

PASSAGE V

This passage describes the impact of open government statutes in California.

- Open government statutes in California have proved both beneficial and harmful. In the energy commission, for example, as in other government commissions, nearly all decisions must be made in a public session for which at least seven days' notice must be given. (Two notable exceptions to public participation in commission meetings are meetings that are held to discuss pending litigation and meetings held to discuss staff personnel matters.) The determination of which decisions can be made by the executive director and which are strictly reserved for the commission becomes quite important in this context. If something is a matter for the commission, there must be a public hearing with attendant publicity and preparation of materials for distribution at the meeting. (A formal delegation of authority authorizes the executive director to make purchases of goods and services, including consulting services, costing less than \$5,000.)
- Furthermore, no more than three of the commission's five commissioners may meet informally with one another or with the executive director or any member of his staff to discuss commission activities. Such behavior would be a violation of open government statutes. Staff briefings must take place commissioner by commissioner or through a commissioner's advisers. More frequently, commissioners or their advisers contact the staff for information, but all such requests must be submitted in writing.
- An example of the impact of open government on the operating procedures of a commission is the energy commission's budgetary process. The budget for the commission, unlike that prepared in other state agencies, was prepared in a public session by the five commissioners. The session was not simply a "review and comment" session, since the commissioners had not previously discussed the budget. Every item proposed for the budget could be commented on by anyone who attended the hearings. The budget was then forwarded to the governor's office prior to submission to the legislature as part of the executive budget. In a recent case involving development of regulations to ban the use of gas pilot lights in new equipment sold in the state, much of the actual development of the regulations was performed by an advisory committee of both environmental and industrial representatives in public workshops.
- Perhaps open government's effect has been greatest in the promulgation of rules and regulations. Complaints have arisen from the news media and several legislators about the slowness of the energy commission in setting regulations. In fact, the commission may be unable to meet the original legislatively mandated deadlines for several sets of regulations, including standards for newly constructed nonresidential buildings. If, however, a commission attempts to handle more matters without input from state agencies and interested groups in open meetings, it will be criticized for circumventing the open government intentions of the legislation. Thus, if present practices continue, the commission will continue to be criticized for moving too slowly; but if it attempts to move more quickly, the commissioners open themselves up to charges of attempting to circumvent the letter and spirit of the open government law.