



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 7, 1994

Honorable Robert Junell
Chair
Appropriations Committee
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 94-064

Re: Applicability of the Texas Open Meetings Act, Gov't Code ch. 551, and the Texas Open Records Act, Gov't Code ch. 552, to the State Employee Charitable Campaign Policy Committee and related entities (ID# 25674)

Dear Representative Junell:

You ask whether certain entities established pursuant to article 6813h, V.T.C.S., are subject to the Texas Open Meetings Act, Government Code chapter 551, and the Texas Open Records Act, Government Code chapter 552. Specifically, you seek our opinion with respect to the State Employee Charitable Campaign Policy Committee (the "policy committee"), the State Employee Charitable Campaign Advisory Committee (the "advisory committee"), and the Local State Employee Charitable Campaign Committees (the "local committees").¹

I. The Open Meetings Act

We first address whether the aforementioned entities are subject to the Open Meetings Act. The Open Meetings Act applies to "governmental bodies." It defines the term "governmental body" to include "a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members." Gov't Code § 551.001(3)(A). In addition, a governmental body must have supervision or control over public business or policy. See *id.* § 551.001(4) (definition of a meeting); *Gulf Regional Educ. Television Affiliates v. University of Houston*, 746 S.W.2d 803, 809 (Tex. App.--Houston [14th Dist.] 1988, writ denied). An entity which supervises but does not ultimately control public business or policy still qualifies as a "governmental body." Attorney General Opinion H-438 (1974). On the other hand, an entity which serves a purely advisory function, with no power to supervise or control public business, is not a "governmental body," and is not subject to the Open Meetings Act. Attorney General Opinion JM-331 (1985).

¹"State employee charitable campaign" is defined at section 1(19), V.T.C.S. article 6813h, as "an annual campaign conducted in communities or areas in which state employees work to solicit contributions to eligible charitable organizations."

In Attorney General Opinion H-772 (1976), this office set forth five prerequisites for a meeting of an entity to be subject to the Open Meetings Act:

- (1) The body must be an entity within the executive or legislative department of the state;
- (2) The entity must be under the control of one or more elected or appointed members;
- (3) The meeting must involve formal action or deliberation between a quorum of members;²
- (4) The discussion or action must involve public business or public policy; and
- (5) The entity must have supervision or control over that public business or policy. [Footnote added; citations omitted.]

This opinion concentrates on the first, second and fifth criteria because they are relevant to whether an entity is subject to the Open Meetings Act. The third and fourth criteria are relevant to determining whether a particular meeting is subject to the Open Meetings Act, an issue which we have not been asked to address. See Attorney General Opinion DM-284 (1994) at 3.

We address the aforementioned entities in turn:

A. The State Employee Charitable Campaign Policy Committee

The policy committee consists of not more than 10 state employee members appointed by the governor, lieutenant governor, and comptroller. V.T.C.S. art. 6813h, § 4. A policy committee member serves for a term of two years and may not be compensated for time spent or expenses incurred as service on the policy committee may require. *Id.* § 8. The policy committee's duties are set forth in section 9(c), V.T.C.S. article 6813h:

(c) The state policy committee shall:

- (1) establish local campaign areas based on recommendation by the state advisory committee;
- (2) select the state campaign manager;

²Since Attorney General Opinion H-772 (1976) was issued, the legislature has amended the definition of "deliberation" to include "a verbal exchange during a meeting . . . between a quorum of a governmental body and another person." Gov't Code § 551.001(2).

(3) determine the eligibility of federations or funds and their affiliated agencies for statewide participation in the state employee charitable campaign;

(4) approve the recommended campaign plan, budget, and generic materials to be used by campaign managers;

(5) oversee the state employee charitable campaign to ensure that all campaign activities are conducted fairly and equitably to promote unified solicitation on behalf of all participants; and

(6) perform other duties prescribed by the comptroller's rules.

Id. § 9(c). It is also the policy committee's duty to "appoint the presiding officer of a local state employee charitable campaign committee in each local campaign area," *id.* § 6(a), and to review applications from federations of funds that seek statewide participation in a state employee charitable campaign, *id.* § 11(a).

