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June 27, 2006

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

Re: Request for Attorney General Opinion

Dear General Abbot:

A recent meeting of an ad hoc group including several district judges raised questions after local members of the media were barred from attending the meeting. The question that I submit for official response is as follows:

Is a group of elected officials, appointed officials and government employees who call themselves the Jail Population Control Committee and who meet on a regular basis to monitor the county jail population and to share information with each other required to comply with the provisions of the Open Meetings Act?

As a basis for this request I submit the following information:

FACTS: HISTORY

In Nueces County the presiding judge of the local council of judges requested another district judge to preside over the meetings of a voluntary association of county officials and employees which is called the Jail Population Control Committee. This committee was formed after the local county jail started experiencing problems related to jail overcrowding. It has been in existence for several years.

The committee or group is composed of officials and employees of most of the county and city departments that have some type of direct impact on the jail population. Some of the departments that are represented include the district courts, the county courts, the commissioners court, the county clerk, the sheriff's department, the local police department, the City of Corpus Christi, municipal court officials, the County and District Attorney's Office, and any other department that may be deemed to have information that may be useful in monitoring the jail population. The membership or attendance is not fixed at a certain number and attendance by officials varies from month to month.

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OPINION COMMITTEE

FILE # ML 44877-04

I.D. # 44877

The group meets on a monthly basis and the sole purpose for the meetings is to share information about the jail population and to monitor the population to avoid problems. The different departments represented at any particular meeting will share whatever information is considered important in trying to monitor and control the jail population. The group has no supervisory power over anybody. They cannot issue any orders nor do they have any enforcement or quasi-judicial authority over anybody. Their sole responsibility is to monitor the jail population by the sharing of information. Meetings are attended by whoever may be available at the time of the meeting.

FACTS: CONTROVERSY

On June 20, 2006 the district judge who presides at meetings of the Jail Population Control Committee convened a meeting of the group and invited only the district judges and the sheriff. In attendance were all of the district judges of Nueces County who had been made aware of a serious public controversy involving the living conditions at the jail. The primary purpose of the meeting was to share information (photographs) that had been received from a federal district judge. The photographs were allegedly depictions of living conditions at the jail. The photographs were obtained by one state district judge from the federal district judge with a notation that read, "Not for media distribution as security might be compromised." The meeting was attended almost exclusively by the judges but also included the county sheriff as well as the chief deputy.

The local media appeared at the meeting and requested to be allowed to attend the meeting. The presiding judge denied their request and held a portion of the meeting behind closed doors. That action prompted a complaint from the local media, and pursuant thereto, this request for a clarification of the status of the group. I enclose herewith a copy of the complaint (with attachments) and copies of newspaper articles dealing with the controversy in question.

DISCUSSION

Questions regarding a group of judges or other public officials meeting to discuss public issues have been addressed before and the differences in circumstances has resulted in a variance of responses.

In Attorney General opinion DM-395 a question arose when the Harris County Committee of District and Statutory Judges met to participate in the management of the Harris County Community Supervision and Corrections Department. The question was narrowed to the issue of whether the committee in question was a "governmental body" as that term is defined in the Open Meetings Act.

Relying on the definition of a "special district" as set out by the Austin court of appeals in Sierra Club v. Austin Transportation Study Policy Advisory Committee, 746 S. W. 2D 298 (Tx App. – Austin 1988), the Attorney General opined that the Community Supervision and Corrections Department would come within the definition of "Special District" and that the judges supervising the CSCD would be a "governing body" of such special district and therefore would be covered by the requirements of the open meetings act. The summary of the determination however is limited as follows, "The meetings of judges to perform statutory functions with respect to the management of a Community

Supervisions and Corrections Department are subject to the Open Meetings Act, chapter 551, Government Code.” (emphasis mine).

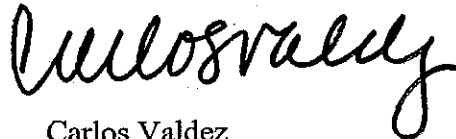
When the Attorney General’s Office considered whether the same group of judges performing a completely different statutory function was required to comply with the Open Meetings Act, the response was completely different. The question arose when the district judges of Harris County met to select a county auditor. The issue posed was whether that meeting should be governed by the Open Meeting law of the state.

The Attorney General’s Office in opinion no. JM-740 determined that a meeting of the district judges for the purpose of selecting a county auditor (a statutory function) was not a meeting of a “governmental body” and therefore did not come within the scope of the Open Meetings Act. It would seem to follow that whether a group of judges is required to comply with the Open Meetings Act would depend on the type of statutory function being performed.

A more analogous situation to the one we are concerned about in this request was addressed in Attorney General Opinion No. MW-28. The meeting analyzed in that opinion involved several public officials getting together to discuss the consolidation of taxing authorities. The decision in that situation was that a meeting of various public officials is not within the scope of the Texas Open Meetings Act where there is not a quorum of the city council or commissioners court, where there is no intent to circumvent the provisions of the Act by meeting in numbers less than a quorum, and where the group does not have rulemaking or quasi-judicial power. So, in essence, when a group of public officials get together for a formal meeting to discuss public business, it does not have to comply with open meeting requirements when the group meets the three prong test set out in the opinion. The meeting discussed in Opinion No. MW-28 is closer to the situation that is the subject of this request.

The different opinions create a confusing area of the law that needs to be addressed and clarified. Your response to the question posed will hopefully clarify, once and for all, the issue of whether or not the Open Meetings Act applies to the meeting in question.

Respectfully submitted,



Carlos Valdez

CV/et

Attachments: newspapers articles and complaint

Copy: The Honorable Thomas Greenwell

Mr. Jorge Rangel