

Brown Act experts say vote to place Powers on leave was mishandled

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The Ventura County Board of Supervisors ran afoul of the state's open meetings law the night it voted in closed session to put then-county CEO Mike Powers on paid administrative leave, according to people familiar with the law.



Acorn file photo

The county attorney disagrees. Up for debate: whether placing Powers, the county's top employee, on leave March 8 constituted a change in employment or discipline—the former is required to be reported at the end of any closed session, the latter is not. Powers resigned two days later.

In an interview with the *Acorn*, Monica Price, an attorney with San Rafael-based First Amendment Coalition, said the Brown Act allows government agencies to discuss personnel matters in private but requires that they immediately report any action taken that affects the employment of a public employee; it mentions appointment, dismissal and resignation but not leave.

"I would say being placed on administrative leave is affecting your employment status," Price said. "A reasonable mind could differ, but that's the way I see it."

County Counsel Tiffany North contends that no immediate disclosure was required because Powers was not fired.

She did report the outcome of the March 8 vote during the March 22 supervisors meeting, saying it was unanimous and the action was effective immediately.

She also revealed that the board had voted 5-0 to set a special meeting for March 11 to discuss and consider Powers' performance evaluation "including possible discipline and dismissal."

"Michael Powers was notified of this special meeting and he resigned prior to the agenda being posted," North said. "His resignation precluded the Board of Supervisors from taking any further action regarding his employment."

It came out later that Powers,

CEO OUT—The Ventura County Board of Supervisors voted in closed session March 8 to place its top executive, Mike Powers, on paid leave and did not disclose that action until asked.

59, had been the subject of an outside investigation that determined "a preponderance of the evidence" substantiated claims he sexually harassed a female employee and used a racially insensitive nickname while speaking to her.

The Brown Act outlines what must be reported to the public out of closed session. It includes real estate deals, legal settlements and final actions regarding high-level employees, Price said.

"Placing someone on paid administrative leave when you know there are serious allegations against them, you've already investigated them... it's a significant change," the attorney said. "And I think the people have the right to know that their CEO is going to be missing in action."

The County of Ventura isn't the only government agency in California to take North's view of the law. In December, the Eastvale City Council voted in closed session to place their top executive on leave. When challenged about why the vote was not disclosed, the city attorney said there had been no change in employment status.

Improperly agendized
Price also takes exception to

how the county presented the closed session agenda.

The March 8 agenda makes no mention of any employee action, only that the board was meeting to discuss "anticipated litigation."

Price said if supervisors decided during that discussion to place Powers on leave, the board should have scheduled a meeting for a later day, properly labeled it, and voted then.

North believes otherwise.

"The items were properly listed and described on the closed session agenda," she said.

Thousand Oaks Traffic Commissioner Andrew Pletcher, an attorney with the City of Palmdale, said on Twitter he tends to agree with the First Amendment Coalition's take.

"A best practice for Brown Act situations is to usually side on disclosure to fulfill the legislative purpose of the Brown Act, which is to have government be transparent to those it represents," he said.

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"Establish a countywide, collaborative approach to design, implement and maintain a holistic, wildfire resiliency strategy that builds individual, local and regional capacities to better prepare for, prevent, mitigate, respond to, and recover from potential wildfire threats for Ventura County neighborhoods and communities located in the Wildland Urban Interface (WUI), now and into the future."

In its first effort, the Collaborative secured \$2.7 million in funding from CAL FIRE to implement six priority projects that will start to build a countywide wildfire risk mitigation program currently being developed as part of the update to the Ventura County Community Wildfire Protection Plan (CWPP). For more information visit the Collaborative's website at www.vcrd.org/vcwc.

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