



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 1, 1994

Honorable John Whitmire  
Chair  
Committee on Criminal Justice  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

Letter Opinion No. 94-063

Re: Whether the Dallas City Council may deliberate in executive session on the appointment of board members to the Dallas Area Rapid Transit Authority pursuant to section 551.074(a) of the Government Code (ID# 23671)

Dear Senator Whitmire:

You have asked the following question concerning a Dallas City Council (the "city council") meeting:

Would the Dallas City Council be in violation of the Texas Open Meetings Act if the council went into executive session and selected members to fill a regulatory board for a public entity (ie: Dallas Area Rapid Transit - mass transportation agency)?

The attorney general is unable to resolve questions of fact in the opinion process; we are therefore unable to decide whether a particular city council meeting properly complied with the Open Meetings Act (the "act"), Government Code chapter 551. See, e.g., Attorney General Opinion DM-95 (1992). Alleged violations of the act's provisions should be directed to the local prosecutor. See Gov't Code § 551.144 (providing for criminal penalties for violations of the act).

Although we are unable to make factual determinations concerning a particular city council meeting, for the reasons discussed below, we believe that the city council may go into executive session to consider prospective appointees to the Dallas Area Rapid Transit ("DART" or the "authority") governing board. However, the city council must take final action in open session regarding matters discussed in executive session pursuant to section 551.102 of the Government Code. Attorney General Opinion H-496 (1975).

Under the act, "[e]very regular, special, or called meeting of a governmental body shall be open to the public" unless expressly excepted by the provisions of the act. Gov't Code § 551.002. The city council is, of course, a governmental body as defined in the act. *Id.* § 551.001(3)(C) (governmental body includes "municipal governing body in the state"). Therefore, if a quorum of the city council meets to discuss public business over

which it has supervision or control, the city council will be subject to the act's provisions. *Id.* § 551.001(4).

A governmental body may convene in executive session only where specifically authorized by law. *See* Attorney General Opinion DM-251 (1993) at 3. Section 551.074(a) of the Government Code provides in relevant part:

This chapter does not require a governmental body to conduct an open meeting:

(1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee.

Section 551.074 generally permits a governmental body to deliberate in executive session regarding the selection of public officers of a governing board. Attorney General Opinion H-1047 (1977). Therefore we must determine whether members of the DART board may be considered public officers of a governing board for purposes of section 551.074.

A public officer generally has a fixed term of office and may be removed only in accordance with the law. Attorney General Opinions DM-218 (1993) at 4 (citing *Aldine Indep. Sch. Dist. v. Standley*, 280 S.W.2d 578 (Tex. 1955); DM-149 (1992) at 3 (same). In addition, a public officer performs government functions "largely independent of the control of others." *Aldine*, 280 S.W.2d at 583 (quoting *Dunbar v. Brazoria County*, 224 S.W.2d 738, 740 (Tex. Civ App.—Galveston 1949, writ ref'd). The city council is authorized by section 6 of article 1118y, V.T.C.S., to appoint members to the DART board. The members of the board serve for a fixed term of two years. V.T.C.S. art. 1118y, § 6(g).

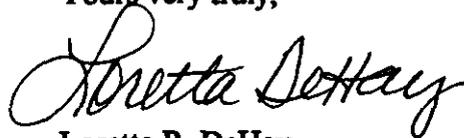
We understand that the board is the governing body of the authority. V.T.C.S. art. 1118y, §§ 2(4) (definition of executive committee as "directors of the authority who serve as the governing body"), 13 ("if the existence of the authority is confirmed in only one subregion or separate subregion, then the board for that subregion shall become the executive committee and governing body of the authority"). Therefore, the control and operation of the DART is vested in the board. *See generally* V.T.C.S. art. 1118y, §§ 5, 10. *See also* Attorney General Opinion JM-595 (1986) at 2 (citing official powers of DART Authority). In addition DART board meetings are subject to the provisions of the Open Meetings Act. Attorney General Opinion JM-595 at 1-2.

We conclude that members of the DART governing board are "public officers" for purposes of section 551.074(a) of the Government Code. Thus, the city council may convene in executive session to discuss the appointment of members to the DART board. However, as we noted above, the city council must take any final action concerning the appointment of persons to the DART board in open session pursuant to section 551.102 of the Government Code.

**S U M M A R Y**

The Dallas City Council may convene in executive session to discuss the appointment of members to the Dallas Area Rapid Transit Board. The city council must take final action regarding the appointment of public officers in open meeting. The attorney general is unable to resolve questions of fact concerning whether a particular city council meeting properly complied with the provisions of the Texas Open Meetings Act.

Yours very truly,

A handwritten signature in cursive script, reading "Loretta DeHay".

Loretta R. DeHay  
Assistant Attorney General  
Opinion Committee