



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

August 8, 1988

Jim Mapel  
Criminal District Attoprney  
Brazoria County Courthouse  
Angleton, Texas 77515

LO-88-92

Attn: Wigginton

Dear Mr. Mapel:

This will acknowledge receipt of your letter of July 12, 1988, seeking an opinion on a question arising under the Texas Open Meetings Act, article 6252-17, V.T.C.S. Your letter was designated ID# 4040. This letter opinion is LO-88-92.

You indicate that, on June 27, 1988, the Brazoria County Commissioners Court held an executive session to receive legal advice on specific issues relating to the county's employee retirement and disability plans. You indicate that your office declined to discuss the matter with the press and that, shortly thereafter, a local newspaper printed a story stating that an unnamed official with our office had opined that the executive session in question violated the Open Meetings Act. You seek an opinion on whether the executive session complied with the act.

As a preliminary matter, this office does not give legal opinions over the telephone. We have no way of verifying facts or fully researching relevant questions of law during telephone conversations. On occasion, our attorneys and legal assistants will attempt to provide general information and guidance on matters previously resolved in issued opinions.

Additionally, the Texas Government Code limits our authority to issue opinions on open meetings questions. Sections 402.042 and 402.043 of the Government Code list the public officials who may request legal opinions from the attorney general. Section 402.045 of the code prohibits the

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attorney general from issuing legal opinions or advice to any other person. Consequently, we would not give a newspaper a legal opinion.

Finally, the attorney general's authority under the Government Code is limited to giving legal opinions; this office cannot resolve disputed questions of fact. Nor does the attorney general have the authority to "enforce" the Open Meetings Act. Whether a particular executive session complies with the act necessarily involves questions of fact.

Section 402.043 of the Government Code authorizes county and district attorneys to request attorney general opinions. As criminal district attorney, you serve as both county and district attorney. As indicated, however, we cannot resolve disputed questions of fact; we may address only questions of law with regard to open meetings questions. For this reason, this office cannot determine whether the executive session in question actually complied with the act.

The Open Meetings Act requires that all meetings of government bodies, as described in the act, be open, with certain narrow exceptions. See Cox Enterprises, Inc. v. Board of Trustees of the Austin Independent School District, 706 S.W.2d 956, 958 (Tex. 1986). Executive or closed sessions may be held only when expressly authorized and when certain procedural requirements are met. For example, adequate notice must precede executive sessions. Art. 6252-17, § 2(a); Cox Enterprises, 706 S.W.2d at 958. The governmental body must first convene in open session. Sec. 2(a); see 706 S.W.2d at 959. Additionally, governmental bodies may not take final action in executive session. Section 2(1); 706 S.W.2d at 958. Finally, the governmental body may have to restrict the persons who attend certain executive sessions. This is of particular importance with regard to executive sessions to obtain legal advice. See Attorney General Opinions JM-238 (1984); MW-417 (1981).

Section 2(e) of the Open Meetings Act authorizes governmental bodies to hold executive sessions for consultations with their attorneys:

Private consultations between a governmental body and its attorney are not permitted except in those instances in which the body seeks the attorney's advice with respect to pending or contemplated litigation, settlement offers, and matters

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where the duty of a public body's counsel to his client, pursuant to the Code of Professional Responsibility of the State Bar of Texas, clearly conflicts with this Act.

Section 2(e) was intended to encompass the attorney-client privilege. See Attorney General Opinion JM-100 (1983).

You indicate that during the executive session in question, the commissioners court met to receive legal advice from the civil division of your office on specific legal issues related to its employee benefit program. You indicate that no one other than agents or officers of Brazoria County attended the executive session. The county took no action. Cf. City of San Antonio v. Aguilar, 670 S.W.2d 681, 685-86 (Tex. App. - San Antonio 1984, writ dism'd) (if governmental body need not take action as a body on a matter, it need not reconvene in open meeting to vote on matter). By separate letter, designated ID# 4041, protected from required public disclosure by section 3(a)(1) of the Texas Open Records Act, article 6252-17a, V.T.C.S., in conjunction with the attorney-client privilege, you detail the circumstances surrounding the legal advice provided to the commissioners court. An executive session based on the circumstances you describe would be proper under section 2(e) of the Open Meetings Act.

Because existing decisions and case law govern your request, we are resolving this matter with this letter opinion rather than with a formal published opinion. If you have questions about this letter, please refer to LO-88-92.

Yours very truly,

  
Jennifer S. Riggs  
Chief, Open Government  
Section of the Opinion  
Committee

Ref.: ID# 4040  
ID# 4041

JSR/bra