clerk; Bruce Rudd; Lee Brand; Russ Richeda; Phillip Hardcastle; Michael Reid
Subject: RE: Retirement System problems with open meeting laws, e.g., improperly posted agenda(s) for the Boards' off-site meeting(s) on April 5-6 at Copper River Country Club

Good morning Ms. Brock;

The last thing that the Boards or I want to do is hide things or to make it harder for anyone to find our agenda for either Board Retreats or regular Board meetings.

I personally forgot to post the paper copy of our retreat agenda on the door of the Copper River Country Club, and the choice of where to place the retreat on the CFRS website was made by me for staff's convenience. Going forward we will as normal timely post all Board agendas via the City Clerk.

The Agenda and materials for the Retreat are posted in the Joint Boards Agendas & Minutes Section which you can access at <http://cfrs-ca.org/Employee/Agendas-Minutes/JRB.asp> or

Agendas & Minutes - City of Fresno Employee Retirement System

cfrs-ca.org

The city of Fresno Retirement Systems (CFRS). The city of Fresno Retirement System site was developed to assist our members in obtaining information about their ...

<http://cfrs-ca.org/Fire-Police/Agendas-Minutes/JRB.asp>

City of Fresno Fire & Police Retirement System - Agendas ...

cfrs-ca.org

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Regards,

Robert Theller, Esq.
Retirement Administrator
City of Fresno Retirement Systems
Robert.Theller@Fresno.gov

Yvonne Spence

From: Robert Theller
Sent: Wednesday, April 12, 2017 8:51 AM
To: Sandra Brock
Cc: Clerk; Bruce Rudd; Lee Brand; Russ Richeda; Phillip Hardcastle; Michael Reid
Subject: RE: Retirement System problems with open meeting laws, e.g., improperly posted agenda(s) for the Boards' off-site meeting(s) on April 5-6 at Copper River Country Club

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Regards,

Robert Theller, Esq.
Retirement Administrator
City of Fresno Retirement Systems
Robert.Theller@Fresno.gov

From: Sandra Brock [mailto:████████████████████]
Sent: Monday, April 10, 2017 11:40 PM
To: Robert Theller
Cc: Clerk; Bruce Rudd; Lee Brand
Subject: Retirement System problems with open meeting laws, e.g., improperly posted agenda(s) for the Boards' off-site meeting(s) on April 5-6 at Copper River Country Club

Mr. Theller:

Agendas for the Retirement Boards' off-site meetings at Copper River Country Club were not provided to the City Clerk for posting on the City website or on the kiosk in front of City Hall, in violation of policies formally adopted by the City Council which govern the posting of agenda materials for all City boards, commissions, and advisory bodies. State open meeting law was also violated, in that no agenda(s) for the April 5th and 6th off-site meeting(s) were posted on the bulletin board of the Retirement Office nor at the entry to the Copper River Country Club itself.

Even the spirit of open meeting law was violated when the Retirement Office did not put those off-site meeting agenda(s) on the AGENDA pages of the City of Fresno Retirement Systems' web site (see attached). Instead, those agendas were pretty well hidden by posting them on some other

Retirement System web page where no agenda has ever been posted before and where no member of the public would reasonably have thought to look for an agenda.

You appear to be excusing these lapses by saying that no action items were on the agenda(s), anyway. Characterization of a meeting as a "retreat" and a lack of stated action items on the agenda for a "retreat" does not absolve the Retirement Office of its duties under state and local open meeting laws. Since agenda materials were not properly posted before the meeting, the public and interested parties were not adequately provided with details on which room at Copper River the meetings were held and what time the off-site meeting sessions began. Regardless of whether, or which, actions may be contemplated at a public meeting, the public is to be afforded advance notice of proceedings so that it has the opportunity to ask pertinent questions and comment on any matter within the purview of the public body.

The public cannot be assured that no decisions governing the retirement systems were made by the Retirement Boards even if nothing was prospectively identified as an "action" item, because recent events at the Retirement Board have shown that a lack of identified action items on an agenda is no guarantee that some material decision or policy change will not be made at a meeting.*

Stories in the media have praised the solvency of Fresno's pension system. As the current Retirement Administrator, you have been accepting those accolades on behalf of the City. I hope you understand that the success of Fresno's Retirement Systems has been due to more than software, consultant and investment selection. It is the product of a long-term dedication to excellence in all aspects of managing the retirement systems for the benefit of retirees, not for the benefit of the system itself. The areas of excellence have included a collaborative attitude by the Retirement Administrator, and a commitment to following the tenets of open meeting laws. Visible agendas, accessible proceedings, answering questions, and thoughtful consideration of comments and suggestions offered (including those by parties other than staff, consultants, and vendors) have not been treated as a burden or waste of time. They have been woven into the Retirement Office's overall communication efforts. They have broadened the knowledge base of decision-makers, and have fostered participant and community support for the Retirement System. In recent years, when the very concept of public defined benefit pension systems has been challenged, the City's open-door approach to decision-making (and willingness to supply meaningful answers to questions) has reassured the public, elected officials, members, and retirees that the City runs its pension program in an above-board fashion, allowing everyone to know that it is making the best decisions possible.

