



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 8, 1988

Honorable Bill Haley
Chairman
Committee on Public Education
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78769

LO-88-81

Dear Mr. Haley:

This is to acknowledge the receipt of your letter of June 24, 1988, requesting information on the Open Meetings Act, article 6252-17, V.T.C.S., as it pertains to school district trustees. Your letter has been assigned ID# 3898. This decision is LO-88-81.

You ask several questions which all relate to whether section 2(g) of the act allows school board trustees to be "disciplined" in executive session. Section 2(g) of the act permits closed meetings "in cases involving the appointment, . . . discipline, or dismissal of a public officer or employee." The purpose of the section is to avoid "possible unjustified harm to the reputation of the officer or employee under consideration." Attorney General Opinion H-1045 (1977). As will be shown, we need not address whether a trustee is a public officer within the meaning of section 2(g).

In specific, you ask:

Is the Open Meetings statute violated by an executive session wherein a few trustees are advised by the majority of trustees to refrain from bringing up volatile issues in open meeting unless they are sure they have sufficient votes to pass the issues in question. (Emphasis added.)

This question suggests that the board may be requiring that trustees make final decisions during executive sessions in contravention of the act.

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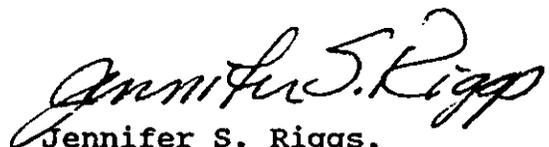
Section 2(1) of the act prohibits governmental bodies from taking final actions in executive sessions. See Cox Enterprises, Inc. v. Board of Trustees of the Austin Independent School District, 706 S.W.2d 956, 958 (Tex.1986); See also Attorney General Opinion H-1163 (1978) (prohibiting secret ballots). Section 4 provides penalties for holding or participating in improperly closed meetings or for participating in secret deliberations in contravention of the act. Board members are permitted to notify each other of items to be discussed. For example, in Attorney General Opinion MW-32 (1979), the attorney general ruled that the act does not prohibit a board member from notifying other members of a request to place an item on the agenda. On the other hand, deliberately attempting to circumvent public discussion of an item does violate the act. For example, Attorney General Opinion JM-645 (1987) indicates that an attempt to avoid public discussion by having a quorum simply sign an order which in fact is a decision violates the act.

In summary, an executive session may be held under section 2(g) of the act to discuss legitimate disciplinary matters regarding public officers and employees. It may not, however, be called to circumvent public discussion of an item by using the session to determine if a majority exists to pass an item; thus, in essence, voting on it.

The attorney general's role under the Open Meetings Act is limited to deciding questions of law; therefore, we cannot determine if the particular situation you raise constituted a violation of the act. See Attorney General Opinion MW-390 (1981). See e.g., Attorney General Opinion MW-28 (1979).

If you have any questions concerning this letter, please refer to LO-88-81.

Yours very truly,



Jennifer S. Riggs.
Chief, Open Government Section
of the Opinion Committee

JSR/BLS/bc