



**TEXAS DEPARTMENT OF PUBLIC SAFETY**  
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June 6, 2000

JUN 12 2000

OPINION COMMITTEE

John C. Cornyn  
 Attorney General  
 Price Daniel, Sr. Bldg., 8<sup>th</sup> Floor  
 209 W. 14<sup>th</sup> Street  
 Austin, Texas 78701

CERTIFIED MAIL

RQ-0243-JC  
 FILE # ML-41468-00  
 I.D. # 41468

Re: Request for Opinion

Dear General Cornyn:

Pursuant to Tex. Gov't Code Ann. § 402.042 (Vernon 1998), I am requesting an opinion regarding the scope of Op. Tex. Att'y Gen. No. JC-0203 (2000), and how the conclusions in that opinion relate to participation of governmental bodies in the legislative process. I make this request on behalf of the Public Safety Commission (the "Commission"), which asked in its meeting of May 18, 2000, that I make a formal request for an Attorney General opinion.

Specifically, we ask if attendance at legislative hearings by a quorum of the Public Safety Commission is subject to the posting and other requirements of the Open Meetings Act (the "Act"). See Tex. Gov't Code Ann. ch. 551 (Vernon 1994 & Supp. 2000).

The Public Safety Commission, which controls the Department of Public Safety of the State of Texas (the "Department") pursuant to Tex. Gov't Code Ann. § 411.003 (Vernon 1998), is composed of three members. At times committee and subcommittee hearings held by the Texas House of Representatives and Senate concern matters within the purview of the Commission's duties and powers. See Tex. Gov't Code Ann. § 411.004 (Vernon Supp. 2000). Examples of committees are Senate Finance, House Appropriations, Senate Criminal Justice, and House Public Safety. It is not unusual for legislators to recognize the presence of the commissioners, encourage statements or comments, or make inquiries of them regarding Department business. These legislative hearings are themselves public and posted in accordance with rules of the House of Representatives or of the Senate. The Open Meetings Act provides an exception to the general rule on notice for committees of the legislature. See Tex. Gov't Code Ann. § 551.046 (Vernon 1994).


We ask whether attendance by a quorum of the Commission at such legislative hearings, during which at least one commission member plans to participate in a discussion of Department business within the Commission's supervision, requires additional notice of this attendance under the Open Meeting Act. If such notice is required, a problem in complying is anticipated due to the fact that legislative posting time requirements are generally shorter than the seven-day posting required for state agencies. In such situations, we ask whether an emergency posting is authorized as "a reasonably unforeseeable situation" under Tex. Gov't Code Ann. § 551.045 (Vernon 1994).

Additionally, if attendance at and participation in legislative hearings is subject to the Open Meetings Act, we ask whether minutes must be kept in accordance with section 551.021 of the Act, or may the record kept by the legislative committee suffice. These hearings are generally tape-recorded, and records are kept documenting the participants in the hearing.

The Department of Public Safety is committed to open government as espoused by your office. But it appears that an unintended consequence of Op. Tex. Att'y Gen. No. JC-0203 (2000) may be the discouragement of interaction between members of the legislative and executive branches of state government in open forums. Legislative hearings are posted and open to the public. The posted notice of the hearings often includes a state agency's name as an agenda item for discussion. The public may reasonably conclude that a quorum of the governing body of that agency may appear to comment or answer questions regarding agency business that they are statutorily responsible for overseeing. It is our perception over the years that legislative committee members welcome the participation of state agency boards and commissions during the open and public hearings, and not just the one-on-one contacts that are excluded from the provisions of the Open Meetings Act.

On behalf of the Department of Public Safety and its Commissioners, I respectfully request that you issue a written opinion on these issues.

Sincerely,



Thomas A. Davis, Jr.  
Director

TAD:MAC:js

cc: Commissioner James B. Francis, Jr.  
Commissioner Robert B. Holt  
Commissioner M. Colleen McHugh