

MEMORANDUM

TO: Mayor Buford & City Council
City of Lemoore

CC: Jeff Britz, City Manager ✓

RE: Closed Sessions for Real Property Negotiations.

DATE: November 9, 2006

FILE NO: 12367-00000

The purpose of this memorandum is to provide you with parameters for closed sessions relating to real property negotiations. The Brown Act in Government Code Section 54956.8 provides in pertinent part:

[A] legislative body of the local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant pursuant to **grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.** (Emphasis Added)

There are Superior Court decisions that have interpreted the language in bold very strictly. While they are not binding, they are instructive on courts' deference to openness under the Brown Act. There is also an appellate decision on point that is binding. In Shapiro v. San Diego City Council Cal.App.4th (2002), the Court of Appeal affirmed the trial court's decision that the City Council had violated the Brown Act by discussing items beyond the specific scope of the Brown Act safe harbor language. The trial court and appellate court reasoned that the City Council had held discussions that were too tangential to be legal. While the discussions related to the real property negotiations, they were not permissible closed session discussions. Not only did the Appellate Court uphold the ruling as to the violations, it also upheld the injunction against the City.

In summary, while there is some need for background and context so that the Council may make a reasoned decision to purchase, sell, exchange or lease property, the Brown Act requires that discussions relating to tangential matters must be discussed in public. Please let me know if you wish to discuss this further or need additional information.



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