



**THE ATTORNEY GENERAL
OF TEXAS**

January 9, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. John Paul Batiste
Executive Director
Texas Commission on the Arts
P. O. Box 13406
Capitol Station
Austin, Texas 78711-3406

LO-89-1

Dear Mr. Batiste:

You ask about the application of the Open Meetings Act, article 6252-17, V.T.C.S., to a particular set of facts. Specifically, you ask whether meetings of your "Peer Advisory Review Panel" fall within the ambit of the act. We conclude that such meetings do fall within the act.

The Texas Commission on the Arts is governed by chapter 444 of the Government Code (formerly codified at article 6144g, V.T.C.S.) and is composed of 18 members appointed by the governor with the advice and consent of the senate. Section 444.024 of the code, which governs grants, provides:

(a) An applicant for a grant of money from the commission shall specify in the grant application a minimum and maximum amount of money requested.

(b) Before making a grant of money, the commission shall submit the grant application to a panel of commission consultants for its recommendations. The panel shall include in its recommendations its determination of the reasonableness of the proposed amounts of funding.

(c) Grants of money shall be made without regard to the race, creed, sex, religion, or national origin of the applicant. (Emphasis added.)

We assume, although you do not expressly indicate, that the "Peer Advisory Review Panel" is the "panel of commission consultants" referred to in subsection (b). See also Gov't Code § 444.023 (empowering the commission to form committees from its membership and to prescribe their duties.

Mr. John Paul Batiste
January 9, 1989
Page 2

You inform us that you employ the following procedures in the evaluation of grant applications:

(1) All applications for grant requests are first reviewed by the T.C.A. [Texas Commission on the Arts] staff. Criteria for the staff evaluation is based on the performance and funding history of the applicant as well as the evaluation of any previously approved projects and submitted support materials.

(2) The applications are then submitted to the Peer Advisory Review Panels who evaluate with a ranking system (numerical vote) and written panel comments.

(3) The staff again reviews the applications for compatibility to the State Arts Plan, the requested dollar amount in relationship to the dollars available, administrative capability, reports from site and field visits and an analysis of the Peer Advisory Panel rankings and evaluations. The staff evaluation is then presented to the Assistance Review Committee for consideration.

(4) The Assistance Review Committee composed of Commissioners, in an open meeting, reviews all applications submitted for funding. They develop a recommendation on the applications by a vote of the committee. At this point in the process applicants are given, through the public hearing session of the meeting, an opportunity to speak to, or appeal to the committee concerning the ranking or evaluation of their request. ARC [Assistance Review Committee] recommendations, staff recommendations and Peer Panel recommendations are then submitted to the full commission for review and a final decision. Again at this Commission meeting, during the public hearing session an applicant may speak or make an appeal concerning their ranking or evaluation prior to the Commission making the final decision on grant awards.

Past decisions of this office have held that merely advisory committees of governing bodies are not subject to the Open Meetings Act in an instance in which the committee

Mr. John Paul Batiste
January 9, 1989
Page 3

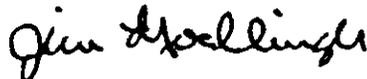
comprises less than a quorum and exercises only advisory authority. See, e.g., Attorney General Opinions JM-794 (1987); JM-596 (1986); MW-506 (1982); MW-177 (1980); H-1281 (1978); H-554 (1975); H-464 (1974). Under these past decisions, the Peer Advisory Review Panel as you describe it possesses only advisory powers and would not fall under the act. However, a specific statute other than the Open Meetings Act may require such an entity to comply with the Open Meetings Act or may set out its own procedures and requirements for open meetings. See, e.g., Attorney General Opinions JM-596 (1986); see also Attorney General Opinion H-816 (1976). In this instance, there is such a statute.

Subsection 444.002(b) of the Government Code provides in pertinent part:

The commission and its committees are subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes). (Emphasis added.)

A statute will not be construed in such a way as to impute to the legislature the intent of doing an unreasonable thing, if any reasonable construction can be adopted. State Highway Dep't v. Gorham, 162 S.W.2d 934 (Tex. 1942); Anderson v. Penix, 161 S.W.2d 455 (Tex. 1942). An examination of the legislative history of Senate Bill No. 894, which recodified article 6144g, V.T.C.S. in the Government Code, does not reveal the intention of the legislature. Bill Analysis, S.B. 894, 70th Leg. (1987). The commission itself would have fallen within the provisions of the Open Meetings Act even without the inclusion of section 444.002. The legislature must have intended something by its inclusion of section 444.002. We can only assume that the legislature intended that both the commission and its committees were intended to be brought within the ambit of the Open Meetings Act. Accordingly, we conclude that the Peer Advisory Review Panel meetings about which you ask are subject to the Open Meetings Act.

Very truly yours,



Jim Moellinger
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk
Chief, Letter Opinion Section

JRM/SW/bc
5259