

## GETTING THE COMMISSION'S WORK DONE

### WHILE COMPLYING WITH OPEN MEETING LAWS

#### OPENNESS AND PUBLIC ACCESS: A PLACE FOR THE PUBLIC AT THE TABLE

**Cal. Const. Art. 21 Sec. 2 (b).** The Citizens Redistricting Commission shall conduct an open and transparent process.

**Government Code Sec. 8253.** The commission shall establish and implement an open hearing process for public input and deliberation that shall be subject to public notice and promoted through a thorough outreach program to solicit broad public participation in the redistricting public review process.

**Government Code Sec. 11120.** It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

**Problem 1:** The Commission meets on February 25 and wants to set future meetings, but is unsure when these meetings will be held.

Law: The Commission must provide at least 14 days' notice except that meetings in September, 2011 may be held with 3 days' notice. Gov. Code Sec. 8253 (a) (1).

(Unlike Bagley-Keene: 10 days' notice for regular meetings, 2 days' notice for special meetings, one hour notice to media for emergency meetings; unlike Brown Act: 3 days' notice for regular meetings; 1 day for special meetings; 1 hour for emergency meetings.)

Possible Solutions:

- 1) The Commission could schedule meetings on every possible date and delegate power to the Chairperson, in consultation with its Executive Director, to set the agendas for all necessary meetings with 14 days' notice and to cancel all meetings that need not be held.
- 2) The Commission could delegate power to the Chairperson, in consultation with its Executive Director, to set future meetings upon 14 days' notice.
- 3) The Commission could delegate power to its Executive Director, with the advice of two Commissioners, the power to set future meetings.

**Problem 2:** Between meetings, the Commissioners become aware of a problem that requires a decision prior to the next scheduled meeting.

Law: Commission can only act during a regularly scheduled meeting.

Possible Solutions:

1. If time permits and if power to set a meeting has been delegated to Chairperson, the Chairperson sets a timely meeting.
2. The Commission could delegate power to the Chairperson, in consultation with its Executive Director, to decide questions that arise between meetings, subject to ratification at next meeting upon proper agenda.
3. Absent solutions 1 or 2, the Commission would be limited to having its staff attempt to postpone the need for an immediate decision.

**Problem 3:** Commissioners are invited to participate in a redistricting seminar or speak at an event sponsored by an outside entity and open to the general public.

Law: Commissioners may not communicate with or receive communications about "redistricting matters" from anyone outside of a public hearing.

Possible Solutions.

1. As reasonably construing "redistricting matters" consistent with this law, Commissioners could speak at outside events and describe the process and progress of the Commission in carrying out its duties. They may not, however, comment on any personal opinions or on any decisions that the Commission has made concerning adjusting boundary lines.
2. The Commissioners could limit their participation to being listeners and have all information that is provided regarding redistricting conveyed to the entire Commission. "Receiving communications" cannot reasonably be construed as restricting the Commissioners' receipt of information equally available to all members of the public.

**Problem 4:** Commissioners are invited to speak, in a private conversation, with outside persons regarding redistricting issues.

Law: Commissioners may not communicate with or receive communications about redistricting matters from anyone outside of a public hearing.

Possible Solutions.

1. The Commissioners could graciously decline the invitation.
2. The Commissioners could advise the inviter that he/she should attend a Commission meeting and provide the entire Commission with the information. If there is to be Commission discussion or action in response to the information, it should be placed on the agenda.

**Problem 5:** A group of 3 or more Commissioners wish to get together outside a Commission meeting.

Law: Any advisory committee meeting of more than 2 Commissioners discussing Commission business must be properly noticed. (This is under Bagley-Keene; under Brown, less than a quorum may meet.)

Possible Solutions:

1. Make it a social and do not discuss Commission business.
2. If those attending are not an official body (not a quorum, not a committee), do not use a series of communications for the Commission or a committee of the Commission to discuss or decide any matter under the Commission's jurisdiction.

**Problem 6:** Only 8 Commissioners attend a meeting, but scheduled speakers are present.

Law: Nine Commissioners are required for a quorum

Possible Solutions.

1. Convene Commissioners who are present as an advisory committee and take testimony from speakers, with any action delayed until a quorum is present.
2. Reschedule speakers for another meeting.

