

October 16, 2019

Presiding Officers
Curriculum Committee
Bakersfield College, KCCCD

Dear Co-Chairs Rice, Johnson, and Menchaca:

This letter is to call your attention to what I believe was a potential violation of a central provision of the Ralph M. Brown Act and Article I, Section 3 of the California Constitution, which may jeopardize the finality of action to be taken by the Bakersfield College Curriculum Committee.

The nature of the violation is as follows. On Sunday September 29, 2019 two employees of Bakersfield College, KCCCD, in separate e-mails, utilized the listservs bc_faculty and bc_adjunct potentially creating a serial communication leading to developing a concurrence regarding a non-agendized item, History B9, likely to be considered by the body.

The concern under the Brown Act is not how the discussion was communicated among the committee. Instead, the concern is whether an inappropriate number of members received the serial communication and whether that serial communication led to a concurrence among the majority of the members on an issue that is now to be considered by the body.

The Brown Act prohibits serial communications that lead to "developing a concurrence." Developing a concurrence on an item is broadly construed. It means any discussion or information that assists you in voting. It means any information that assists or clarifies your understanding of an issue. It means any information that leads to an agreement or compromise among the members. It means any discussion or information that advances the resolution of an item that is on the agenda or within the committee's subject matter jurisdiction. (California Attorney General, The Brown Act: Open Meetings for Local Legislative Bodies, 2004, p. 11.)

I believe the communication taken was not in compliance with the Brown Act and Article I, Section 3 of the California Constitution because it allowed for the culmination of a discussion in closed session of a matter which the Act does not permit to be discussed in closed session and there was no adequate notice to the public on the non-agendized item that the matter would be discussed, and there was no finding of fact by the Curriculum Committee that urgent action was necessary on a matter unforeseen at the time the non-agendized communication occurred.

As you may be aware, the Brown Act allows the legal remedy of judicial invalidation of illegally taken action(s). Thus, I respectfully request that the Curriculum Committee cure or correct the illegally taken communications as follows: History B9 be removed from the Thursday October 17, 2019 Curriculum Committee agenda and re-agendized for your next meeting with a disclosure of the improper communications allowing the public to access the information and giving them the opportunity to comment on the information, of which it has been deprived.

As provided by law, you have 30 days from the receipt of this request to either cure or correct the challenged communications or inform me of your decision not to do so.

Sincerely,



Steven Holmes

President, Bakersfield College Academic Senate