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OPINION COMMITTEE



ROCKWALL COUNTY
CRIMINAL DISTRICT ATTORNEY

November 6, 2008

Office of the Attorney General
Box 12548
Austin, Texas 78711

FILE # ML-45905-08
I.D. # 45905

RQ-0763-GA

Re: Opinion request – City of Rockwall Charter provision

Dear Sir or Madam;

The City Council of the City of Rockwall (Rockwall County) has appointed a Charter Review Commission to examine and make recommendations as to amendments to the Home Rule Charter of the City of Rockwall (the "Charter") attached hereto. The commission is currently meeting to fulfill their task in order to present amendments to the voters at the May 2009 election. A question has arisen regarding a section of the Charter for which the city attorney has contacted our office to seek your opinion. While we understand that the Texas Attorney General does not generally review city charter provisions, the Rockwall County Criminal District Attorney's Office believes that an opinion from your office is proper in this instance because the charter provision at issue "raises a question of . . . state law." See Tex. Att'y Gen. Op. No. GA-0226. Specifically, the state law question at issue involves the applicability of the Texas Open Meetings Act. Therefore, we are seeking your opinion on behalf of the City of Rockwall on this issue.

Section 3.08 of the Charter states in part as follows " Special meetings of the City Council shall be held at the call of the Mayor or *a majority of the Council members* (emphasis added) upon provision of public notice in accordance with state law." The central question here is does the aforesaid section violate the Open Meetings Act (Chapter 551 Tex. Govt. Code) either on its face or as may be applied? Specifically, can a majority of the council members call, without deliberating at a publically noticed meeting, for a special meeting of the city council without violating the Open Meetings Act?

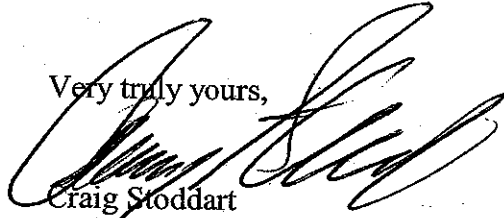
We are aware that the Act has been held relevant to certain situations where members of a governmental body act but are not in each other's presence. Examples would be emails, telephone communications, or written correspondence by a quorum of members, even if the quorum is not physically present and discussion does not take place at the same time.(see LO-95-055) Here, the Rockwall City Council consists of a Mayor and six Council members, for which four members constitute a quorum or majority.

I would direct your attention to Opinion No.GA-326, where your office adopted the "walking quorum" term. The term appears to indicate that if you had the number three as a quorum and that if A contacted B, then B deliberates with C etc. a quorum could be formed. The city attorney has informed me that in that regard the above Charter section almost contemplates or at least envisions that such walking quorum would have to be formed to call a meeting, hence a violation of the Act.

Further, in Opinion No. DM - 95, the Attorney General's office stated "if a quorum of a governmental body agrees on a joint statement on a matter of such business or policy, the deliberation by which that agreement is reached is subject to the requirements of the Act and those requirements are not necessarily avoided by avoiding the physical gathering of a quorum in one place at one time." (citing Hitt v. Mabry, 687 S. W. 2d 791 (Tex. App. - San Antonio 1985, no writ) Also see Opinion No.JC-307.

I thank you in advance for giving your consideration to our request.

Very truly yours,



Craig Stoddart
Acting Criminal District Attorney
Rockwall County, Texas