



Texas Commission on Fire Protection

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September 3, 1993

The Honorable Dan Morales
Attorney General
State of Texas
209 West 14th Street
Austin Texas 78701

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Michael E. Hines
Executive Director

Ernest A. Emerson
State Fire Marshal

Re: Whether provisions of S.B. 383 apply to advisory committees established in Texas Government Code Chapter 417 and Chapter 419.

Dear General Morales:

On behalf of the Texas Commission on Fire Protection (hereafter "Commission"), I would like to request a formal attorney general opinion regarding the applicability of S.B. 383 (enacted in the regular session of the 73rd Legislature) to the various mandatory advisory committees and councils that assist the Commission pursuant to TEX. GOVT. CODE, Chapters 417 and 419. Specifically, they include the Fire Protection Personnel Advisory Committee (§419.023); the Funds Allocation Advisory Committee (§419.054); the Volunteer Fire Fighter Advisory Committee (§419.072); the Fire Extinguisher Advisory Council (TEX. INS. CODE, art. 5.43-1, §9); the Fire Alarm Advisory Council (TEX. INS. CODE, art. 5.43-2, §2(3) and §6(a)); the Fire Protection [Sprinkler] Advisory Council (TEX. INS. CODE, art. 5.43-3, §6); and the Fireworks Advisory Council (TEX. INS. CODE, art. 5.43-4, §5B). See also GOVT. CODE, §417.0041.

The questions urged by the Commission are as follows:

1. Do the provisions of S. B. 383, including the requirement that membership of advisory committees be balanced between industries or occupations regulated and the consuming public, apply to each of the mandatory advisory committees identified above?
2. Do the provisions of S.B. 383 pertaining to reimbursement of expenses through the appropriations or budget execution process apply to each of the advisory committees identified above?
3. If the answer to question No. 1 is affirmative with respect to the Funds Allocation

Advisory Committee which has two appointing authorities other than the Commission (i.e. 3 members appointed by the State Firemen's and Fire Marshals' Association of Texas and 3 members appointed by the Texas State Association of Fire Fighters), how are the provisions of Section 2 of the bill which require the agency to "reserve the ratio of members appointed by the various appointing authorities" to be implemented? Are the various appointing authorities required to appoint additional "public" members to provide balance or does the Commission appoint the additional public members?

4. If the answer to question No. 1 is affirmative with respect to the Volunteer Fire Fighter Advisory Committee (who are appointed by the Commission, but a portion of whose members must be appointed from a list submitted by the State Firemen's and Fire Marshals' Association of Texas), do the provisions of Section 2 requiring that the ratio of members appointed by different appointing authorities apply and how are the provisions implemented?
5. If the answer to question No. 1 is affirmative with respect to the Fireworks Advisory Council (who are appointed by the Commission, but a portion of whose members must be appointed from a list submitted by the Texas Pyrotechnic Association), do the provisions of Section 2 requiring that the ratio of members appointed by different appointing authorities apply and how are the provisions implemented?
6. How are the provisions of S.B. 383 requiring "balancing" reconciled with the provisions of TEX. GOVT CODE, §419.023 and §419.072, requiring 6 members of each committee to be fire fighters and 3 members to be instructors.?
7. How are the provisions of S.B. 383 requiring "balancing" reconciled with the provisions of TEX. INS. CODE, art. 5.43-1, 5.43-2, 5.43-3, requiring representation on the respective advisory councils from various areas of the fire protection field?

The required advisory committees and councils which assist the Commission pursuant to TEX. GOVT. CODE, Chapter 417 and Chapter 419, are not pure "advisory" committees, in spite of their names. The named committees and councils each have a mandatory role in the Commission's rule-making process. All proposed rule changes

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and additions must be submitted to the respective committees for development. If the Commission does not approve a rule developed by the committee it must be returned to the committee for further development.

The unusual mandatory role in rule-making of these committees was a product of *lengthy negotiations and compromise that resolved conflicts concerning the composition of the Commission and the extent of its jurisdiction during the 1991 regular session of the Legislature when the Commission was created by the consolidation of the Commission on Fire Protection Personnel Standards and Education, the Emergency Funding Board, the State Fire Marshal's office (transferred from the State Board of Insurance), and the Key Rate section of the State Board of Insurance (See Acts 1991, 72nd Leg., ch. 628). There is a real likelihood that the required balancing of committee membership with "public" members will upset the delicate political balance established when the Commission was created.*

Therefore, we ask that you carefully consider whether the legislature, in enacting the new S. B. 383, intended it to apply to this Commission's mandatory advisory committees and councils, *inasmuch as those committees have already been carefully balanced to represent the diverse elements of the fire service and fire protection industry.*

If you require additional information, please contact my office or the Commission's General Counsel, Jack Woods.

Sincerely,



Michael E. Hines
Executive Director

MEH/TRT/cm

cc: Texas State Firemen's and Fire Marshals' Association
Texas State Association of Fire Fighters
Texas Pyrotechnic Association
Texas Burglar and Fire Alarm Association
Texas Sprinkler Contractor Association