

RO-204

BRIEF IN SUPPORT OF REQUEST FOR ATTORNEY GENERAL'S OPINION

112# 13506  
MS

INTRODUCTION

This brief addresses a request to the Honorable Attorney General for the State of Texas for an opinion on the matter of Ector County Commissioners Court. Specifically, the Ector County Attorney's office asks for an Attorney General's opinion as to the following four (4) issues:

RECEIVED  
SEP 06 97  
Opinion Committee

- (1) In a subsequent meeting, can a Commissioner raise an issue for discussion if the Commissioners Court has previously taken final action on the matter?
- (2) Can the Commissioners refuse to place a matter on their agenda?
- (3) May Robert's Rules of Order be used to govern discussions in the Commissioners Court meetings?
- (4) If a treatise may be used to regulate the conduct of meetings, must it be formally adopted as the controlling authority in Commissioners Court?

Based on Attorney General's Opinions JM-63 (1983) and H-188 (1973), the Ector County Attorney's office has reached the following conclusions:

- (1) Following a final vote by the Commissioners Court, a Commissioner or member of the public can bring an issue up for discussion but may be required to first place the item on the agenda. The Commissioners Court must follow its own established rules and procedures if it requires the item to be placed on the agenda before considering the matter.
- (2) The Commissioners Court may not refuse to place an item on its agenda, provided proper procedures are

used. Once correctly placed on the agenda, the matter may be raised at the meeting and debated subject to any established rules governing debate.

(3) Reasonable rules may be adopted to control the conduct of Commissioner's Court meetings. Op. Tex. Att'y. Gen. No. H-188(1973). The use of Robert's Rules of Order appears to be authorized, therefore, to the extent it does not limit topics of discussion.

(4) The Commissioner's Court has authority to regulate the manner in which its meetings are conducted. In order to do so, the Commissioners Court must adopt rules or agree to follow specific rules. This is done by a vote of the Court.

#### FACTUAL BACKGROUND

The Commissioners Court of Ector County took a final vote on an amendment to an ordinance relating to sexually oriented businesses. One commissioner was absent from this meeting of the Court. The Commissioners Court at that meeting passed the amendments to the ordinance regulating sexually oriented businesses.

Regulation of sexually oriented businesses is subject to strong emotions on both sides. As a result, persons opposed to the amendments wish to bring the matter back before the Court. Further, one or more Commissioners may wish to have the matter raised without the matter being placed on the agenda. Some questions have arisen on whether the matter may be placed on the agenda.

The current procedure for having an item placed on the Commissioners Court agenda requires a form to be completed

and returned to the County Judge. The form must be returned by the Tuesday preceeding the Commissioners Court meeting. The form is attached. A solicitation policy has been adopted requiring proposed purchases to come from County departments.

The Commissioners Court has not voted to adopt Robert's Rules of Order as the rules governing the conduct of its' meetings and matters placed on the agenda. Meetings have generally been conducted in accordance with Robert's Rules of Order even though it has not been formally adopted as the rules governing the Commissioners Court meetings.

#### DISCUSSION

As a general proposition, the Commissioners Court can discuss any matter upon which it could act. The Commissioners Court may regulate the conduct of its meetings. This includes authority to regulate the number and length of speakers on subjects with which the Commissioners Court is faced. Op. Tex. Att'y. Gen. No.H-188 (1973). In our system, government is to represent the people and to act upon matters of interest to the government. Rules limiting the topics of discussion appear to be in conflict with this ideal. See Op. Tex. Att'y. Gen. No. H-188 (1973). In Texas Attorney General's Opinion No. JM-63, 1983, the Attorney General said that the Commissioners' agenda could not be controlled by the County Judge or by the County Clerk. This opinion does not address the issue of whether the majority of the Commissioners Court may limit the subjects discussed at its meetings other than those placed on the agenda. To this question, there is no statutory answer.

The citizens have a right to bring before their governing body any matter which they wish to have discussed

and upon which the governing body could act. This right to petition government has long been recognized in the United States. Eg. Tex. Const. Art. 1, Sec. 27.

To facilitate Commissioners Court discussion, an agenda is prepared and citizens may be required to have their concerns placed upon that agenda. Once done, the Commissioners may act or may not act in the same manner as they would with any issue they faced.

Requiring items to be placed on the agenda permits the public to know topics of discussion, ensures the public of an opportunity to voice its concerns, and ensures that persons raising the matter have sufficient interest for the matter to be raised.

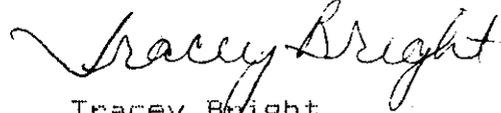
If issues did not have to be placed on the agenda, Commissioners Court time would be wasted. As a practical matter, such a result could enable members of the public and dissenting members of the Commissioners Court to filibuster the Court.

#### CONCLUSION

There are strong policy arguments supporting the conclusions that the Commissioner's Court can not prevent issues from being placed on the agenda. Public policy supports the conclusion that the Court may require issues to be placed on the agenda in order to properly bring the matter before the Court. The existing law, however, does not provide any answer to the issues raised by this brief. As a result, it is respectfully requested that the Honorable Attorney General for the State of Texas state an opinion that the Commissioners Court can not prevent items from being placed on its agenda, but can establish reasonable procedures

for placing matters on the Commissioners Court agenda and can require matters to be placed back on the agenda once final action has been taken by the Court.

Respectfully submitted,



Tracey Bright  
Ector County Attorney  
Room 201  
Ector County Courthouse  
Odessa, Texas 79761  
915-335-3122

TB/ct