



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

May 4, 1992

Honorable Gary L. Watkins
Chairman
Higher Education Committee
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 92-9

Re: Whether notice that a community college district board was to consider selection of interim chancellor satisfied requirements of the Texas Open Meetings Act, article 6252-17, V.T.C.S. (RQ-358)

Dear Representative Watkins:

In a letter dated March 17, 1992, your office inquired about the application of the Open Meetings Act, article 6252-17, V.T.C.S., to the Alamo Community College District board (the "board"). The attorney general is not authorized under the Open Meetings Act (the "act") to enforce its provisions. Instead, allegations that certain individuals have violated the act must be addressed to the appropriate local prosecutor. *See* V.T.C.S. art. 6252-17, §§ 2A(g)-(h), 4 (making violations of the act misdemeanors). More importantly, this office cannot investigate fact questions or resolve disputed questions of facts in the opinion process, and thus, cannot definitively resolve whether a particular meeting actually complied with the act or whether a specific notice is sufficient under the act. *See, e.g.*, Attorney General Opinion Nos. DM-95 (1992); M-307 (1968).

The following discussion, however, is provided to inform you about the duties of the board under the act. The act requires that all meetings of a governmental body be open to the public unless expressly excepted by the act. Thus, if a quorum of the board meets and engages in deliberations concerning public policy or business, the board will be subject to the act. V.T.C.S. art. 6252-17, §§ 1(a)-(b) (defining "meeting" and "deliberation").

Section 2(g) of the act provides the following exception from the act's open meeting requirements:

Nothing in this Act shall be construed to require governmental bodies to hold meetings open to the public in cases involving the

appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear complaints or charges against such officer or employee, unless such officer or employee requests a public hearing.

Thus, the board may meet in closed or executive session to discuss the appointment or employment of public officers or employees. Nevertheless, final action or voting by the board on an individual's appointment or employment must be taken in open session. V.T.C.S. art. 6252-17, § 2(1); *Cox Enterprises, Inc. v. Bd. of Trustees of Austin Indep. School Dist.*, 706 S.W.2d 956, 958 (Tex. 1986); Attorney General Opinion H-496 (1975). In accordance with section 3B of the act, the minutes or tape recording of the open session must indicate each vote, order, decision or other action taken by the board. Minutes or tape recordings of open sessions must be made available to the public pursuant to the Open Records Act, article 6252-17a, V.T.C.S. Open Records Decision No. 225 (1979). The act also requires the board to keep a certified agenda for or make a tape recording of all closed meetings. If a certified agenda is kept, it must state the subject matter of each deliberation and a record of action taken on such matters. The certified agenda or tape recording of the closed session, however, will be available for public inspection only on court order. V.T.C.S. art. 6252-17, § 2A(c).

Subsection (a) of section 3A of the act states "[w]ritten notice of the date, hour, place, and subject of each meeting held by a governmental body shall be given before the meeting." Consequently, all meetings, including closed sessions, must be preceded with public notice. Furthermore, the governmental body must first announce in open session that a closed session will be held and identify the specific provisions of the act that authorize the holding of the closed session. *Id.* § 2(a). In accordance with subsection (h) of section 3A, notice of the meeting must be posted in a place readily accessible to the public at all times for at least 72 hours preceding the scheduled time of the meeting. *See also id.* §§ 3A(b)-(g)(specific additional posting requirements that vary by type of governmental entity); 3A(h) (two hour posting requirement for emergency meetings); *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762 (Tex. 1991).

According to the Supreme Court's most recent opinion on the act, *City of San Antonio v. Fourth Court of Appeals*, the notice must be sufficient to apprise the general public of the subject of the meeting. *Id.* at 765-66 (also holding notice need

not be tailored to reach individuals with particular private interests in a matter if notice is sufficient to apprise general public of matter). In an earlier decision, *Cox Enterprises, supra*, the Supreme Court held insufficient the notice of a school board closed executive session that listed only general topics such as "personnel," "litigation," and "real estate matter." *Cox Enterprises, supra*, at 958. The court stated in *Cox Enterprises, Inc.* that the selection of a new superintendent was not in the same category as ordinary personnel matters, and that the use of the description "personnel" was not sufficient to apprise the public of the board's selection of a superintendent. See also *Lower Colorado River Authority v. City of San Marcos*, 523 S.W.2d 641, 646 (Tex. 1975) (court held sufficient notice indicating city was to consider some action with respect to city electric rates); *Texas Turnpike Authority v. City of Fort Worth*, 554 S.W.2d 675, 676 (Tex. 1977) (court held sufficient notice indicating board was to consider feasibility of turnpike bond issue without noting action was contrary to board's prior intent).

These cases provide only general guidelines with regard to the requisite specificity of the descriptions of the matters the board will consider during an open meeting or executive session. If the notice at issue here indicated that the board would consider in closed session the appointment of an interim chancellor, the notice would appear sufficient under the Supreme Court's recent decisions in *City of San Antonio* and *Cox Enterprises, Inc.* Nevertheless, whether a particular notice is sufficient in a particular case will involve factual issues that cannot be resolved in the opinion process.

While the act provides the public access to the decision-making processes of its governmental bodies, it does not provide the public with the right to speak about items on the agenda. Attorney General Opinion H-188 (1973). Thus, it is within a governmental body's discretion to allow or deny the public an opportunity to comment on the topics addressed at a meeting. If the governmental body does allow public comment, it must do so in a nondiscriminatory manner. *Id.*

Governmental actions taken in violation of the act are voidable. V.T.C.S. art. 6252-17, § 3(a); *Ferris v. Texas Bd. of Chiropractic Examiners*, 808 S.W.2d 514 (Tex. App.--Austin 1991, writ dism'd). Any interested person, including a member of the press, may bring an action either by mandamus or by injunction to stop or reverse violations or threatened violations of the act. In an action brought under the act, a court may award reasonable attorney's fees and costs of litigation to the prevailing party. V.T.C.S. art. 6252-17, § 3(b).

S U M M A R Y

Whether any specific notice constitutes a violation of section 3A(a) of the Open Meetings Act, article 6252-18, V.T.C.S. must ultimately be determined by a trier of fact.

Yours very truly,



Celeste A. Baker
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Opinion Committee