We conclude that the policy committee is a governmental body subject to the Open Meetings Act for the following reasons. First, we believe that the policy committee is "a committee within the executive . . . department of the state," even though article 6813h does not make the policy committee a part of an existing executive agency and does not appear to exclude from the policy committee state employees from the legislative and judicial departments of the state. In determining whether to classify an entity or an entity's actions as executive, legislative, or judicial, courts have looked to the function and purpose of the entity. For example, in *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ), the classification of the Webb County Juvenile Board as nonjudicial for purposes of the Open Records Act turned on the function of the board, not on the members' service elsewhere in government. *See also State Bd. of Ins. v. Betts*, 308 S.W.2d 846 (Tex. 1958); *Gulf Regional Educ. Television Affiliates v. University of Houston*, 746 S.W.2d 803 (Tex. App.—Houston [14th Dist.] 1988, writ denied). We believe that the duties of the policy committee listed above are executive, not legislative or judicial. This conclusion is also supported by the close relationship that article 6813h creates between the policy committee and the comptroller.³ For instance, the comptroller may prescribe by rule policy committee duties in addition to those set forth in the statute, *see* V.T.C.S. art. 6813h, § 9(c)(6), and must direct authorized deductions to federations or funds that the policy committee has deemed eligible to participate in the state employee charitable campaign, *see id.* § 2(b). In addition, we conclude that the policy committee functions "under the direction of one or more elected or appointed members." Finally, we conclude that the policy committee has supervision or control over public business or policy, *i.e.*, general oversight and administration of the state employee charitable campaign. Accordingly, we conclude that the policy committee is a "governmental body"

³The comptroller of public accounts is an executive officer of the State of Texas. Tex. Const. art. IV, § 1.

within the meaning of section 551.001(3) of the Government Code and therefore subject to the Open Meetings Act.

B. The State Employee Charitable Campaign Advisory Committee

The advisory committee consists of eight members appointed by the governor for two year terms. V.T.C.S. art. 6813h, §§ 5, 8. Like members of the policy committee, advisory committee members receive no compensation for their services, nor may they be reimbursed for expenses incurred incident to performance of their duties. *Id.* § 8. Advisory committee members, however, are drawn from a different pool than policy committee members in that they must represent both campaign managers and federations and funds. *Id.* § 5(b). The advisory committee's duties are set forth in section 9(d), V.T.C.S. article 6813h:

(d) The state advisory committee shall:

(1) advise the comptroller and state policy committee in adopting rules and establishing procedures for the operation and management of the state employee charitable campaign;

(2) recommend the number, not to exceed 50, and geographic scope of local campaign areas to the state policy committee; and

(3) review and submit the recommended campaign plan, budget, and generic materials to be used by campaign managers.

Id. § 9(d).

As noted above, an entity, even though it may otherwise satisfy the Open Meetings Act's definition of "governmental body," is not subject to the Open Meetings Act if its function is purely advisory. *See, e.g.*, Attorney General Opinions JM-331 (1985) (citizens advisory panel of Office of Public Utility Council, with no power to supervise or control public business, is not a governmental body); H-467 (1974) (determining that purely advisory city library board not subject to Open Meetings Act); *see also City of Austin v. Evans*, 794 S.W.2d 78 (Tex. App.--Austin 1990, no writ) (holding that city grievance committee was not governmental body subject to Open Meetings Act because it had no power to make binding decisions, but could make only recommendations). The sole function of the state advisory committee is to make recommendations and to advise the state policy committee and comptroller. For instance, while the advisory committee recommends the number and geographic scope of local campaign areas, only the policy committee is authorized to establish the local campaign areas. V.T.C.S. art. 6813h, § 9(c)(1), (d)(2) (establishment of local campaign areas). By the same token, the advisory committee recommends the campaign plan, budget, and generic materials to be used by campaign managers, *id.* § 9(d)(3), while the policy committee approves the advisory committee's recommendation, *id.* § 9(c)(4), and the local committees implement it, *see generally id.* § 9(e). Essentially, the advisory committee is granted authority only to make

recommendations or to advise, while supervision or control over public business or policy is left to the policy committee, the local committees, and the comptroller. The advisory committee's authority does not include supervision or control over public business or policy. Accordingly, we conclude that the advisory committee is not a "governmental body" subject to the Open Meetings Act. We caution, however, that "should the [advisory committee] actually function as something more than merely an advisory body with the result that it in fact supervises or controls public business or policy, it would have to comply with" the Open Meetings Act. Attorney General Opinion JM-331 (1985) at 3 (citing Attorney General Opinion H-772 (1976) at 6). This would be the case if, for example, the policy committee were to routinely accept the advisory committee's recommendations pro forma, without discussion. See Attorney General Opinion H-438 (1974) at 3.

