

# St. Helena Star

## Editorial: Council should follow law

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Our representative form of government depends upon the public's ability to judge the performance of its representatives. If that performance takes place behind closed doors, the public can't fairly decide whether to re-elect or vote for someone new.

That's why the California Legislature enacted the Ralph M. Brown Act, the state's open-meeting law.

"The intent of the Brown Act is for public agencies to conduct their business publicly, not in the shadows where they are not accountable for their actions," Napa County District Attorney Gary Lieberstein told the Star's editorial board Monday.

He was accompanied by Chief Deputy DA Mike O'Reilley, a Brown Act expert whose recent examination of the St. Helena City Council determined that the city violated the Brown Act five times — three times on March 30, in the process of firing City Manager Mary Neilan; once on April 5; and again during a series of email exchanges between council members.

"These violations apparently were undertaken as a result of incorrect legal advice provided to the council," Lieberstein wrote to the council on July 5. "However, incorrect legal advice does not justify or excuse violations of the law."

Because it was not clear that the council intended to violate the law, the DA said he would not prosecute criminally. However, he said any future violation would likely be treated as an intentional violation of law, subject to criminal prosecution.

The DA's office is awaiting a formal City Council response, which could materialize at its Aug. 23 meeting. To date, the only city response to the DA has come from City Attorney John Truxaw, who told the Star he disagreed with the DA's findings.

On July 12, the city responded to a separate legal challenge from Californians Aware, a nonprofit watchdog agency that is threatening to sue the city over its Brown Act violations, by "rescinding" actions taken on March 30 and ratifying Nielan's separation agreement. That July 12 meeting, however, may have violated the Brown Act a sixth time because the city failed to properly notify the public and allow for public comment, according to CalAware lawyers (see front-page story).

Lieberstein and O'Reilley say that until they receive a response from the city, it would be premature to discuss exactly how they might proceed. However, they offered a few tips for the city.

“If their attorney writes to tell us that everything is just fine, we’re going to have further issues,” Lieberstein said. “If they say the Brown Act does not apply to them, we’re going to have to be heard in this again.”

“One would hope they would take this seriously,” the DA said. “Maybe they should defer to being more public.”

For example, when the council met in executive session on March 30 to discuss Nielan’s job performance, the council should have “called a time-out” as soon as it became apparent they were talking about firing Neilan — a topic not listed on the meeting agenda in accordance with the Brown Act.

“I’ll consider their side of the story,” Lieberstein said, “but how can you move a council meeting with an hour’s notice (on April 5) and call it a clerical error? Maybe that was a time to postpone the meeting to give proper public notice. One could make the inference that they didn’t want the public to show up.”

Furthermore, when the council voted 4-1 behind closed doors on March 30, it was required by the Brown Act to immediately reconvene in public to disclose the action and the roll call vote. This provision of law was not followed, O'Reilley told the editorial board.

The council still has not disclosed details of the 4-1 vote in accordance with the Brown Act.

Protecting the public’s right to know what legislative bodies do behind closed doors — and when and where they are conducting public business — is the very purpose of the Brown Act.

The good news is that the City Council can still correct its violations.

The last time Lieberstein had to look into St. Helena City Council violations of the Brown Act, in 2008, a new council meeting was called, with a new agenda and new opportunities for the public to participate. Lieberstein said it would be difficult for the city to re-enact its firing of Neilan, but he said council members could take steps to admit wrongdoing and assure the public such mistakes will not be repeated.

“I want them generally to follow the law,” Lieberstein said. “I want them to say they have no intent to violate the Brown Act, and that what was done wasn’t what they should have done. The proper response is: ‘This isn’t going to happen again,’ and it doesn’t happen again.”

Anything short of that could lead a reasonable person to believe there may be other Brown Act violations still to uncover or prevent, O'Reilley said.

“If you have evidence of previous violations of the Brown Act, common sense leads to the suspicion that there are other possible violations,” O’Reilly said.

In the meantime, Lieberstein and O’Reilly said the DA’s office would be happy to stage a seminar in St. Helena to educate the council, other city officials and residents about procedures that should be taken to make sure the city complies with the Brown Act.

Over the next few weeks, the council should respond properly to the DA by admitting violations, correcting what they can (including disclosing the 4-1 vote), and promising not to violate the law again.

Then, as soon as possible, the council should take the DA up on his offer to conduct Brown Act seminars in St. Helena.

While Brown Act violations provide fodder for newspaper editorials, we’d rather just have the City Council conduct public business in public, without inviting media scrutiny, DA involvement or the threat of lawsuits.

The Brown Act protects the public, city staff and elected officials.

The City Council should embrace that protection and use it to avoid further trouble with the law.

(St. Helena Star editorials are the result of a collaborative effort among a group of six people called the Editorial Board. The board includes four St. Helena resident volunteers — Linda Reiff, Bill Savidge, John Ponte and Shannon Kuleto — along with Assistant Editor Dave Stoneberg and Publisher Doug Ernst.)

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