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Gentlemen:

The City of Wichita Falls and the Runge Independent School District have received requests for the notes taken by the city secretary and the school board secretary of meetings of their respective governmental bodies. The city and the school district have requested the decision of this office pursuant to section 7 of article 6252-17a, V.T.C.S., the Texas Open Records Act, as to when the notes or minutes of a meeting of a governmental body are subject to required disclosure under the Act.

Both of these requests pose two issues: (1) Are a secretary's shorthand or longhand handwritten notes which are intended to be transcribed into typewritten notes "public information" subject to inspection under the Open Records Act; and (2) Are the typewritten minutes of a public meeting subject to required public inspection prior to their approval and adoption as the official minutes by the governmental body?

We will deal with the latter question first. It has been held that under a statute requiring that a petition to review action of a board of adjustment must be presented within 10 days after filing of the decision in the office of the board, that the decision was filed when longhand minutes were typed into the board's minute book, whether or not the minutes were read and approved by the board and signed by the chairman. Hall v. Board of Adjustment of City of McAllen, 239 S.W.2d 647 (Tex. Civ. App. — San Antonio 1951, no writ). Since under this case the typing of minutes into a minute book is a legally significant act which begins the running of time limits, we believe that minutes are public records when entered, and that

Open Records Decision No. 225

Re: Are the handwritten notes of meeting made by secretary of governmental body public under Open Records Act? Are typewritten minutes public prior to approval by governmental body?

public access may not be delayed until formal approval is obtained. See Conover v. Board of Education of Nebo School District, 267 P.2d 768 (Utah 1954).

The next issue is whether handwritten notes taken by a secretary, either in shorthand or longhand, which are intended to be transcribed into typewritten notes are public. This office has said that minutes are the recordation of the transaction of official business, and are the very sort of materials that were intended to be made public by the Open Records Act. Open Records Decision Nos. 221 (1979); 91 (1975); 60 (1974). It has been held that a tape recording of an open meeting made as an aid to the preparation of accurate minutes was information assembled "in connection with the transaction of official business" and was public information subject to disclosure under the Open Records Act. Open Records Decision No. 32 (1974).

The proper performance of duties by a secretary of a governmental body is of crucial importance to the conduct of business by the body. The governing authorities of representative bodies such as cities and school districts can act only in meetings duly assembled and conducted, and only through properly recorded minutes of their operations. Crabb v. Uvalde Paving Co., 23 S.W.2d 300, 302 (Tex. Comm'n App. 1930, holding approved); Stirman v. City of Tyler, 443 S.W.2d 354, 358 (Tex. Civ. App. — Tyler 1969, writ ref'd n.r.e.); City of Floydada v. Gilliam, 111 S.W.2d 761 (Tex. Civ. App. — Amarillo 1937, no writ); Board of School Trustees of Lubbock County v. Woodrow Independent School District, 90 S.W.2d 333 (Tex. Civ. App. — Amarillo 1935, no writ). See Toyah Independent School District v. Pecos-Barstow Independent School District, 466 S.W.2d 377, 380 (Tex. Civ. App. — San Antonio 1971, no writ); 78 C.J.S., Schools and School Districts § 125, p. 915. The minutes and records are the best evidence of the official acts of a governmental body, and are usually the only proper evidence of it. District Trustees of Campbellton Consolidated Common School District No. 16 v. Pleasanton Independent School District, 362 S.W.2d 122, 126 (Tex. Civ. App. — San Antonio 1962, writ ref'd n.r.e.). Incident to the exercise of its governmental powers, a governing body has the power and duty to make its official records truly speak the action of the body. State ex rel. Brauer v. City of Del Rio, 92 S.W.2d 287 (Tex. Civ. App. — Eastland 1936, no writ). The secretary or clerk of a governing body such as a city or school district is a ministerial officer with the power and the duty to record the proceedings accurately. Board of School Trustees of Lubbock County v. Woodrow Independent School District, *supra* at 335; Crabb v. Uvalde Paving Co., *supra*, at 302; City of Electra v. American La France & Foamite Industries, Inc., 133 S.W.2d 223, 225-26 (Tex. Civ. App. — Fort Worth 1939, writ dism'd jdgmt. cor.). The performance of a ministerial duty by an officer such as a city secretary may be compelled by mandamus. Vettors v. State ex rel. Murray, 255 S.W.2d 588 (Tex. Civ. App. — San Antonio 1953, no writ). Thus, it would appear that the city secretary or school board secretary could be compelled by mandamus to perform the ministerial duty of transcribing and properly recording notes taken at a meeting.

Section 3(a) of the Open Records Act provides:

All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with

the transaction of official business is public information . . . [unless within a specified exception].

We believe that the notes made by a secretary of a governmental body made in the performance of his or her official duties to record the minutes is within this provision. Since the secretary is under a duty to record the proceeding of the body in minutes, we believe that notes of this type are distinguishable from the personal notes of the type which have been held to be outside the scope of the Act. See Open Records Decision Nos. 145 (1976); 116, 77 (1975). See also Porter County Chapter of Izaak Walton League of America, Inc. v. United States Atomic Energy Commission, 380 F. Supp. 630 (N.D. Ind. 1974) (uncirculated handwritten personal notes of staff members not "agency records" within federal Freedom of Information Act).

It is suggested that the handwritten notes are excepted from disclosure under the section 3(a)(11) exception which applies to intra-agency memoranda. This exception is not applicable. It only extends to information which constitutes advice and opinion on policy matters and is designed to encourage open and frank discussion between subordinate and chief with regard to administrative action. It does not extend to purely factual matters. Attorney General Opinion H-436 (1974). A secretary's notes of minutes do not contain advice or opinion, but only reflect what in fact occurred. Section 3(a)(11) is not applicable.

We recognize that a secretary's handwritten notes are only a part of the process by which the official minutes of a governmental body are recorded. Ordinarily, such notes are prepared with a view toward transcription into a more formal form. The Open Records Act provides a means by which a governmental officer or employee may carry out his or her duties and accomplish the public's business and still accommodate the public's right of access to information about that business. Section 4 of the Act provides that public information shall be promptly produced for inspection, but also provides:

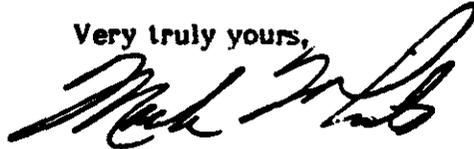
. . . If the information is in active use . . . and, therefore, not available at the time a person asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within a reasonable time when the record will be available for the exercise of the right given by this Act. . . .

This section has been interpreted to require prompt disclosure of information unless it is in "immediate active use." See Open Records Decision No. 121 (1976). For example, if the secretary has transcribed shorthand notes into longhand to be typed, and the typist is in the process of typing them, then this information would be in immediate active use and a specific time when the material may be inspected should be scheduled in accordance with section 4 of the Act. On the other hand, if there is no prospect that they will be immediately typed or further processed, then we believe that the information is public and should be disclosed in that form. Of course, the secretary's prompt performance of his or her duties in preparing minutes in final form will make it unnecessary for information about the meeting to be disclosed in a form other than the typed minutes intended to be placed in the minute book.

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It is our decision that the minutes are public in whatever form they exist.

Very truly yours,



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