EMPLOYMENT LAW ALERT
Employer's Failure to Follow Brown Act is Costly

A California Appellate court recently found in favor of a terminated at-will employee because his employer had failed to follow the Brown Act, California's open meeting law. Specifically, the Court found that the employer: (1) had not properly agendized the termination; (2) failed to provide advance notice that the Board would be considering complaints or charges against the employee; and (3) failed to properly report out action taken to release the employee following its closed session meeting. The Court required the employer to reinstate the employee and awarded him all costs and attorney's fees for the action.

This case arose out of King City, where the finance director, Robert Moreno, essentially held an at-will position. Without providing advance notice to Mr. Moreno, his employer, the City Council, met at a special closed session meeting where it considered complaints and charges against Mr. Moreno. The City placed the following item on its closed session agenda:

> "Per Government Code Section 54957 Public Employee (employment contract)."

Following its closed session, there was a report by the City that no action was taken in closed session. Several days later, the city manager gave Mr. Moreno a two-page memorandum that informed him he was being terminated and detailed five alleged incidents of Moreno's misconduct. Moreno was given no opportunity to respond to the accusations before his termination became effective. Prior to filing a wrongful termination claim against the City, Mr. Moreno's attorney demanded the City to cure its violation of the Brown Act. According to the Court, the City failed to cure its defects.

In addition to declaring that Mr. Moreno's termination was null and void, the Trial Court awarded Mr. Moreno damages, attorney fees and costs. The California Court of Appeal affirmed, holding the City's agenda was in violation of the Brown Act because it did not provide a brief general description of the business to be transacted at the meeting. The City alleged that it could not agendize Mr. Moreno's dismissal as that item would have violated Mr. Moreno's privacy rights. The Court disagreed, finding that the statutory safe harbor provision for dismissal of an employee would have been satisfactory. Further, the Court held that the City had improperly heard "complaints or charges" of Mr. Moreno's conduct at the closed session. The Court reasoned, while an employer may hear a performance evaluation or simply consider whether to dismiss an employee under the Brown Act in closed session, when Board discussions consider specific complaints or charges or accusations against the employee, the employer must give the required written 24-hour advance notice to the employee that the employee has the right to have the complaint heard in open session.

This case reminds us to pay careful attention when the Charter School Board may hear what may be deemed a complaint or charge against even an at-will employee. In such cases, under the Brown Act, the Board must give the employee 24 hours advance written notice of the employee's right to have such complaints heard by the Board in open session. Further, Boards/administration should be mindful of the appropriate safe harbor provisions of the Brown Act in agendizing closed sessions. Finally, if personnel action is taken by the Board, such as dismissal, the Board must report out such action when the Board reconvenes in open session.

If you should have any questions regarding this update, please contact Jim Young at (jyoung@smymlaw.com) or at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400. Test your knowledge of the Brown Act; take the SMYM Brown Act quiz online at http://www.smymcharterlaw.com/resources.html