**Problem 7:** The Commission wishes to open and consider all bid responses in closed session.

Law: Closed meetings may be held only to deal with specified subjects, and considering bids is not permitted in a closed meeting.

Possible Solutions:

- 1) The Commission could delegate power to the Chairperson, in consultation with its Executive Director, to open and review bids and make recommendations to be considered by entire Commission.
- 2) The Commission could delegate power to its Executive Director, with the advice of two Commissioners, to open and review bids, and make recommendations to be considered by entire Commission.

**Problem 8:** During a meeting, a member of the public wishes to address the Commission on a matter that is not on the agenda.

Law: While the Commission cannot act on any matter not included on the agenda, it can ask questions and schedule issues raised by the public for consideration at future meetings.

Possible Solution: The Commission should listen to all members of the public under an agenda item "Public Comment," subject to reasonable time restrictions. Commissioners may ask questions and interact with speaker, but may not take any action on an item not on the agenda.

**Problem 9:** The Commission receives a request to have its information posted on line.

Law: The records of the commission pertaining to redistricting are public records that will be posted in a manner that ensures immediate and widespread public access. Gov Sec. 8253.

Possible Solution: Post all records on Commission's website.

**Problem 10:** The Commission receives a public records request for the e-mail of all Commissioners.

Law: All writings of the Commission containing information relating to the conduct of the public's business are public records. "Writing" includes e-mails and every other means of recording information, regardless of the manner in which the record has been stored.

Possible Solution: All e-mails pertaining to the Commission's work and not otherwise privileged should be disclosed.

## **Suggested Responses to other Frequently Asked Questions**

Q. Why should Californians have confidence that 14 Commissioners who are unelected and therefore unaccountable to the voters be able to produce district boundaries that are in their best interests.

A. It was the voters themselves that took the job of redistricting out of the elected legislators hands because of their frustration with a process which served to protect incumbents. The voters supported a new process which would choose 14 citizens with a myriad of backgrounds, skills and from varied geographic locations to draw district boundaries.

Q. Won't legislators be working behind the scenes to influence Commissioners and take control of the redistricting process?

A. The Voters First Act is very clear that communication between legislators and Commissioners regarding redistricting issues is restricted. Any comment from legislators should take place in a public Commission meeting.

Q. Can't this whole process be done by a computer program?

A. The beauty of what this Commission is doing is that they will be relying on the active participation of citizens across California to weigh in on how the districts should be drawn. This way there is a truly open conversation with Californians about what their local districts should look like, which a computer could never do.

Q. What criteria will the Commission consider in deciding the districts?

A. The criteria for us to follow is laid out in the Act:

- o Districts must comply with the US Constitution
- o Districts must comply with Voting Rights Act
- o Respect boundaries of cities, counties, local neighborhoods and local communities of interest and minimize their division to the extent possible
- o Encourage geographical compactness
- o Where practicable each Senate District should be comprised of two complete and adjacent Assembly Districts and Board of Equalization districts shall be composed of 10 complete and adjacent State Senate Districts
- o Districts shall not be drawn favoring or discriminating against an incumbent, candidate or political party.

Q. Isn't one of the criteria to be considered by the Commission is that districts should be more competitive rather than overwhelmingly dominated by one political party?

A. Designing more competitive districts is not one of the criteria set forth in the Voters First Act to be considered by the Commission in drawing lines. However, given that in the past districts were configured to protect incumbents, and seldom did districts change parties in elections, one natural by-product could be more competitive races.

Q. What is the difference between now than what has been done in the past?

A. Historically redistricting has been an exclusive enterprise engineered by legislators who drew their own district boundaries. Now you have an independent Commission which has a totally inclusive approach. In addition to statewide hearings the Commission is using a myriad of methods to solicit citizen involvement including new media such as Twitter and Facebook. Commissioners are also participating in events such as speaking engagements and panels with various civic and community organizations.

Q. What if the Commission cannot agree on the final redistricting maps?

A. Each of the 14 Commission members are fully committed to fulfilling their mandate to deliver fair district boundaries. To accomplish that goal the Commission is undertaking a deliberative and open process engaging citizens from every corner of the state. Through that process, and working with all the critical data available, the Commission will have a clear understanding to enable them to draw the lines and agree to final maps. In the unlikely scenario that the Commission does not come to agreement on final district boundaries the matter goes directly to the California Supreme Court which will appoint three masters to draw the lines.