

SACRAMENTO

400 Capitol Mall, 27th Floor
Sacramento, CA 95814
T: 916.321.4500
F: 916.321.4555

BAKERSFIELD

1675 Chester Ave., Ste. 320
Bakersfield, CA 93301
T: 661.864.3800
F: 661.864.3810

SAN LUIS OBISPO

1432 Higuera Street
San Luis Obispo, CA 93401
T: 805.786.4302
F: 805.786.4319

WWW.KMTG.COM

Please visit the firm's
website for a searchable
database of Legal Alerts.

RELATED AREAS OF PRACTICE

[Education Law](#)
[Labor and Employment Law](#)
[Municipal and Public Agency](#)

Legal Alerts are published by Kronick Moskowitz Tiedemann & Girard as a timely reporting service to alert clients and other friends of recent changes in case law, opinions or codes. This alert does not represent the legal opinion of the firm or any member of the firm on the issues described, and the information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the attorney with whom you normally consult.

School District Board May Convene In Closed Session To Consider Initiating The Process Of Dismissing A Teacher Without Providing 24 Hours Notice

In *Kolter v. Commission on Professional Competence of the Los Angeles Unified School District*, (--- Cal. Rptr.3d ---, Cal.App. 2 Dist., Jan. 8, 2009), a California Court of Appeal considered whether a school district's governing board violated the Ralph M. Brown Act ("Act"), when it convened in closed session to consider initiating dismissal proceedings against a teacher without providing the teacher 24 hours notice of her right to have the matter heard in open session.

Citing *Bollinger v. San Diego Civil Service Com.* (1999) 71 Cal.App.4th 568, the court found that the 24-hour notification requirement applied if a school board was formally "hearing" evidence, but it could convene in closed session to "consider" dismissing an employee without providing the required notice.

Facts

The governing board ("Board") of the Los Angeles Unified School District ("District") convened in a closed session on May 2, 2006 and initiated the process of dismissing certificated teacher Colleen Kolter. Kolter was not given notice of the session. Kolter exercised her right to request a hearing before the District's Commission on Professional Competence ("Commission"). The Commission concluded that Kolter should be dismissed.

Kolter filed suit alleging that the Board violated the Act when it met in closed session to consider dismissing her without notifying her 24 hours in advance of her right to a public hearing, and that her dismissal was therefore void. The trial court denied her petition and Kolter appealed.

Decision

The Act generally requires that all meetings of a governing body must be open and public, but allows for exceptions, such as some

discussions to "consider" the "dismissal" of personnel. The Act, in Government Code Section 54957, states:

As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session.

The court noted that the *Bollinger* court referred to the Legislature's use of the word "hear" in connection with "complaints or charges," but "consider" in connection with the dismissal of a public employee, and found the distinction significant. Citing *Bollinger*, the court agreed that pursuant to the language of the Act, it was permissible for the Board to "consider" the dismissal of Kolter in a closed session without providing her 24 hours notice to request an open meeting, but that such notice would be required if the Board were to more formally "hear" complaints against her.

"In this matter, the governing board did not conduct an evidentiary hearing on the verified statement of charges against Kolter," the court said. "Rather, it considered whether those charges justified the initiation of dismissal proceedings." The personnel exception to the Brown Act therefore applied to the Board's action and the 24-hour written notice was not required. The judgment was affirmed.

SACRAMENTO

400 Capitol Mall, 27th Floor
Sacramento, CA 95814
T: 916.321.4500
F: 916.321.4555

BAKERSFIELD

1675 Chester Ave., Ste. 320
Bakersfield, CA 93301
T: 661.864.3800
F: 661.864.3810

SAN LUIS OBISPO

1432 Higuera Street
San Luis Obispo, CA 93401
T: 805.786.4302
F: 805.786.4319

WWW.KMTG.COM

Please visit the firm's
[website](http://www.kmtg.com) for a searchable
database of Legal Alerts.

RELATED AREAS OF PRACTICE

[Education Law](#)
[Labor and Employment Law](#)
[Municipal and Public Agency](#)

Legal Alerts are published by Kronick Moskowitz Tiedemann & Girard as a timely reporting service to alert clients and other friends of recent changes in case law, opinions or codes. This alert does not represent the legal opinion of the firm or any member of the firm on the issues described, and the information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the attorney with whom you normally consult.

Questions

If you have any questions concerning the content of this Legal Alert, please contact the following from our office, or the attorney with whom you normally consult.

Diana Halpenny, Bruce Scheidt, Laura Izon
Powell, David Tyra or Mona Ebrahimi |
916.321.4500