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# The Senate of Texas

**Judith Zaffirini**  
State Senator, District 21  
President Pro Tempore  
1997

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December 11, 2000

**RQ-0327-JC**

The Honorable  
John Cornyn  
Attorney General of Texas  
William P. Clements Building  
300 W. 15th Street, 12th Floor  
Austin, Texas 78701

RECEIVED  
DEC 15 2000  
OPINION COMMITTEE

RECEIVED  
DEC 15 2000  
OFFICE OF THE ATTORNEY GENERAL  
EXECUTIVE ADMINISTRATION  
**1787 SG**

Dear General Cornyn:

This is to request an opinion pursuant to Texas Government Code Sec. 402.042 regarding whether a superintendent of a school district attending closed meetings of a school board or a provision in the superintendent's contract requiring the superintendent to attend closed meetings of a school board violates the Texas Open Meetings Act. Enclosed is background information from Randolph Air Force Base resident Debbie Knopf.

Your prompt attention to this important matter would be appreciated greatly. Feel free to contact me, my staff or Mrs. Knopf if you require additional information.

May God bless you.

Very truly yours,

*Judith Zaffirini*  
Judith Zaffirini

JZ/cg

Enc.: Background information

XC: Debbie Knopf

The Honorable Judith Zaffirini

November 28, 2000

P.O. Box 12068

Capitol Station

Austin, Texas 78711

Dear Senator Zaffirini,

My name is Debbie Knopf. I live on Randolph Air Force Base in San Antonio. I'm the newest member on our school board and I was wondering if you could assist me by requesting an Attorney General Opinion regarding Section 2 of the Texas Open Meetings Act. My question addresses Superintendents attending closed sessions of the school board meetings.

Our Superintendent regularly attends every closed meeting of the board, so I reviewed her contract and found a "Board Meeting" clause, which concerns me. The clause states that, "The Superintendent, or the Superintendent's designee shall attend all meetings of the Board, both public and closed, with the exception of those closed meetings devoted to the consideration of any action or lack of action on the Superintendent's contract or the Superintendent's salary and benefits as set forth in this contract or the Superintendent's evaluation."

To my knowledge, there are no Attorney General Opinions or cases that address this issue directly. However, Attorney General Opinions JM-6 and JM-238 and the case of *Finlan v. City of Dallas*, 388 F. Supp. 779 (N.D. Tex. 1995), lead me to believe that it would be a violation of the Texas Open Meetings Act to allow our Superintendent or her designee to attend all closed sessions of the Board. The Superintendent is the CEO and an employee of the school district and of the school board. She is not a member of the Board of Trustees and she is not an officer. I believe that she and her designee would be considered third parties or members of the public. According to the Texas Open Meetings Act, a closed session is "a meeting to which the public does not have access", so they should not be permitted in the closed session. If we allow a member, or members of the public to attend our closed sessions, how then can the meetings legally be considered "closed", and how can we rightfully deny other members of the public attendance to this closed session?

I do realize that there are times when the Board of Trustees will need information from third parties, like the Superintendent, especially with regards to personnel issues. In fact, I have been informed that it is a common occurrence for Superintendents to be present at all Board meetings, open and closed. I have researched but found no statute giving a Superintendent or other third parties the right to be present at all closed sessions of the Board. In fact, I read in the Texas Open Meetings Act, where it addresses Permissible Subjects in Executive Session. "The Attorney General has concluded that whether to

admit a person to such an executive session is a determination that must be made by the governmental body on a case-by-case basis.”

As a matter of public interest and open government concern, I believe that an Attorney General Opinion addressing this issue is long overdue. Having this clause in Superintendents' contracts puts School Boards at risk for breach of contract for trying to exclude Superintendents, or their designees from closed sessions. And even if this clause is not listed in their contracts, it appears too easy for Superintendents to be permitted to join closed sessions simply by listing "Personnel Issues" on their School Board Meeting Agendas.

Thank you for your assistance.

Sincerely,



Deb Knopf  
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