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Appellate Court to review Brown Act decision Allowing Secret Gatherings.

Petitioners Richard P. McKee, Visalia Newspapers, Inc. (Visalia Times-Delta), and the California Newspaper Publishers Association have appealed the dismissal of their action against the Tulare County Board of Supervisors for violation of the state's open meeting law, the Ralph M. Brown Act (*McKee, et al. v. Tulare County Board of Supervisors*, Tulare County Superior Court, Case No. 10-236639). The outcome of this action has implications for the conduct of all local agency meetings statewide. If local agency gatherings, attended by a majority of its members, are allowed to continue to occur outside a noticed, public meeting, it will be difficult or impossible for the public to ever learn what was discussed.

The action alleges that a majority of the Tulare County Board of Supervisors, over the first seven months of 2009, attended 30 luncheons, which were not noticed to the public – many of which took place the day before or the day of a regular Board meeting. According to documents obtained by the Times-Delta under the California Public Records Act, the meals were paid for using a County credit card by one of the Board members or the county administrative officer, who also attended some of the meetings. In each case, the cardholder certified on the receipt or credit card statement that the luncheons were “for official business only” and “were for work related meals.” In 2010, a majority of the Board attended luncheons on January 4, 8 and 11, preceding the January 12 Board meeting, where a previous opponent of a controversial amendment to the County's half-cent sales tax, suddenly changed his vote to pass the amendment 3-1.

The Chairman of the Board, in response to a demand sent by McKee, stated that some of the items discussed at these meetings included “the official activities of individual supervisors, travel planning, and management of the individual Supervisors' offices.” The Chairman went on to state:

“[m]embers of the Board frequently engage in work related activities, which may occur before, during, or after a meal time, apart from the regular or special public meetings of the board...but do not constitute a meeting for purposes of the Brown Act.

In addition, we believe that taking meals together in connection with work-related activities of board members serves the important purpose of fostering collegial relationships between Board members. This helps insure that the Board operates most effectively and efficiently at public meetings.”

Only days later, the Board adopted a resolution temporarily suspending the practice, but still refused to acknowledge the Brown Act violation.

The Brown Act mandates that a majority of a legislative body shall not discuss, deliberate, or take action on any item of business within its subject matter jurisdiction outside of a meeting complying with the requirements of a Brown Act.

Judge Melinda Reed of the Tulare County Superior Court found, on the Board's demurrer, that the allegations of the lawsuit were “insufficient to show Board members discussed business of a specific nature within the Board's subject matter jurisdiction...” and that the allegations of the complaint “involve individual supervisorial activities and are not items of importance concerning collective decision-making related to the public's business.” The trial court then dismissed the action with prejudice.

The appeal is currently pending (*McKee, et al. v. Tulare County Board of Supervisors*, Court of Appeal, Fifth Appellate District, Case No. F061146). The action seeks an order compelling the Board to comply with the requirements of the Brown Act and a declaration that the unnoticed, private luncheons violate the Brown Act.

Shortly after the appeal was filed, the Board of Supervisors requested that the Superior Court order Petitioners to pay over \$30,000 in attorneys' fees. Although Judge Reed declined to rule on the motion with the appeal still pending, the importance of this appeal is now even more significant.

Petitioners have filed their opening brief. The Board's response is scheduled to be filed March 16, 2011, with Petitioners' reply brief to follow shortly thereafter. Oral argument is anticipated later in 2011.

Attorneys for Richard P. McKee are Kelly A. Aviles, La Verne, California and Dennis Winston, Los Angeles, California. The attorney for Visalia Newspapers, Inc. and California Newspaper Publishers Association is Bruce A. Owdom, Fresno, California.