



Californians Aware

THE CENTER FOR PUBLIC FORUM RIGHTS

February 20, 2015

SENT BY EMAIL AND FAX

Eduardo Enz, Acting Executive Officer
Commission on Health and Safety and Workers' Compensation
State of California
Department of Industrial Relations
1515 Clay St., 17th Floor
Oakland CA 94612

RE: Violation of Bagley-Keene Open Meeting Act

Dear Mr. Enz,

This letter is to demand that the Commission on Health and Safety and Workers' Compensation publicly and formally pledge to cease and desist from the practice of attending any conference or meeting at which there is a discussion of matters within its jurisdiction and which members of the public, including but not limited to journalists, are barred from attending.

Californians Aware has received a complaint from Steve Zeltzer, KPFA Radio, that just such an exclusion occurred at a December 15 gathering. It reads in pertinent part as follows.

At a meeting for "Celebrating 100 Years" of Workers' Compensation & Health & Safety held at the Oakland State Building on December 15, 2014, reporters were prevented from attending the state sponsored meeting. No reporters were allowed to attend the "private" meeting and the Highway Patrol was called by Department of Industrial Relations Director Christine Baker to evict a reporter from KPFA who was in the foyer, but the California Highway Patrol officer said the reporter had a right to be in the foyer. The Cal-Osha Report was also prevented from sending a reporter to the meeting. The meeting was funded by the insurance industry through the State Compensation Insurance Fund and the International Workers' Compensation Foundation. For more information: <https://www.youtube.com/watch?v=0M6m8S1OoH0&feature=>

Meetings of the Commission are presumed to be open and public under the Bagley-Keene Open Meeting Act, which defines "meeting" for its purposes as "any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains." Government Code Section 11122.5, subd. (a). Or as the Attorney General's Office summarizes on page 5 of its Handy Guide to the Bagley-Keene Open Meeting Act 2004, "a meeting also includes situations in which the body is merely receiving information. To the extent that a body receives information under circumstances where the public is deprived of the opportunity to monitor the information provided, and either agree with it or challenge it, the open-meeting process is deficient."

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Among the remedies provided by the Act is “an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to past actions or threatened future action by members of the state body.” Government Code Section 11130, subd. (a).

The Ralph M. Brown Act sets forth a specific procedure for demanding and providing an “unequivocal commitment” to “cease and desist” a challenged practice, to allow a local legislative body to preclude litigation of that challenge, by making the demanded pledge, effectively ceasing the practice without having to concede its illegality. Government Code Section 54960.2, subd. (c). The Bagley-Keene Act provides no such procedure, but neither does it preclude a comparable means of relinquishing a controverted specific past practice to avoid adjudication of its lawfulness.

Accordingly, in order to avoid the filing of an action against the Commission for declaratory and injunctive relief to confirm that the practice in question violated the Bagley-Keene Act and to order it not to be repeated, and for the recovery of any attorney fees and costs incurred in such litigation, Californians Aware demands that the Commission’s Chairperson, within 45 days of the receipt of this letter, inform it of the Commission’s unconditional commitment at an open and public meeting, to cease, desist from, and not repeat the practice of attending any conference or meeting at which there is a discussion of matters within its jurisdiction and from which members of the public, including but not limited to journalists, are barred from attending.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Francke", with a long horizontal flourish extending to the right.

Terry Francke
General Counsel