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OPINION COMMITTEE

Tina Driskell
Secretary

903-572-0382

March 22nd, 2005

Honorable Greg Abbott
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

FILE # ML-44169-05
I.D. # 044169

ATTENTION: Opinions Division

RQ-0331-GA

Dear Sir:

I have been requested by members of the Titus County Commissioner's Court to seek an Attorney General's Opinion in accordance with Section 402.043 of the Government Code, as to the applicability of the Texas Open Meetings Act to the appointment of a County Elections Administrator under Section 31.031-31.049 of the Texas Election Code.

The question we are seeking an answer to is as follows:

"Is a County Election Commission meeting held under Section 31.033 of the Election Code subject to the requirements of the Texas Open Meetings Act, specifically public notice and posting found in Section 551.041 and Section 551.049?"

FACTS:

The Titus County Commissioner's Court created the position of Titus County Elections Administrator by written order in accordance with Section 31.031 of the Elections Code, on July 6, 2004. The Chair (County Judge) of the County Election Commission called the meeting to appoint the County Elections Administrator and notified all members of the Commission as required by Section 31.033. No notice of said meeting was posted in accordance with Section 551.049 of the Open Meetings Act. The meeting was held by the Commission on February 3, 2005, and a County Elections Administrator was appointed by action of the Commission under Section 31.032 of the Election Code.

POSITION AND SUPPORTING BRIEF:

It is the position of Titus County that the County Election Commission meeting was not subject to the notice requirements of the Texas Open Meetings Act because it was not a meeting of a "governmental body" as that term is defined in Section 551.001 of the Texas Open Meetings Act. Therefore the Section 551.041 and Section 551.049 requirement of posting notice is not applicable to a meeting of the County Election Commission. It is our position that the only notice required is under Sec 31.033 of the Election Code and that the Commission meeting itself is not subject to the Texas Open Meetings Act.

To be subject to the requirements of the Texas Open Meetings Act, a meeting must be by a "governmental body". Section 551.001 defines in nine subsections what a "governmental body" is. Subsection (A) is not applicable because the County Election Commission is not within the executive or legislative branch of the "state" government. The County Election Commission is within the local county government. That also rules out Subsections (C), (E), (H), and (I).

Subsections (B), (D), (F), and (G) are the only subsections that pertain to meetings involving solely county government. A meeting of the County Election Commission does not involve county education which eliminates Subsections (F) and (G). Because only one member of the Commissioner's Court is involved, it is clearly not a Commissioner's Court meeting which makes Subsection (B) inapplicable. Although the County Election Commission might be considered a deliberative body in the county under Subsection (D), the County Election Commission has no "rulemaking" or "quasi judicial" power. Its only purpose is to appoint an Elections Administrator. The County Election Commission has no other duties or powers.

Therefore, Titus County seeks this opinion to clarify the notice requirement and to validate the action taken by the County Election Commission.

Respectfully submitted,



TIM R. TAYLOR
County Attorney
Titus County, Texas