LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
PUBLIC INTEGRITY DIVISION

STEVE COOLEY • District Attorney
JACQUELYN LACEY • Chief Deputy District Attorney
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JANICE L. MAURIZI • Director

April 6, 2012

The Van De Kamps Coalition
Ms. Laura Gutierrez
Ms. Miki Jackson
236 South Avenue 60
Los Angeles, California 90042

Subject: Allegation of Brown Act Violations by the Los Angeles Community College District Board
PID Case 12-0077

Dear Ms. Gutierrez and Ms. Jackson,

An inquiry that was opened in response to your complaint alleging that the Los Angeles Community College District Board (" LACCD Board") violated the Ralph M. Brown Act when it met in closed session regarding an MOU pertaining to lease terms involving the Van de Kamp Campus has been completed. A copy of our letter to the LACCD, that sets forth our findings, is enclosed.

Your identities as the complainants will not be disclosed, consistent with our policy and the law. We appreciate your interest in protecting the public' s right to open and transparent decision making by local governmental agencies.

Thank you for your activism.

Very truly yours,

STEVE COOLEY
District Attorney
By

JENNIFER LENTZ SNYDER
Assistant Head Deputy
Public Integrity Division

Enclosure

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April 6, 2012

The Honorable Board of Trustees
Los Angeles Community College District
770 Wilshire Boulevard
Los Angeles, California 90017

Subject: Allegation of Brown Act Violations
PID Case 12-0077

Dear Board Members:

An inquiry was conducted in response to a complaint we received alleging that the Los Angeles Community College District Board of Trustees ("LACCD Board") violated the Brown Act when it met in closed session on October 19, 2012 to discuss what was agendized as:

"**V. Discussion with Real Property Negotiator** as may be announced prior to closed session (pursuant to Government Code section 54956.8)

A. Property: Van De Kamp Innovation Center
Negotiating party: Alliance for College Ready Schools
District Negotiator Dr. Adriana Barrera
Under negotiation: Price and terms of payment

B. Van De Kamps Coalition v. Los Angeles Community College District, and related case."

We have been informed that closed session discussions by the LACCD Board are not recorded. (LACCD letter dated February 12, 2012). We reviewed documentary evidence regarding the meeting and the subject matter agendized above, correspondence provided by Counsel to the District, and the applicable law. Our analysis and findings are set forth below.

The particular matter that was the subject of this inquiry appears on what is titled as an Addendum to the Closed Session Agenda, item "V. Discussion with Real Property Negotiator as may be announced prior to closed session (pursuant to Government Code Section 54956.8),

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A. Van De Kamp Innovation Center, B. Van De Kamps Coalition v. Los Angeles Community College District, and related cases."

We are aware of the litigation listed which involves the LACCD. However, inclusion of what appears to be pending lawsuits under the "Re al Property Negotiator" heading pursuant to Government Code Section 54956.8 is striking, because it ignores the narrow construction of closed session exceptions, as required by the California Constitution art. I, section 3(b)(2) and as amply articulated by a multitude of published appellate authorities. Rudd v. Cal.Cas.Gen.Ins. Co., 219 Cal.App.3d 948, 954-955 (1983), Shapiro v San Diego City Council, 96 Cal.App.4th 904, 917 (2002). The fact that a matter to be discussed relates to real property does not bring it within the ambit of the real property exception of Government Code Section 54956.8. See, Shapiro v San Diego City Council, supra.

It is well established that the closed session exception for real property transactions is limited to (1) the amount of consideration that agency is willing to pay or accept in exchange for real property rights to be acquired or transferred in the particular transaction, (2) the form, manner, and timing of how that consideration will be paid, and (3) items that are essential to arriving at the authorized price and payment terms, such that their public disclosure would be tantamount to revealing the information that the exception permits to be kept confidential.". 11 Cal. Daily Op. Serv. 15528 (2011).

More importantly, the real property exception explicitly permits a closed session "with its negotiator *prior* to the purchase, sale exchange or lease of real property by or for the local agency...". Government Code Section 54956.8 (italics added). 93 Ops.Cal.Atty.Gen. (2010). (Negotiation of a redevelopment loan secured by restrictive covenants, which involved amendments to the existing sublease between the City of Covina and the tenant/owner of the property does not fall within the closed session exception for real property.)

The MOU essentially seeks to modify the permissible uses of the property subject to an *existing* lease. The MOU does not create a right of possession, nor does it change the existing rights of possession that exist pursuant to the existing lease. It does not establish an amount of consideration to be paid, nor the form, manner and timing of payment. While the MOU has to do with how the property should be used and accessed, it in no way involved negotiation prior to the purchase sale, exchange or lease of real property by or for the local agency. The MOU regarding lease amendments is much like the restrictive covenants that were proposed amendments to the existing lease that were the basis for the Attorney General's

terms prior to a sale, lease, exchange or transfer of real property by or for the legislative body. Further, the notation on the agenda that the price and terms of payment were the subject under negotiation with regard to the property is, at best, wholly misleading. We therefore conclude that any closed session discussion about the MOU as agendized pursuant to the real property exception of the Brown Act was impermissible.

Whether the MOU was adopted, and whether the MOU was binding or not have no bearing upon the analysis of whether discussion of that MOU in closed session as agendized, was permissible. If, as suggested, the MOU was proposed as part of the settlement of existing litigation, then the matter might fall within the closed session permissions of pending litigation, pursuant to Government Code Section 54956.9(a). To the extent that the public was notified of closed session consideration of this matter under the real property exception, such notice is inaccurate and insufficient. That the matter was, in fact, considered in closed session without adequate notice constitutes a violation of the Brown Act.

We note also that the closed session agenda for the Board meeting on October 19, 2012 includes six listings. The fifth, "V. D iscussion with Real Property Negotiator as may be announced prior to closed session (pursuant to Government Code Section 54956.8)" does not meet the "sa fe harbors" standard for notice of closed session items as set forth in Government Code Section 54954.5 and as required by Section 54954.2. Nor are we aware of any circumstances that would permit the Board to consider, in closed session, items "as may b e announced prior to closed session". Similarly, the entry that appears as, "VI. Other litigatio n matters as may be announced prior to the closed session (pursuant to Government Code Section 54956.9)" does not meet the standard for notice of closed session items. There is no provision in the Brown Act that permits an "add on" of additional items by announcement without proper notice that meets the applicable time requirements having been provided. Nor is there any evidence to suggest that the board was faced with an emergency situation, as set forth in Government Code Section 54954.2(b), which permits consideration of an non-agendized item under particularized circumstances.

To the extent these items are included as placekeepers or as part of a template, they provide no information and do not, in any permissible way meet the notice requirements of Government Code Section 54954.2(a). In fact, the entries create the likelihood of confusion, because a reasonable person, looking at the agenda, would have no way of divining what might be subsumed under such headings.

Your agency, like every public agency, is required to provide sufficient notice of any matter for discussion to the public so that a reasonable person would have sufficient, accurate information upon which to make further inquiry. The agendas reviewed in this matter do not satisfy that requirement. We urge this board to review its obligations and demonstrate a renewed commitment to comply with the

Brown Act, by providing accurate information and greater transparency with regard to the matters you consider as the agents of the public you serve.

Very truly yours,

STEVE COOLEY
District Attorney
By

JENNIFER LENTZ SNYDER
Assistant Head Deputy
Public Integrity Division