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Opinion Committee

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March 30, 1998

The Honorable Dan Morales  
Attorney General, State of Texas  
Attn: Opinion Committee Chairperson  
P.O. Box 12548  
Austin, Texas 78711-2548

CMRRR Article No. Z 081 097 564

**RE: Request for Attorney General's opinion on reposting of continued regular term meetings of Commissioners Court**

May a Commissioners Court continue its regular term meeting without reposting if the continuance is, pursuant to Texas Local Government Code ("LGC") Section 81.005(a), to any date and time within a week of the regular term meeting? Would the answer be any different if the continuance was to an alternate regular term day authorized under LGC Section 81.005(h)?

Dear Attorney General Morales:

This is a request for an Attorney General's opinion regarding the interpretation of a part of LGC Section 81.005(a) in those instances where Commissioners Court desires to continue a regular term meeting to a date and time within a week. This request is generated in light of the interpretation of Texas Attorney General Opinion No. H-1000 (1977) ("H-1000") by the San Antonio Court of Appeals in the case of *Rivera v. City of Laredo*, 948 S.W.2d 787 (Tex. App.- San Antonio 1997).

**Statement of Facts**

Our Commissioners Court, pursuant to LGC Section 81.005(a), has designated Wednesday as the day of the week it convenes its regular term meetings. Commissioners Court has not designated an alternate regular term day under LGC Section 81.005(h). All matters to be considered at the Wednesday regular term meeting are initially posted in the manner and for the time period required under the Texas Open Meetings Act, Texas Government Code, Chapter 551 ("TOMA").

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Commissioners Court has a special statute regarding continuances of regular term meetings. LGC Section 81.005(a), in relevant part, provides that:

“A regular term may continue for one week but may be adjourned earlier if the court’s business is completed.”

When Commissioners Court needs to continue a matter from a regular term meeting, based on LGC Section 81.005(a), if the continuance is for a date less than a week away, the date and time of the continuance will be announced in open court, but will not be re-posted. If the continuance is for a date a week or more in the future, it will be re-posted.

In H-1000, your office was asked whether TOMA required a Commissioners Court (sitting in that particular instance not in its regular term, but as a Board of Equalization to determine property values for assessment of ad valorem taxes) to post notice for each daily session. In confirming that TOMA required posting of each daily session, your office went on to say:

“This is not to say that the board may not *recess* (original emphasis added) day to day when it does not complete consideration of a particularly long subject so long as the action is in good faith and does not serve as an evasion of the Act.”

While H-1000’s dicta approved of a day to day under certain circumstances, this is not always possible as a quorum, interested parties, documents, witnesses, and so on, may not be available on the next day(s) immediately following the regular term meeting. As a result, our Commissioners Court, before a continuance day and time is announced, makes good faith efforts to determine and accommodate the availability of a quorum, interested parties, documents, witnesses, and so on.

In Headnote 8 of *Rivera*, the San Antonio Court of Appeals addressed, as a matter of first impression for Texas Courts, whether a “governmental body” must post notice under TOMA for recessed meetings. The Court held that the City of Laredo violated TOMA by recessing a city council meeting from May 4 to May 6 without re-posting, and that the City’s actions taken at the May 6 meeting were thus voidable. In its decision, the Court focused on two factors. First, it concluded that H-1000, the only commentary it could find in Texas on posting and recesses, implied that a recess can only be to the next day. Second, because TOMA did not contain guidance relating to recesses, the City was required to post notice before convening “regardless of whether it considered the meeting *a continuation from a recessed meeting* held two days previous.” (Original emphasis added).

### Discussion

We believe that with respect to regular term meetings of Commissioners Court, if the continuance is for a date less than a week away, re-posting should not be required. We believe that it should be irrelevant whether the extension is called a recess or continuance. To assist in discussion purposes, we have included copies of H-1000, LGC Section 81.005 and *Rivera*.

It is well-settled that TOMA applies to Commissioners Courts. *See generally*: H-1000. We agree with the *Rivera* court that TOMA is silent on the issue of re-posting for recessed and/or continued meetings, and that until the *Rivera* decision, Texas courts had never addressed the issue under TOMA of re-posting for recessed and/or continued meetings.

