



The Attorney General of Texas

August 28, 1978

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Honorable R. A. Ramon
County Judge
P. O. Box 431
Brownsville, Texas 78520

Open Records Decision No. 204

Re: Whether files of county judge containing congratulatory, birthday, and sympathy letters to constituents are public under Open Records Act.

Dear Judge Ramon:

You have received a request for records which relate to the mailing under your signature of obituary, congratulatory, and birthday letters, and any records of reimbursement by you to the county for postage, salary, or both in connection with the preparation and mailing of private, personal, or political correspondence. You contend that information held by you is excepted from the Act because you are a member of the judiciary and thus excluded from the Act.

The Open Records Act, article 6252-17a, makes "all information collected, assembled or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business" public unless it comes within a specific exception. Sec. 3(a). Section 2(1) of the Act defines governmental body in pertinent part as follows:

(1) "Governmental body" means:

...

(B) the commissioners court of each county . . .

(F) the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds . . .

(G) the Judiciary is not included within this definition.

The county judge is judge of the county court, and also is presiding officer of the commissioners court. Tex. Const. art. 5, §§ 15, 16, 17, 18. The dual nature of the office has been remarked upon as follows:

[T]he county judge is not a judicial officer only. When holding sessions of his court, his powers are, as a rule, purely judicial; but in addition to his duties as a judge, there are various executive and ministerial functions conferred upon him by the constitution and laws.

Clark v. Finley, 54 S.W. 343, 347 (Tex. 1899). See Nalle v. City of Austin, 104 S.W. 1050, 1053 (Tex. 1907). In the absence of constitutional or statutory authority, a county judge has no power to conduct judicial business except when he is sitting as a court. Citizens State Bank of Frost v. Miller, 115 S.W.2d 1183, 1184 (Tex. Civ. App. — Waco 1938, no writ). This principle provides a useful dividing line between the judge's judicial functions and his other duties.

The commissioners court is expressly included in the definition of governmental body, under section 2(1)(B), and the county judge is a part of the commissioners court. Akers v. Remington, 115 S.W.2d 714, 720 (Tex. Civ. App. — Fort Worth 1938, writ dismissed). See Attorney General Opinion H-115 (1973). Section 2(1)(F) makes every part of an organization, institution or agency supported by public funds a governmental body and subject to the Act. Accordingly, we believe each component of the commissioners court, including the county judge, is subject to the Act.

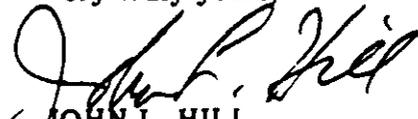
We do not believe that there is an irreconcilable conflict within the definition of "governmental body" as to its application to the county judge as a part of the commissioners court, and its exclusion of the judiciary from the Act. We believe that information held by the county judge is subject to the Open Records Act except to the extent it pertains to cases and proceedings before the county court. This construction of the Act is consistent with both the requirement that it be liberally construed in favor of granting any request for information and the exclusion of the judiciary from the Act. Of course, most of the records maintained by the county court are public under other law, both statutory, V.T.C.S. article 1945, and common law, Palacios v. Corbett, 172 S.W. 777 (Tex. Civ. App. — San Antonio 1915, writ refused). See Nixon v. Warner Communications, 98 S. Ct. 1306 (1978) (recognizing general common-law right to inspect and copy public records including judicial records and documents); Open Records Decision No. 25 (1974).

In connection with this request and in response to our request for representative samples of the type of information requested, you have submitted a number of file cards on individuals and families with notes concerning contacts or communications with such persons. With one exception, which is outside the scope of the request, the entries do not appear to relate to judicial business. You have not claimed that any specific exception in section 3 is applicable to the information requested. Several of the entries concern intimate family matters but these are not within the scope of the information requested. See Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 678-681, 683-685 (Tex. 1976) (information within constitutional or common-law right of privacy excepted from disclosure under Act).

We do not believe that the information requested, i.e., the fact of mailing obituary, congratulatory, and birthday letters, is within either the constitutional or common law right of privacy, but we note that this information may have to be extracted from certain cards in order to protect private information from improper disclosure. See id. at 687.

It is our decision that information held by the county judge is subject to the Open Records Act except to the extent it pertains to cases and proceedings before the county court, and that the particular information requested here is public.

Very truly yours,

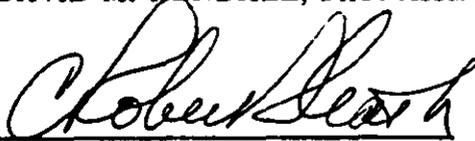


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APPROVED:



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Opinion Committee

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