The posting of the April 5th & 6th off-site agendas on the WRONG web page is an inexcusable failure to uphold the collaborative and open traditions for transacting Retirement System business. Worse, it evidences a sort of sly intent to *pretend* to comply with open meeting laws, but not to truly support meeting attendance and participation by anyone except the Retirement Boards, consultants, and hand-picked staff who were invited to the "retreat."

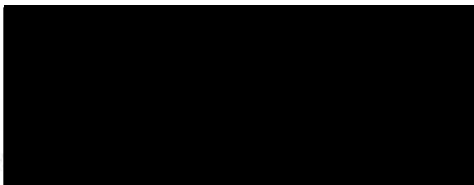
Personally, I am uncomfortable with that kind of "slyness" in charge of two billion dollars of public money. It's called a "trust fund" and it's governed by Retirement Trustees because we're supposed to be able to trust who's in charge: trust them to do the right things and to do things right, trust them with the money, and trust them to take proper care of hundreds of people who spent decades of their lives serving the City (and who collectively contributed hundreds of millions of dollars into the pension fund). I subscribe to President Reagan's advice that we should "Trust, but verify." I have spent hundreds of hours of leave and personal time attending Retirement Board meetings over the past decade, and until recently have been pleased with the tenor and conduct of those proceedings. But I find it hard to verify anything when agendas don't get posted where they are supposed to be, or when agendas don't reflect what decisions the Retirement Boards propose to make at a given

meeting. These occurrences seem to be a departure from past practices of excellence, and the Retirement System needs to get back on course.

I am hereby pursuing my administrative remedies by means of copying the Clerk of the City of Fresno with this email and hereby requesting that this matter be forwarded to the Fresno City Council for appropriate corrective action, seeking compliance with express direction that all Retirement Board agendas be posted in the prescribed and customary places, and that all proposed/recommended actions of the Retirement Boards be properly agendized as such in advance (excepting those determined to be emergency matters). If this matter is set for a date and time certain for Council consideration, I request notification so that I may be present to testify.

Sincerely,

Sandra Brock
City of Fresno ERS system retiree



* On February 8th, the Joint Retirement Boards took an action which materially affected all retirees, even though the issue was agendized as simply an informational report--and was on the "Board Initiated Items" part of the agenda, even though the matter was put on the agenda at the behest of Retirement Office staff/administration.

A decision was made on that date by the Joint Boards to stop mailing monthly statements to retirees when their retirement benefits are deposited. These monthly statements contain information on pension payments, DROP payments, taxes withheld, and insurance deductions--they are not simple duplications of a line item on the retirees' bank statements. (The fact that this information is proposed to be accessible through the Member Direct website clearly indicates that the information is important for retirees to have.)

The agenda listing and backup report for this agenda item was solely informational. However, during the meeting, after you reviewed that informational memorandum, you further stated that cessation of mailed statements would be beneficial a cost saving--absent any cost data presented. (Your concern over cost savings was stated mere minutes after the Joint Boards accepted your recommendation and voted to spend >\$25,000/year for a custom software subscription that would make it easier for some of the Retirement staff to prepare the annual report...and at the same meeting where you advocated a "retreat" off-site meeting at Copper River Country Club as a beneficial expenditure. I cannot fathom why the most financially successful retirement system in the West can't afford to spend anything to mail monthly statements to retirees, but could afford to spend on those other things to benefit staff and Board members.) You would not agree to consult with retiree organizations prior to any change in agenda mailing, you did not agree to survey retirees as to their usage of the Member Direct website, and you concluded your review of the statement mailing issue by recommending that the Joint Boards vote to stop sending retirement statements. The Joint Boards acceded to your recommendation.

