



**THE ATTORNEY GENERAL
OF TEXAS**

November 7, 1986

**JIM MATTOX
ATTORNEY GENERAL**

Mr. F. Witcher McCullough, III
Chairman
Unauthorized Practice of Law
Committee
State Bar of Texas
3000 One Shell Plaza
Houston, Texas 77002-4995

Open Records Decision No. 449

Re: Whether records of the
Unauthorized Practice of Law
Committee of the State Bar of
Texas are subject to the Open
Records Act, article 6252-17a,
V.T.C.S.

Dear Mr. McCullough:

This is to advise you of the status of RQ-899, which presents the question of whether records of the Unauthorized Practice of Law Committee of the State Bar of Texas are subject to required disclosure under the Open Records Act, article 6252-17a, V.T.C.S.

Under section 7 of the Open Records Act, the attorney general may issue decisions only in instances in which a governmental body refuses to release requested records and then formally requests the attorney general to decide whether such refusal is legally permissible. Section 7 provides:

(a) If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information.

(b) The attorney general shall forthwith render a decision, consistent with standards of due process, to determine whether the requested information is a public record or within one of the above stated exceptions. The specific information requested shall be supplied to the attorney general but shall not be disclosed until a final determination has been made. The attorney

general shall issue a written opinion based upon the determination made on the request.

V.T.C.S. art. 6252-17a, §7.

In this instance, the Unauthorized Practice of Law Committee has not requested a decision from the attorney general as to whether the records requested by HALT are public records under the act. Such a request is a condition precedent to our having jurisdiction to consider that issue. On the contrary, the committee has merely advised this office that it believes that it is not a "governmental body" subject to the act, but instead is part of the judiciary, which is exempt from the act. V.T.C.S. art. 6252-17a, §2(1)(G). The committee derives support for its position from an order promulgated by the Supreme Court of Texas on September 16, 1986, which states that the committee is appointed by the Supreme Court of Texas and operates pursuant to rules considered and approved by that court, and which sets forth the circumstances under which records maintained by the committee shall be subject to required disclosure. But see V.T.C.S. art. 320a-1, §9(f) (all records of the State Bar are subject to the Open Records Act, with two exceptions not relevant here).

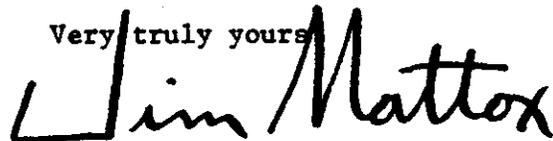
Because no decision of the attorney general has been requested by the Unauthorized Practice of Law Committee, the attorney general lacks jurisdiction in this matter under section 7(a) of the act. We must on that basis decline to consider the availability of the records requested by HALT.

In closing, we note section 8 of the act, which states:

If a governmental body refuses to request an attorney general's decision as provided in this Act, or to supply public information or information which the attorney general has determined to be a public record, the person requesting the information or the attorney general may seek a writ of mandamus compelling the governmental body to make the information available for public inspection.

This section prescribes the procedure to be followed in instances in which an entity that receives a request to disclose its records declines to request a decision from the attorney general.

Very truly yours



J I M M A T T O X

Attorney General of Texas

JACK HIGHTOWER
First Assistant Attorney General

MARY KELLER
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RICK GILPIN
Chairman, Opinion Committee

Prepared by Jon Bible
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