Webster's defines "continue" as to "carry onward or extend: keep on the court calendar: postpone by a continuance." Webster's defines "recess" as "a suspension of business or procedure...for a comparatively short time: to interrupt the course or sitting of for a comparatively short period." Within the context of Commissioners Court meetings and the issue of re-posting under TOMA, "continue" and "recess" are synonymous and wholly interchangeable. H-1000 stands for the proposition that a Commissioners Court recess can be from one day to the next; a "continuance" of court, by its common use and perception, can also be for a full day. While LGC Section 81.005 says that a continuance of a matter can be for up to week, it also approves of continuances of a shorter time period in the event that the business of the court is completed before then.

*Rivera* notes that other states have anticipated the issue of, and consequently included provisions for, recesses, but even among these states, there is no uniform treatment of this dilemma. Michigan requires new notices for meetings recessed more than 36 hours, while Mississippi requires one-hour notice for each recessed meeting. *Rivera* at 793. In concluding that TOMA's affirmative requirement of posting applied even to the City's recessed meeting, the *Rivera* court specifically cites as authority for its holding "the absence of a statutory provision to the contrary..." *Id.*

The Legislature, in LGC Section 81.005(a), created such a statute to the contrary for regular term meetings of Commissioners Court. To argue that the statute is swallowed up and given no effect by TOMA and *Rivera* would make the words and acts of the Legislature empty acts. We believe that in light of the policies of TOMA to promote informed, open and participatory government, the dicta in H-1000 approving of day-to-day recesses was not intended to be the sole criteria for a valid continuance. To promote efficiency and courtesy among parties that must appear before Commissioners Court, we believe that a) good faith efforts to set a continuance date that will attempt to accommodate interested parties; and b) the practice of announcing the date and time of the continuance in open Court comply with the spirit of TOMA and H-1000.

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While we believe an answer in the affirmative to the first question we have presented (continuances under LGC Section 81.005(a) do not have to be re-posted) would be dispositive of our concerns, in the event that the answer is in the negative, we then ask the question whether the result would be different if the continuance was within a week to an alternate regular term day established under LGC Section 81.005(h). Under LGC Section 81.005(h), an alternate regular term day would be a day (in the case of El Paso County, a day other than Wednesday) that has been officially designated as a day that Commissioners Court will convene. In designating the alternate regular term day, Commissioners Court has put the public on notice of another day that business will be taken up. Commissioners Court could accomplish its objectives under LGC Section 81.005(h) in the following manner: on its regular posting for the Wednesday meeting, designate the alternate regular term day and time that (any) unfinished business will be concluded.

A fixed alternate regular term day, however, does not fully resolve the question, as it also has associated problems. First, just like the day to day recess, the alternate day may not be the day that best accommodates a quorum, interested parties, documents, witnesses, and so on. Second, the language of LGC Section 81.005(h) appears to mandate that the Court consistently convene on this alternate day, and there are practical problems in having the Court meet twice a week in regular term throughout the year.

#### **Summary/Conclusion**

As long as a continuance of a regular term meeting of Commissioners Court is done within a week's time, done in good faith with an adequate public announcement at the time of the recess, and does not serve as an evasion of TOMA, we believe that pursuant to the authority of LGC Section 81.005(a), that re-posting should not be required. We believe it is irrelevant whether the act extending the meeting is called a continuance or recess. In the alternative, we believe that continuing the meeting to an alternate regular term meeting day would not require re-posting if the public has been given notice that the alternate regular term meeting day exists for the purposes of continuing unfinished business of the Court.

Since this request affects past, present and future meetings of all Commissioners Courts in Texas, time is of the essence in obtaining your opinion. Therefore, any expedited handling of this request would be appreciated.

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Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, reading "José R. Rodríguez". The signature is written in a cursive style with a large, looping initial "J" and a long, sweeping underline.

José R. Rodríguez,  
El Paso County Attorney

JRR/tlg  
Enclosures