CALIFORNIANS AWARE
THE CENTER FOR PUBLIC FORUM RIGHTS

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For Further Information:
Background—Richard McKee, Vice President/Open Government Compliance: (909) 599-0984; richardpmckee@gmail.com
Brown Act Legal Issues—Terry Francke, General Counsel: (916) 487-7000; terry@calaware.org

CalAware Warns Local Governments of Brown Act 'Strict Enforcement'

Carmichael, CA – Californians Aware (CalAware) has advised the state associations representing most local government agencies that their members may be subject to short-notice lawsuits for some common violations of the open meeting law.

On Monday CalAware sent letters to six local government associations based in the Sacramento area: the League of California Cities, the California State Association of Counties, the California School Boards Association, the California Special Districts Association, the Association of California Water Agencies and the Association of California Healthcare Districts.

In the letters (copy attached), Richard McKee, Vice President for Open Government Compliance, and Terry Francke, General Counsel, called on the associations to caution their members statewide that they may face prompt litigation challenges for apparent violations of the Ralph M. Brown Act that frequently appear in connection with posted meeting agendas:

> Over the past several years, Californians Aware has identified four clusters of Brown Act issues that arise repeatedly. While we view our mission as primarily educational, the time spent correcting these violations has taxed our resources and often comes after the public has been shut out of the decision-making. There is no doubt that each of these should have been entirely avoided by the local agency's use of knowledgeable and alert legal counsel to both counsel client bodies and train the appropriate staff. Thus, this communication is to inform you of these issues before our organization begins a more aggressive stance in both publicizing and litigating these common violations.

The four categories of failure to comply likely to get prompt attention, the letter warns:

• Litigation: Failure to disclose to the public, prior to a closed session on "potential litigation," what are the legally required "existing facts and circumstances" that have created the litigation threat.

• Compensation: Using closed sessions to take final action on raises and contract improvements for key executives, and even to negotiate directly with them for increased pay or benefits behind closed doors.

• Property Negotiations: Failing to provide adequate location information concerning real property under negotiation for lease or purchase, as reported to the body in closed session, and within the session, discussing matters going beyond the "price and/or terms of payment" scope permitted by the Brown Act.

• Surprise Action: Voting to address items that are not on the agenda at regular meetings, as a matter of convenience rather than dictated by necessity responding to unforseen circumstances.

The letter concludes:

> We are sending you this notice to give your organizations time adequately to inform your members that, from here on, we intend to commence litigation promptly when we find violations of these obvious requirements meant to protect the public's involvement in the decision-making of its local agencies. That is, since (the law) does not require a challenger to allow 30 days for correction (if the lawsuit will seek only an order to cease illegal practices), absent an acknowledgement of violation and correction at the next regular meeting or within seven days, whichever occurs sooner, we will file an action to stop these practices so obviously forbidden by the Brown Act.
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> In this way we hope to educate those who willfully, or through an unwillingness to recognize their responsibilities, violate the open meetings law, by strongly reinforcing the point that such acts will not be tolerated.
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> Nevertheless, we remain eager to assist those who may ask Californians Aware to help them in gaining a thorough understanding of open government laws. Education is still our primary mission.

McKee and Francke encourage journalists and watchdogs to notify them of such instances as they surface in local government meetings or agendas.