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Alerts & Articles

AB 992 Clarifies Permissible Communications via Social Media Platforms

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On September 18, 2020, Governor Newsom signed Assembly Bill 992 ("AB 992"), which clarifies how public officials may communicate on internet-based social media platforms through a new exception to the Brown Act's prohibition against "serial meetings."

Background

The Brown Act generally requires meetings of legislative bodies to be open and public. Outside of properly noticed public meetings, the Brown Act prohibits "serial meetings" between a majority of a legislative body's members. Serial meetings are defined as any type of communication, direct or through intermediaries, that allows the majority of the legislative body's members to "discuss, deliberate or take action" on a matter "within the subject matter of the legislative body." This prohibition does not apply to individual communications between members of a legislative body and employees/staff of the public agency, provided that the employees/staff do not communicate the comments or position of any other members of the legislative body. The Brown Act also does not prohibit communications involving a total of less than a quorum of the legislative body.

While communications on internet-based social media platforms may be public and allow members of the public to comment/react, such communications do not meet the general open meeting requirements of the Brown Act, including compliance with the usual notice, agenda and accessibility requirements. AB 992 attempts to clarify how members of a legislative body may permissibly use social media platforms to address matters within the subject matter jurisdiction of their legislative body by amending the Brown Act in two notable ways.

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Communications on Internet-Based Social Media Platforms

AB 992 amends Government Code section 54952.2 to clarify that certain communications involving a legislative body's members on an internet-based social media platform do not constitute meetings under the Brown Act. As such, a legislative body's members may engage in separate communications on an internet-based social media platform to "answer questions," "provide information to the public," and/or solicit public input on matters within the body's jurisdiction. However, a majority of the legislative body may not "discuss among themselves" "business of a specific nature" within the body's jurisdiction. As defined by AB 992, "discuss among themselves" includes "comments or use of digital icons that express reactions to communications," as well as any communications posted or shared on a social media platform between members of the legislative body Accordingly, a majority of the members of a legislative body may not respond to the same communication on an internet-based social media platform, whether accessing the internet-based social media by computer, phone, iPad, or other device, including the use of emojis, the "like" button on Facebook or Instagram, and/or retweeting on Twitter.

Additionally, AB 992 now limits direct communications via social media between individual members of a legislative body regarding a matter within a legislative body's subject matter jurisdiction. Specifically, members may not directly respond to a social media communication made, posted, or shared by any other member of the same legislative body. Previously, the Brown Act did not prohibit such communications, as long as they did not involve a majority of the members of a legislative body. This change is significant considering the increase in social media usage by members of legislative bodies in recent years, and especially during the COVID-19 pandemic, in order to connect to and communicate with their constituents.

AB 992 applies to any communication on an internet-based social media platform that is "open and accessible to the public." This means social media platforms which members of the public may access and participate in free of charge and without prior approval, and from which they cannot be blocked, except for violations of the platform's protocols or rules (as determined by the platform). This includes any forum or chatroom on a social media platform.

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As written, this new provision sunsets on January 1, 2026, and then Section 54952.2 reverts to the prior language. However, given the proliferation in the use of social media by and among members of legislative bodies and the public, it is critical for members of legislative bodies to be aware of and adhere to these new requirements and restrictions. This is especially true considering the potential for both criminal and civil penalties, as well as public criticism, for violations of the Brown Act.