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MEMORANDUM

TO:	MCWD BOARD OF DIRECTORS	**FILE NO:**	12400.007
FROM:	LLOYD LOWREY, DISTRICT COUNSEL	**CLIENT:**	MCWD
DATE:	April 28, 2011	**SUBJECT:**	CLOSED SESSIONS FOR NEGOTIATIONS

This Memorandum responds to a Director's request at the April Board meeting for a written opinion on whether the General Manager may attend closed sessions of the Board held under the "labor negotiations" exemption in the Brown Act (Govt. C. §54957.6(a), copy attached) when the topic of the closed session is the General Manager's contract. The labor negotiations exception authorizes a local legislative body like the Board to appoint and meet with a negotiator or negotiators concerning discussions with employee organizations and unrepresented employees regarding salaries and fringe benefits. I have advised the Board and General Manager that the General Manager should not attend such closed sessions.

The California Attorney General has long held the opinion that a legislative body may appoint one or more members constituting less than a quorum to act as its negotiator and may meet with the appointed negotiators in closed session under the provisions of 54957.6, but may not meet in closed session without using a designated representative. (The Brown Act, California Attorney General's Office (2003) page 43; 57 Ops.Cal.Atty.Gen 209, 212 (1974)). The Attorney General has also opined that the full legislative bodies of a city and a water district may not meet together in

closed session to discuss the settlement of potential litigation. (62 Ops. Cal. Atty. Gen. 150 (1979)). In the 1979 Opinion, the Attorney General stated, "...absent a change in the law with respect to the requirements of the Brown Act, public agencies attempting to settle such disputes will be required to find means to do so other than holding meetings in executive session between their full legislative bodies." (Id., at 163-164).

More recently, the 2009 decision in Page v. Miracosta Community College District, 180 Cal.App.4th 471, 501-504 (Review Denied Mar. 24, 2010), found that a complaint stated a cause of action for a Brown Act violation where a community college board allegedly engaged in negotiations and mediation with the college president and her legal counsel in closed session. In reaching this conclusion, the court cited the Attorney General's 1979 opinion on city and water district negotiations, "guided by the principle that statutory exceptions authorizing closed sessions of legislative bodies are construed narrowly, and the Brown Act "sunshine law" is construed liberally in favor of openness in conducting public business." [Id., at 501.Citations omitted].

With this appellate court decision, in my opinion, there is a substantial risk of having action taken on a contract with the General Manager invalidated if the full Board discusses the contract with the General Manager in closed session. The General Manager should meet with the Board's designated negotiators, and the designated negotiators should meet with the Board in closed session without the General Manager present, to guard against possible Brown Act challenges to action on the General Manager's contract.

LWL:ll