



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke, Commissioners Audero, Cardenas, Hatch, and Hayward
From: John M. Feser Jr., Senior Commission Counsel
Subject: Proposed Questions re Bagley-Keene Act for Attorney General Opinion
Date: February 5, 2018

The Commission seeks to submit questions to the Attorney General's Office related to the Bagley-Keene Act for a formal AG Opinion. In accordance with the Commission's instructions at the January 2018 meeting, staff worked with interested Commissioners to prepare proposed questions for discussion at the February 2018 meeting.

The questions submitted for an AG Opinion must comply with the AG's requirements. Questions should enable as clear an answer as possible, with enough description of the background and context of the question to allow a precise legal analysis to be prepared. AG Opinions are only provided on questions of law. Requests that require factual investigations, would require the resolution of a factual dispute, or seek policy determinations will be declined. The questions below have been drafted with these perimeters in mind.

If the Commission approves the questions and decides to request an AG Opinion, the request must be accompanied by a legal analysis prepared by the Commission's Legal Division.

PROPOSED QUESTIONS FOR ATTORNEY GENERAL OPINION

PUBLIC COMMUNICATIONS TO COMMISSIONERS

Is the Bagley-Keene Act violated if:

1. one member of the public sends an e-mail to five FPPC Commissioners?
2. one member of the public sends an e-mail to five FPPC Commissioners and one Commissioner responds in a "reply all" email?
3. one member of the public sends an e-mail to five FPPC Commissioners and other members of the public?
4. one member of the public sends an e-mail to five FPPC Commissioners and other members of the public and one Commissioner responds by email, but only to the members of the public?

COMMISSIONER DISCUSSIONS OF BAGLEY-KEENE

Is the Bagley-Keene Act violated if five FPPC Commissioners meet outside a public meeting (e.g., over lunch) and talk about how the Bagley-Keene Act applies to the FPPC?

COMMISSION SUBCOMMITTEES – THIRD PARTY COMMUNICATIONS

Is the Bagley-Keene Act violated if two Commissioners who serve as the only members of a FPPC subcommittee, without posting an agenda or public notice:

1. interview one member of the public?
2. interview two or more members of the public, each of whom were present during all interviews?
3. interview one member of the public and a third Commissioner attends the interview, but only to observe, not participate?
4. interview one member of the public, a third Commissioner attends the interview and participates in the interview?

COMMISSIONER CALL-IN FROM REMOTE LOCATION

Is the Bagley-Keene Act violated if a Commissioner is out of town, cannot personally attend a Commission meeting, and appears by telephone from a location in:

1. Alaska from a 19th Century historic building that was not ADA compliant?
2. China from a modern office building, but the Commissioner does not know whether it is ADA compliant?
3. the Commissioner's Los Angeles office where the building was ADA compliant, but security was strict and the office was not publicly accessible?

NOTICE/AGENDA REQUIREMENTS – SUBSTANTIAL COMPLIANCE

Is the Bagley-Keene Act violated if the Commission votes on an agenda item where:

1. the agenda states only that the matter will be discussed, not specifically that the Commission would take any action on the item?
2. the item is part of an executive staff report that covers other issues and staff has proposed recommended action for the Commission to take on the item?