




Renne Sloan Holtzman Sakai
Public Law Group[®]

1220 Seventh Street Suite 300
Berkeley, CA 94710
(510) 995-5800

Memorandum

PRIVILEGED AND CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

To: Board of Directors, Kensington Police Protection and Community Services
District

From: Randy Riddle
Teresa L. Stricker 

Date: August 22, 2016

Re: KPPCSD Board Policy Changes

At the request of Board President Welsh, we have examined the question Director Toombs raised regarding whether the Board may amend a variety of the rules set forth in its Policy and Procedures Manual by a simple majority vote notwithstanding Rule 1010.20, which requires a 4/5 vote of the Board to adopt a new policy or amend an existing Board policy.

Specifically, Director Toombs asked whether a majority of the Board may amend (1) Rule 1010.20 itself, (2) Rule 1010.20 which requires a 4/5 vote to continue a meeting past 10 pm, (3) Rule 5040.20 which provides that a 4/5 vote is required whenever "policy or other law" requires a 2/3 vote for passage, and (4) Rule 5030.41 which sets forth the amount of time permitted for public comment. We conclude that the Board may amend each of these rules by a simple majority vote notwithstanding Rule 1010.20.

Government Code section 61045 grants the board of directors of a community service district the power to adopt rules by a simple majority vote unless otherwise specifically required by law. Based on the same analysis set forth in our October 2, 2013 memorandum (a copy of which is attached to this memorandum), we conclude that the Board may not adopt a rule conditioning its power or the power of a future board under Government Code section 61045 on a 4/5, rather than a simple majority, vote of the Board.

People's Advocate Inc. v. Superior Court (1986) 181 Cal. App. 3d 320 is directly on point. That case involved a challenge to a state-wide initiative measure that, among other things, repealed statutes governing the internal proceedings of the State Assembly and State Senate, established new rules for each house and limited how those rules could be modified. (181 Cal.App.3d at p. 321.)



Board of Directors, Kensington Police Protection and Community Services District
August 22, 2016
Page 2

The Court of Appeal concluded that these provisions “invaded one or more of the powers of the houses over their committees, staff and internal proceedings as expressly delegated to them” by the state constitution. (*Id.* at p. 324.) The court rejected the argument that because the internal rules changed by the initiative measure had been adopted by statute – rather than by each house exclusively – the initiative did not conflict with the constitutional authority of each house to adopt its own internal rules. (*Id.* at pp. 326-327.) The court explained:

Nor could a house estop itself or a future house by use of the statutory form from adopting any rule the substance of which is within the powers exclusively delegated to it by the Constitution. "The long indulgence in [a] custom cannot create a right in the legislature, or either house thereof, to do that which it has no power or authority to do." (Special Assembly Int. Com. v. Southard (1939) 13 Cal. 2d 497, 509 [90 P.2d 304].) A house "has power to adopt any procedure and to change it at any time and without notice. It cannot tie its own hands by establishing rules which, as a matter of power purely, it cannot at any time change and disregard. Its action in any given case is the only criterion by which to determine the rule of proceeding adopted for that case." (French v. Senate (1905) 146 Cal. 604, 608 [80 P. 1031]; see In re Collie (1952) 38 Cal. 2d 396, 398 [240 P.2d 275].) A power conferred exclusively upon a house of the Legislature cannot be delegated. (In re McGee (1951) 36 Cal. 2d 592 [226 P.2d 1] [jurisdiction to judge qualifications of members cannot be delegated]; cf. the limited exception now contained in art. IV, § 5.)

(181 Cal. App. 3d at p. 327 [emphasis added].)

The same principle applies here. No community services district board may bind itself, or a future board, by conditioning on a 4/5 vote of the board the power Government Code section 61045 grants to the board to adopt or amend its internal rules by a simple majority.

We make one additional observation with respect to Rule 5030.20. As explained above, that rule requires a 4/5 vote of the Board where “policy or law” requires a 2/3 majority vote. Given that the Board consists of five members, where state law requires a 2/3 vote of a governing body, the result is that the Board would need a 4/5 vote to act under state law regardless of what the Board’s own rules proscribe. Accordingly, any amendment to that rule would be without practical meaning or effect.

Please let us know if you want to discuss our analysis further.