When I challenged that Joint Board decision as being invalid under the Brown Act because the topic was agendized as an informational item, not an action item, you stated that the Boards were not taking an action; they were simply directing staff --as if "directing staff" is not a type of action that public body may take after considering and deciding a matter! Again, the Board members deferred to your declaration that there had been no Brown Act violation, and the decision to stop

mailing statements to retirees stuck. On March 8th the Joint Boards agenda included an item for approval of the form letter sent to retirees. That agenda report did not provide an opportunity for the Joint Boards to reconsider their February 8th decision. The Boards' decision to cease mailing statements to retirees was treated as a *fait accompli*.

Now we have a situation where the City's elderly pensioners are expected to magically acquire computer skills, hardware, and internet access to see their monthly "check stub" detail. Also a situation where the Retirement Office's own "boilerplate" Power of Attorney language does not (yet) adequately authorize a family member or other designated party to obtain a password to access the "Member Direct" web site on behalf of the pensioner.

Gee, "I can hardly wait" to see when the next informational non-action item on a Retirement Board agenda turns into a significant policy change without anyone having any inkling from the agenda (...if posted properly!) as to what action might be taken! And you wonder why I want to attend Retirement Board meetings to keep an eye on things!!

From: Robert Theller <Robert.Theller@fresno.gov>

Sent: Monday, April 10, 2017 7:39 AM

To: Sandra Brock

Subject: RE: No agenda(s) were posted for City Retirement Board meeting(s) on the April 5th and 6th

Good morning Ms. Brock.

As agendized and discussed during the "Administrator's Report" at most of the Board meetings for at least the past six months, the Retreat was paid for in advance and was held at the Copper River Country Club. Also as discussed, there were no voting items since it was strictly a retreat to hear about new topics and ideas.

The offsite agenda was timely posted on our website, in two separate places.


<http://www.cfrs-ca.org/Employee/Communications/documents/RetreatAgenda.pdf>

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Please let me know the next time you cannot find something on our website, we are always happy to help.

Regards,

Robert Theller, Esq.
Retirement Administrator
City of Fresno Retirement Systems
Robert.Theller@Fresno.gov

From: Sandra Brock [mailto:
Sent: Saturday, April 08, 2017 3:52 PM
To: Robert Theller

Subject: No agenda(s) were posted for City Retirement Board meeting(s) on the April 5th and 6th
Importance: High

I have attached a document with screen shots from the Joint Retirement Board, ERS Board, and F&P Board agenda listings on the Retirement website, showing that no agendas were posted for the April 5th and 6th offsite meeting(s) at the Copper River Country Club. Under the Brown Act, Retirement Board "retreats" and other off-site meetings are public meetings, not closed sessions such as those the Brown Act exempts from open meeting laws in order for public bodies to consider confidential personnel legal matters).

Since "retreat" and other offsite meeting sessions are public meetings, agendas for the ones held by the City of Fresno Retirement Boards last week were supposed to have been made available to the public so that any interested person would know where and when to attend, and what would comprise the proceedings, the issues that the Boards were to discuss and consider.


Since no agendas were posted for the retreat meeting(s), I--and possibly other interested persons--made the reasonable inference that the off-site meeting(s) had been cancelled. The usual protocol for a cancelled or rescheduled CFRS meeting is that the meeting agendas simply do not get posted; there have never been notices of cancellation or rescheduling on the City of Fresno Retirement Systems "agenda" listing pages. So, this was a reasonable inference to make.

Although it is now too late for me or other members of the public to HAVE attended the April 5th and 6th off-site meetings to comment or ask questions on matters within the purview of the Retirement Boards, I would appreciate it if you would have your staff post the agendas and backup reports/presentations (incl. PowerPoint slide shows), so that the public may know what material was presented to the Joint Boards. I also think it would be appropriate that the next regular meeting of the Joint Board would provide an opportunity for any interested member of the public to ask questions or comment on the issues presented, and that the Boards reconsider and re-vote on any matters where the public had no opportunity for review or input prior to any votes taken at the April 5th and 6th off-site meeting(s).

I realize that you came from another state and the Brown Act's provision for public information and participation may be something new to you, that you may not be personally comfortable with. However, it is law in California and we have become accustomed to having the right to watch our governing bodies transact public business, and to participate in that business by asking questions and voicing opinions.

Sincerely,

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Sincerely,

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California Government Code

TITLE 5. LOCAL AGENCIES [§50001 - §57550]

DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [§53000 - §55821]

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [§53000 - §54999.7]

CHAPTER 9. Meetings [§54950 - §54963]

...also known as "The (Ralph M.) Brown Act"

§54954.3.

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(Amended by Stats. 1994, Ch. 32, Sec. 9. Effective March 30, 1994. Operative April 1, 1994, by Sec. 23 of Ch. 32.)