Addendum to Bagley-Keene Guide

Serial Meetings (Pages 5–6)

The Attorney General's Office's 2004 Bagley-Keene Guide indicates that "[t]he Act expressly prohibits the use of direct communication, personal intermediaries, or technological devices that are employed by a majority of the members of a state body to develop a collective concurrence as to action to be taken on an item by the members of a state body outside an open meeting." Additionally, it says that "[t]he prohibition applies only to communications employed by a quorum to develop a collective concurrence concerning an action to be taken by the body." These statements interpret an outdated version of the law that has been amended, and they should not be relied on.

Before 2009, the Guide's position was a reasonable interpretation of the law. It jibed with Justice Brown's concurrence in *Regents of the University of California v. Superior Court*, 20 Cal. 4th 509, 537-45 (1999). Before 2009, the serial-meetings subsection of Bagley-Keene prohibited serial meetings "to develop collective concurrence as to action to be taken on an item by the members of the state body." However, in 2009, after the most recent Guide was published, the legislature amended Bagley-Keene in response to the *Regents* case and *Wolfe v. City of Fremont*, 144 Cal. App. 4th 533, 545 n.6 (2006) ("serial individual meetings that do not result in a 'collective concurrence' do not violate the Brown Act"). The amended subsection prohibits serial meetings "on any item of business that is within the subject matter of the state body." Gov. Code § 11122.5(b)(2). This new version rejects Justice Brown's interpretation.

The current law is clear that a quorum of members may not talk with each other about any matter within the Board's subject matter jurisdiction in a non-public physical meeting, in a series of meetings, or through representatives.