



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 23, 1993

Honorable Charles C. Bailey
District Attorney
76th Judicial District of Texas
P.O. Box 249
Mount Pleasant, Texas 75456-0249

Letter Opinion No. 93-105

Re: Whether a commissioners court may consider in executive session questions about the use of county-owned vehicles (ID# 20150)

Dear Mr. Bailey:

On behalf of the Camp Commissioners Court ("the court"), you ask two questions concerning the authority of the court to meet in executive session pursuant to the Open Meetings Act ("the act"), chapter 551 of the Government Code (formerly V.T.C.S. article 6252-17).¹ You state that at a special session the court adopted a resolution prohibiting county-provided transportation for an elected county official or employee to or from work. Approximately a month later, the court met again. The meeting notice stated that as authorized by section 551.074 "and other applicable sections" of the act, the court may go into session to discuss "county policy and possible adoption of guidelines and policy as . . . relate[d] to the use and operation of county owned motor vehicles with emphasis on the motor vehicles being allocated to and used by the sheriff's office."

A member of the public challenged the court's authority to convene in executive session, and asserted that because the court would be discussing policy issues concerning the use of county-owned vehicles, the authority cited was inapplicable. In response, the court noted that the executive session would be convened based upon section 551.076 of the act which permits a governing board to meet in executive session to discuss the "deployment, or specific occasions for implementation, of security personnel or devices." While in executive session, the court voted to rescind the prior resolution as it applied to the sheriff's department. Following the meeting, a local paper requested the tape recording that was made of the executive session.² The request was denied.

You now ask whether the discussion of personal use of county-owned vehicles by the sheriff's department personnel constitutes "the deployment, or specific occasions for

¹V.T.C.S. article 6252-17 was repealed by the 73rd Legislature. Acts 1993, 73d Leg., ch. 268, § 46. The Open Meetings Act is now codified in the Government Code at chapter 551. *Id.* § 1. This codification of the Open Meetings Act is a nonsubstantive revision. *Id.* § 47.

²You state that a tape recording was made in lieu of a certified agenda.

implementation, of security personnel or devices" for purposes of section 551.076 of the act. We shall begin our analysis with an overview of the applicable notice provisions of the act.

The Open Meetings Act requires every regular, special or called meeting of a governmental body to be open to the public, with certain narrowly drawn exceptions which are not extended to any "final action, decision, or vote." *Cox Enters., Inc. v. Board of Trustees*, 706 S.W.2d 956, 958 (Tex. 1986); Gov't Code, §§ 551.101 - .102; *see also* §§ 551.001, 551.071 - .073, 551.076 - .078, 551.080, 551.082 - .083. Furthermore, the act requires advance notice for each meeting, and provides for civil and criminal enforcement of this requirement. Gov't Code, §§ 551.041 - .042, 551.143 - .144. Section 551.041 provides in part:

A governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body.

The act defines "meeting" as a deliberation between a quorum of a governmental body and another person, during which public business or public policy over which the body is responsible is discussed or considered, or formal action is taken. Gov't Code § 551.001(4); *see also id.* § 551.143. Accordingly, we conclude that an executive session is defined as a meeting pursuant to the act and is subject to the same notice requirements. *Cox*, 706 S.W.2d at 958; *Port v. Morgan*, 622 S.W.2d 470 (Tex. App.--Tyler 1981, writ ref'd n.r.e.).

Courts of this state have considered the notice required by section 551.041, however, none have fully addressed the extent of that notice. *Cox*, 706 S.W.2d at 958; *see Texas Turnpike Auth. v. City of Fort Worth*, 554 S.W.2d 675 (Tex. 1977); *Lower Colorado River Auth. v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975). In *Texas Turnpike Authority* as well as in *Lower Colorado River Authority*, the Texas Supreme Court held that notice would be in substantial compliance with the act if it alerted the reader to the topic for consideration; general notice in certain cases is substantial compliance even though the notice is not as specific as it could be. *Texas Turnpike Auth.*, 554 S.W.2d at 676; *Lower Colorado River Auth.*, 523 S.W.2d at 646. Thus, for a governmental body to hold an executive session that complies with the act, a quorum of members of the governmental body must be assembled in the meeting room, the meeting must be convened as an open meeting pursuant to proper notice, and the presiding officer must announce that a closed session will be held and substantially identify the sections of the act authorizing the closed session. *See Cox*, 706 S.W.2d at 958-59.

In this particular instance you state that the initial notice stated that section 551.074 and other applicable sections permitted discussion of the topic in executive session. However, section 551.074 only provides for a closed meeting or executive session where the topic of discussion addresses "the appointment, employment, . . . duties,

discipline, or dismissal of a public officer or employee." Although the court incorrectly cited section 551.074 as the initial basis for the executive session, the error does not invalidate an otherwise sufficient notice. *See Lower Texas Turnpike Auth.*, 554 S.W.2d 675. However, we caution that less than full disclosure is not substantial compliance. *Cox*, 706 S.W. at 960. In the instant case, we conclude that the notice given amounted to full disclosure in substantial compliance with the act because it alerted the public to the topic for consideration.

We now consider the scope of section 551.076 of the Open Meetings Act and its applicability to the instant case. The provision states:

This chapter does not require a governmental body to conduct an open meeting to deliberate the deployment, or specific occasions for implementation, of *security personnel* or devices.

Gov't Code § 551.076 (emphasis added). There have been no judicial decisions or attorney general opinions construing section 551.076. However, we believe that the applicability of 551.076 rests upon the definition of "security personnel" and whether law enforcement personnel of the sheriff's office are included in that definition.

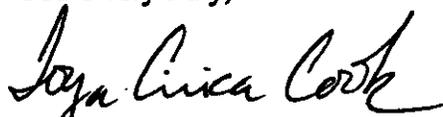
Section 551.076 was added during the third reading of the bill without discussion, thus the legislative history concerning chapter 551, and specifically section 551.076, fails to provide guidance as to the legislative intent and scope of the term "security personnel." *See H.J. of Tex.*, 63d Leg., at 242 (1973). While the definition of "security personnel" is not contained within the act, we conclude that the reasonable meaning of the term would include law enforcement personnel of the sheriff's office. *See Gov't Code* § 312.002(a) (words shall be given their ordinary meaning). However, this does not conclude our inquiry with respect to your first question. In that regard we are unable to conclude whether the court was authorized to hold an executive session to discuss the county car policy in relation to law enforcement personnel of the sheriff's office. You have not stated the nexus between section 551.076 and the subject discussed in the executive session at issue; and we are unable to determine the nexus between section 551.076 and the county-car policy. Furthermore, we do not know what was actually discussed in the executive session. Based upon the sum of these unknowns, we conclude that we are unable to provide a meaningful response to your first question; any further analysis of this issue would involve fact questions which are not amenable to the opinion process.

In response to your second inquiry, disclosure of the record of an executive session shall occur only following a court order in an action brought pursuant to the act, chapter 551 of the Government Code.

S U M M A R Y

Whether a commissioners court is authorized to hold an executive session pursuant to section 551.076 of the Open Meetings Act involves questions of fact that cannot be addressed in the opinion process. The record of an executive session shall be made available for inspection and copying only upon court order in an action brought pursuant to the act.

Yours very truly,

A handwritten signature in black ink, appearing to read "Toya Cirica Cook". The signature is written in a cursive style with a large, sweeping flourish at the end.

Toya Cirica Cook
Assistant Attorney General
Opinion Committee