C. Local State Employee Charitable Campaign Committees

The formation of the local committees is governed by section 6, V.T.C.S. article 6813h, which provides:

(a) The state policy committee shall appoint the presiding officer of a local state employee charitable campaign committee in each local campaign area.

(b) The presiding officer of a local employee committee shall recruit at least five but not more than 10 additional members. The members must represent different levels of employee classification.

(c) Each member of a local employee committee may vote on matters before the committee.

(d) Appointments shall be made to a local employee committee in a manner that ensures that the committee reflects the race, ethnicity, and national origin of the citizens of the local campaign area for which appointments are made.

(e) A local employee committee has the duties provided by Section 9(e) of this article.

V.T.C.S. art. 6813h, § 6.

The local committees have the following duties:

(1) contract with a federated community campaign organization to serve as the local campaign manager;

(2) determine the eligibility of local charitable organizations to participate in the state employee charitable campaign;

(3) in consultation with the local campaign manager, approve the recommended campaign plan, budget, and generic materials to be used by campaign managers;

(4) oversee the local state employee charitable campaign to ensure that all local campaign activities are conducted fairly and equitably to promote unified solicitation on behalf of all participants; and

(5) perform other duties prescribed by the comptroller's rules.

Id. § 9(e). In addition, a local committee must select a local campaign manager, *id.* § 7, and review applications from federations or funds that seek local participation in a state employee charitable campaign, *id.* § 12.

We conclude that a local committee is a governmental body subject to the Open Meetings Act. First, we conclude that local committees are committees "within the executive . . . branch of state government." We believe it is inconsequential that a local committee does not have statewide jurisdiction. As noted above, the definition of "governmental body" includes various local entities, as well as statewide entities. See Gov't Code § 551.001(3)(B), (C), (E) - (G). In addition, a local committee is subject to rules promulgated by the comptroller on the advice of the state advisory committee. Most importantly, however, the local campaign areas are established by the state policy committee, V.T.C.S. art. 6813h, § 9(c)(1), which also appoints the local committees' presiding officers, *id.* § 6(a). To a significant extent, a local committee is a subdivision of the state policy committee. Thus, a local committee is "within the executive . . . branch of state government." In addition, a local committee functions "under the direction of one or more elected or appointed members." Finally, we believe that a local committee has supervision or control over public business or policy. For example, it has authority to enter into contracts, determine the eligibility of local charitable organizations, and generally oversee administration of the local state employee charitable campaign. On the basis of its structure and function, we conclude that a local committee is a "governmental body" within the meaning of section 551.001(3) of the Government Code and therefore subject to the Open Meetings Act.

II. The Open Records Act

Next we consider whether the policy committee, advisory committee, and local committees are "governmental bodies" within the meaning of section 552.003 of the Texas Open Records Act, Government Code chapter 552, and therefore subject to the Open Records Act.

The Open Records Act's definition of "governmental body," found in section 552.003 of the Government Code, is broader than the Open Meetings Act's definition of "governmental body." It includes the following:

(1) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;

...

(10) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.

Gov't Code § 552.003.

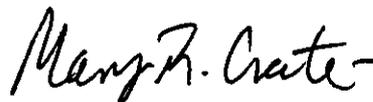
As noted above, the policy committee, advisory committee, and local committees are all committees "within the executive . . . branch." In addition, they are directed by appointed members. See V.T.C.S. art. 6813h, §§ 4 - 6. Furthermore, it also appears that they receive public funds. See Acts 1993, 73d Leg., ch. 922, § 3, at 3935 (authorizing the comptroller to collect administrative fees to administer V.T.C.S. article 6813h). Accordingly, we conclude that the policy committee, advisory committee, and local committees are "governmental bodies" within the meaning of section 552.003 of the Government Code and therefore subject to the Open Records Act.

S U M M A R Y

The State Employee Charitable Campaign Policy Committee and the Local State Employee Charitable Campaign Committees are subject to the Texas Open Meetings Act, Gov't Code ch. 551. The State Employee Charitable Campaign Advisory Committee is not.

The State Employee Charitable Campaign Policy Committee, the State Employee Charitable Campaign Advisory Committee, and the Local State Employee Charitable Campaign Committees are subject to the Texas Open Records Act, Gov't Code ch. 552.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee