



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 26, 1996

The Honorable Rene Guerra
Criminal District Attorney
Hidalgo County
Hidalgo County Courthouse
Edinburg, Texas 78539

Letter Opinion No. 96-018

Re: Whether a hearing examiner may
close a civil service hearing to the
public (ID# 35854)

Dear Mr. Guerra:

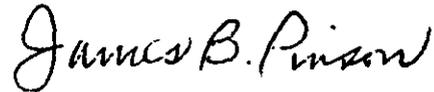
You ask whether, under the municipal civil service provisions contained in chapter 143 of the Local Government Code, "a third party hearing examiner, who in essence is substituting for the Civil Service Commission, [may] close a hearing to the public which otherwise should be open." We understand the relevant facts to be that a police officer of the City of Weslaco appealed, pursuant to section 143.010 of the Local Government Code, from a disciplinary action against him; that the officer "elect[ed] to appeal to an independent third party hearing examiner instead of to the commission," Local Gov't Code § 143.057(a); and that at the hearing the examiner granted the officer's counsel's request for a closed hearing and excluded both the press and a member of the commission from the appeal hearing.

You point out that section 143.010(c) of the Local Government Code provides in part, "Each commission proceeding shall be held in public," and that section 143.057(f) provides, "In each hearing conducted under this section, the hearing examiner has the same duties and powers as the commission, including the right to issue subpoenas." You contend that those provisions require a hearing examiner to hold the appeal hearing in public. We agree. The only provision of chapter 143 that mentions a closed session in a civil service proceeding is section 143.053(d), which provides that "[t]he commission may deliberate the decision in closed session but may not consider evidence that was not presented at the hearing." That provision applies only to the "deliberat[ion]" of the matter, that is, the analysis, discussion, and weighing of the evidence that the commission members have heard in order to reach a decision based on their findings of fact and the application of the law to those facts. See BLACK'S LAW DICTIONARY 427 (6th ed. 1990) (defining *deliberation*). Section 143.053(d) plainly does not permit the hearing examiner to close to the public the hearing itself, that is, the presentation of the parties' evidence and the motions and argument of their counsel. In our opinion, the closure of an appeal hearing to the public would violate sections 143.010(c) and 143.057(f).

S U M M A R Y

Sections 143.010(c) and 143.057(f) of the Local Government Code require a hearing examiner to hold a civil service disciplinary appeal hearing in public.

Yours very truly,

A handwritten signature in cursive script that reads "James B. Pinson".

**James B. Pinson
Assistant Attorney General
Opinion Committee**