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June 9, 2000

The Attorney General of Texas
Attn: Opinions Committee
P. O. Box 12548
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CERTIFIED MAIL NO. 70993220000149329495

Re: Request for Attorney General's Opinion

Dear Sir:

I am requesting an attorney general's opinion of the following:

QUESTIONS:

A. Does a violation of the Open Meetings Act (TEX. GOV'T CODE ANN. Open Meetings §551.001 *et seq.*) (Vernon Supp 2000) occur when a person who is not a member of the Commissioners Court goes outside of a called meeting to all or a quorum of the County Commissioners to secretly secure their commitment to decide a matter that is on the Commissioners Court agenda to be heard at an open session set in the future?

B. Does a violation of the Open Meetings Act occur when a person who is not a member of the Commissioners Court goes to all or a quorum of the County Commissioners to urge a specific decision on a matter that the actor wants placed on the Commissioners Court agenda?

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C. Does a violation of the Open Meetings Act occur when a claim, invoice, or bill is circulated or passed among the County Commissioners until at least three signatures are attained then to deliver the claim, invoice or bill to the County Auditor/Treasurer for payment?

Can the criminal penalties of the Open Meetings Act be applied to a person who is not a member of the County Commissioners Court, but engages in conduct that results in secret deliberations and decision-making by the Commissioners Court?

An example of such conduct might be when a person who wants a certain course of action to take place at a future meeting in the Commissioners Court, goes to and finds, wherever they may be found, at home or work, all of the County Commissioners one by one, or goes to at least three Commissioners, or goes to two Commissioners and the County Judge either to have the item placed on the agenda and decided in the manner advocated by that person, or to decide a matter on the agenda in the manner urged by that person

If so, then what is the responsibility of a County Commissioner or County Judge toward someone the County Commissioner or County Judge suspects is violating the Open Meetings Act by peddling secret deliberations among more than one member of the Commissioners Court?

BRIEF:

Obviously TEX. GOV'T CODE ANN. §551.143 (Vernon) applies to a member or members of a Commissioners Court who knowingly conspire to circumvent the Open Meetings Act by meeting in numbers less than a quorum for the purpose of secret deliberations.

That section imposes a criminal penalty of a fine not less than \$100 or more than \$500; confinement in the county jail for not less than one months or more than six months; or both. *Id.*

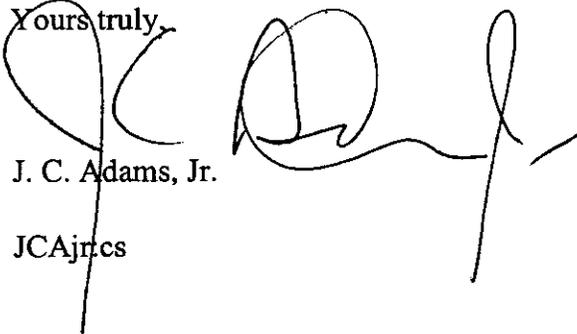
The Commissioners Court is a 'Governmental Body' as defined by TEX. GOV'T CODE ANN. §551.001 (Vernon Supp. 2000).

'Deliberation' requires merely a verbal exchange - no decision is necessary - between a quorum of the governmental body and another person. *Id.* (Vernon Supp. 2000)

It appears that TEX. PENAL CODE §7.02 *Criminal Responsibility for the Conduct of Another* (Vernon 1994) applies to a person who causes or aids a member of a Commissioners Court to engage in secret deliberations by lobbying from one member's door to another, gaining commitments to decide a matter of county business in a particular way, outside of the context of a called open meeting. TEX. PENAL CODE §7.02 states, "(a) A person is criminally responsible for an offense committed by the conduct of another if: (1) acting with the kind of culpability required for the offense, he causes or aids an innocent ... person to engage in conduct prohibited by the definition of the offense."

Apparently, TEX. PENAL CODE §7.02 (Vernon 1994) has been applied to another other Texas code, that being the Alcoholic Beverage Code (*Id*, see generally headnote 42, p. 169 Vernon 1994). Further, TEX. PENAL CODE §7.03 excludes as defenses that the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

Yours truly,

A handwritten signature in black ink, appearing to be "J. C. Adams, Jr.", written over a typed name. The signature is stylized with a large initial "J" and "A".

J. C. Adams, Jr.

JCAjrcs