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OPINION COMMITTEE

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STATE OF TEXAS
HOUSE OF REPRESENTATIVES
DISTRICT 103

FILE # ML-48274-17
I.D. # 48274

RQ-0203-KP

December 14, 2017

The Honorable Ken Paxton
Texas Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RE: REQUEST FOR OPINION

General Paxton:

Pursuant to 402.042(b)(7) of the Texas Government Code, I am writing to request an opinion regarding whether Open Meetings Act violations recently occurred at the Railroad Commission and whether there is a limitation on the authority of one Railroad Commissioner to act unilaterally to terminate the agency's Executive Director or other employees.

Specifically I am requesting an opinion on the following questions:

1. Under Texas Law governing the conduct of state agencies and official action, can a Railroad Commissioner unilaterally terminate the Executive Director without consultation with the other two commissioners in an appropriate setting?
2. Under the Texas Open Meetings Act, can a Railroad Commissioner unilaterally terminate the Executive Director without taking such action at a properly posted open meeting of the Railroad Commission?
3. Under Texas and Federal Employment Law, does giving an employee the "choice" of resigning or being fired constitute termination, and if so, does that constitute official agency action?
4. Can the Chairman of the Railroad Commission unilaterally appoint an acting Executive Director without consultation in an appropriate setting with the other two commissioners?
5. Does non-verbal, substantive written communication attempted by one Commissioner at an open meeting on the dias constitute a violation of the Texas Open Meetings Act?

For purposes of this request, please assume that the Railroad Commission has not delegated any special authority to one commissioner related to the management of the agency by rule or policy as evidenced by the fact that the entire commission voted to hire the Executive Director.

I am submitting a brief below.

Factual Background

On the afternoon of Monday, September 18, 2017 Railroad Commission Chairman Christi Craddick conducted a meeting with then Executive Director Kimberly Corley and two attorneys from the General Counsel's Division in her office. That interaction was described by a reporter in the following way:

Kim Corley, who has been executive director of the Texas Railroad Commission since last year, said she was abruptly summoned Monday to commission Chairwoman Christi Craddick's office. Craddick, accompanied by two of the commission's lawyers, told her she could resign or the agency would begin the process of firing her, Corley said in an interview.

"She said, 'We're just moving in a different direction,'" Corley said.¹

When questioned at the commission's open meeting on September 19th, Chairman Craddick stated that Ms. Corley was given "a choice,"² that "she made a choice,"³ presumably to resign or be terminated. However, Chairman Craddick had previously stated she understood Ms. Corley was taking a personal day.

My understanding is that Railroad Commission practice is to have representatives from the General Counsel's office present in meetings where an employment termination is to occur. Chairman Craddick's September 18th meeting with Ms. Corley included two members of the General Counsel's office. All three Railroad Commissioners voted to hire the former Executive Director. The Commission has not delegated to the Chair authority to fire the Executive Director. Given these facts, does the full Commission have to vote to terminate the Executive Director under the administrative laws of the State of Texas which govern the Railroad Commission?

Section 551.074(b) gives employees whose employment status is to be discussed the right to have that discussion take place in an open meeting. Was not giving Ms. Corley "the choice" to resign or have her employment terminated actually a termination of her employment and a violation of her right to request a public discussion regarding her employment? I understand Ms. Corley's cell phone, computer and other commission property and building access were taken and computer access cut off after her meeting with Chairman Craddick. These facts make it is hard to imagine she could have availed herself of the opportunity to request the type of open meeting discussion envisioned under the provisions of 551.074(b).

If any one Railroad Commissioner can call any employee into their office at any time and give them a "choice" of "resign or you'll be fired," this deficiency must be addressed. The hard working staff

¹ "Railroad Commission chief's ouster raises open meetings question", Mike Lee, E&E News reporter, Published: Wednesday, September 20, 2017

² <https://www.texastribune.org/2017/09/19/railroad-commissioner-chair-isnt-dictatorship/>. [the relevant portion of the video of the commission's open meeting where this matter was discussed is included in this link] See *Commission Open Meeting Video on Texas Tribune link at 3:08* "She made a, was given a choice, she has made a choice."

³ *Id* at 3:45

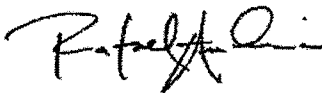
of this agency deserves clarity regarding how a single commissioner could impact their employment. In the employment law context, is telling an employee to "resign or your fired" effective termination? If so, would the action Chairman Craddick has confirmed she took not require the posting of an open meeting giving the employee an opportunity to request public discussion related to their performance and employment?

Commissioner Sitton's office has also confirmed with multiple Railroad Commission division directors that they received calls from Chairman Craddick following her meeting with Ms. Corley in which Chairman Craddick informed them Ms. Corley had resigned and that one of the agency's division directors would be the Acting Executive Director. Given it takes a vote of the three members of the Railroad Commission to hire an Executive Director, and no special authority has been reserved to the Chairman, would it not also take a vote of all the Commissioners to name an Acting Executive Director despite what Chairman Craddick told division directors on Monday, September 18th?

The purpose of this request is not to disparage anyone or cast blame. My purpose is to understand the appropriate process and procedure for handling employee related matters going forward. My strong belief is all Commissioners should be involved in these types of decisions in a properly posted and public, transparent setting. I am anxious to know if mistakes were made so the Commission does not make them again in the future.

If there are any questions related to this request, please do not hesitate to contact my General Counsel, Abel Mulugheta, at 214-943-6081 or via email at abel.mulugheta@house.texas.gov.

Sincerely,



Rafael Anchia