



**THE ATTORNEY GENERAL
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September 3, 1974

The Honorable Ron Clower
Chairman, Senate Subcommittee
on Consumer Affairs
Texas State Senate
Austin, Texas

Letter Advisory No. 84

Re: Legality of restraints
placed on activities of the
Subcommittee on Consumer
Affairs by the Open Meetings
and Access to Information
Legislation.

Dear Senator Clower:

On behalf of the Senate Subcommittee on Consumer Affairs, you have asked our opinion as to the legality of two proposed subcommittee rules:

a. All hearings of the subcommittee shall be open to the public except that the subcommittee may meet in Executive Session where necessary to obtain testimony or evidence that could not otherwise be obtained and where necessary to consult with subcommittee counsel regarding the progress of any investigation.

b. No transcript of testimony obtained in Executive Session shall be made available for use outside of a meeting of the subcommittee except by majority vote of the committee.

Specifically you have called to our attention the Open Meetings Law, Article 6252-17, V. T. C. S., and the Open Records Law, 6252-17a, V. T. C. S.

The operational portion of the Open Meetings Act is Sec. 2(a) which provides:

"Except as otherwise provided in this Act or specifically permitted in the Constitution, every regular, special, or called meeting or session of every governmental body shall be open to the public; and no closed or executive meeting or

session of any governmental body for any of the purposes for which closed or executive meetings or sessions are hereinafter authorized shall be held unless the governmental body has first been convened in open meeting or session for which notice has been given as hereinafter provided and during which open meeting or session the presiding officer has publicly announced that a closed or executive meeting or session will be held and identified the section or sections under this Act authorizing the holding of such closed or executive session.

Section 2(b) of the same Act reads:

In this Act, the Legislature is exercising its rule-making powers to prohibit secret meetings of the Legislature, its committees, or any other bodies associated with the Legislature, except as otherwise specifically permitted by the Constitution.

The section apparently refers to the power conferred on each House of the Legislature by Article 3, Section 11 of the Constitution which provides: "Each House may determine the rules of its own proceedings"

As we said in Attorney General Letter Advisory No. 18 (1973), neither House may infringe upon or limit the present or future right of the other to adopt its own rules. However, if necessary we may consider Art. 6252-17 as the exercise by each House of the 63rd Legislature of its right to determine the rules of its proceedings. Therefore, unless the matter is raised under different circumstances, it is unnecessary to determine whether Art. 6252-17 is unconstitutional to the extent it may conflict with Art. 3, Sec. 11.

That the Open Meetings Law, whether considered as a rule of each House or as a statute, was intended to cover legislative committees is further demonstrated by its Sec. 1(c):

As used in this Act: . . . 'Governmental body' means any board, commission, department, committee, or agency within the executive or legislative department of the state, which is under the direction of one or more elected or appointed members; and every Commissioners Court and city council in the state, and every deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city; and the board of trustees of every school district and county board of education; and the governing board of every special district heretofore or hereafter created by law. (Emphasis added)

Private consultations between a governmental body and its attorney are permitted when they have to do with pending or contemplated litigation or matters made confidential by the Code of Professional Responsibility adopted by the State in 1963. Section 2(e). The Act does, not, however authorize closed meetings to obtain testimony or evidence or to permit the body to consult with counsel "regarding the progress of any investigation".

We are of the opinion, therefore, that subcommittee rule "a", quoted above, conflicts with the Open Meetings Law, whether it be considered a general statute or a rule of the Senate.

Our answer with reference to proposed rule "a", makes it unnecessary to answer with reference to rule "b". We would, however, call to your attention the provision of Subsection 2(i) of the Act.

All or any part of the proceedings in any public meeting of any governmental body as defined hereinabove may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction.

And see Open Records Decision 32 (1974).

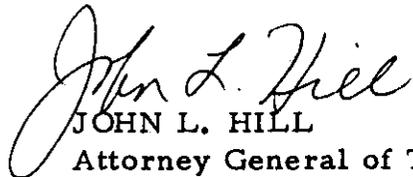
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Your second question is as follows:

The subcommittee also wishes to request your opinion on the legality of a subcommittee meeting held in Executive Session for the purpose of issuing subpoenas.

Whether Article 6252-17, V. T. C. S., is considered as a rule of each House, or as a general law, holding closed meetings for the purpose of issuing subpoenas would conflict with the Open Meetings Law.

Very truly yours,


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APPROVED:


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