

## Keeping Up with Tech: Brown Act Rules on Social Media Communication

As modes of communication continue to evolve with advances in technology, Assembly Bill 992 (effective January 1, 2021) clarifies which forms of communication via internet-based social media would violate the properly noticed, open meeting requirement of the Ralph M. Brown Act (Government Code sections 54950 *et seq.*) for local legislative bodies. Legislative bodies include governing bodies, commissions, committees, and boards of a local agency. The purpose of the Brown Act is to ensure that any hearing, discussion, deliberation, or action of legislative body members is open to the public since these legislative bodies are conducting the people's business. Thus, the legislative body must ensure the public is properly noticed of the meetings, provided information on what will be discussed or considered at the meetings, and provided the opportunity to attend the meetings and to make public comment. "Meetings" include communications among a majority of the members of the legislative body. While, for example, less than a majority of members of a legislative body may discuss the people's business outside of a public meeting, the Brown Act is violated if the members also incorporate into the conversation the comments or positions of additional members (which would constitute a majority of the members) through a series of meetings or conversations (a so-called "serial meeting").

The rise of internet-based social media has blurred the scope of prohibited communication. If members of a legislative body "like," "comment," or "share" each other's "post" on social media, have the members engaged in a prohibited communication outside of a properly noticed meeting? AB 992 clarifies that the answer to this question is **yes**: "A member of the legislative body **shall not** respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body." However, members of legislative bodies can still use social media platforms that are open and freely accessible to communicate with members of the public. Specifically, members of the legislative body can "answer questions, provide information to the public, or solicit information from the public" via social media.

For further information regarding AB 992 or the Brown Act, please contact Erin Lapeyrolerie, Karen Tiedemann, Barbara Kautz, Jhaila Brown, or any other attorney at Goldfarb & Lipman LLP.

Law Alert is published by Goldfarb & Lipman LLP as a timely reporting service to alert clients and others of recent changes in case law, opinions or codes. This alert does not represent the legal opinion of the firm or any member of the firm on the issues described, and the information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the attorney with whom you normally consult.