Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 30, 1995

Mr. Elmer Bomer
Commissioner
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

Letter Opinion No. 95-067

Re: Whether the governing committee of the Texas Automobile Insurance Plan Association ("TAIPA") is subject to the Open Meetings Act, Gov't Code ch. 551 (ID# 27553)

Dear Commissioner Bomer:

Your predecessor in office has asked whether the governing committee of the Texas Automobile Insurance Plan Association ("TAIPA") is subject to the Open Meetings Act (the "act"), Gov't Code ch. 551. We conclude that TAIPA's governing committee is subject to the act.

The Open Meetings Act applies to a "governmental body." In order to determine whether TAIPA's governing committee is subject to the Open Meetings Act, we must determine whether TAIPA is a "governmental body" under the act.

The act defines "governmental body" in relevant part as "a board, commission, department, committee, or agency within the executive . . . branch of state government that is directed by one or more elected or appointed members." Gov't Code § 551.001(3)(A). This office has devised three prerequisites for an entity to be considered a governmental body under section 551.001(3)(A) of the act:

> (1) The body must be an entity within the executive or legislative department of the state;
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> (2) The entity must be under the control of one or more elected or appointed members;
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> . . . .
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> [(3)] The entity must have supervision or control over public business or policy.

Attorney General Opinion H-772 (1976); *see Gulf Regional Educ. Television Affiliates v. University of Houston*, 746 S.W.2d 803, 809 (Tex. App.--Houston [14th Dist.] 1988, writ

denied); Attorney General Opinion DM-284 (1994).[1] With regard to the third prerequisite, an entity which supervises but does not ultimately control public business or policy still qualifies as a "governmental body." Attorney General Opinion DM-284 (1994). However, an entity which serves a purely advisory function, with no power to supervise or control public business, is not a "governmental body" under the act. *See id.*; Attorney General Opinion H-994 (1977). We will examine the creation of TAIPA, as well as the composition and function of TAIPA's governing committee, to determine whether TAIPA's governing committee is a governmental body for purposes of section 551.001(3)(A) of the act. *See* Attorney General Opinion JM-1185 (1990).

TAIPA[2] is a nonprofit corporate body, the purpose of which is to provide a means by which insurance is assigned to certain insurers for eligible people required by the Texas Motor Vehicle Safety Responsibility Act (the "Safety Responsibility Act"), V.T.C.S. art. 6701h,[3] to show proof of financial responsibility for the future. *See* Ins. Code art. 21.81, § 4(a). To be eligible for insurance through TAIPA, a person must certify that he or she has been rejected for insurance by at least two insurers who are licensed to do business in Texas and who are actually writing automobile insurance in Texas, including insurers that are not rate regulated. *Id.* § 4(b).

TAIPA's membership includes all insurers authorized by the Texas Department of Insurance to write motor vehicle liability coverage under chapter 5 of the Insurance Code. *Id.* §§ 1(2), 2(a). Such an insurer must be a member of TAIPA as a condition of its authority to write motor vehicle liability insurance. *See id.* § 2. TAIPA must assess all members for the costs of its operation. *Id.* § 3(a). Assessments must be in proportion to an insurer's writings of motor vehicle liability insurance in this state. *Id.* The Commissioner of Insurance (the "commissioner") is authorized to institute a disciplinary action under article 1.10 of the Insurance Code against an insurer who fails to pay an assessment. *Id.*

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[1]You have not asked, and therefore we need not address, whether a particular meeting of TAIPA's governing committee is subject to the act. *See* Gov't Code § 551.001(2) (defining "deliberation"), (4) (defining "meeting"); Attorney General Opinion JM-1127 (1989).

[2]TAIPA is the successor to the Texas Automobile Insurance Plan ("TAIP"), which was established under section 35 of V.T.C.S. article 6701h. TAIP was abolished on and after the effective date of TAIPA's plan of operation, at which time TAIP transferred all of its assets and obligations to TAIPA. *See* Act of May 30, 1993, 73d Leg., R.S., ch. 685, § 14.09, 1993 Tex. Gen. Laws 2559, 2678.

[3]Section 1A(a) of V.T.C.S. article 6701h provides that with the exceptions listed in subsection (b) of that section, no motor vehicle may be operated in this state unless a policy of automobile liability insurance in at least the minimum amounts to provide evidence of financial responsibility under the Safety Responsibility Act is in effect to insure against potential losses which may arise out of the operation of that vehicle. The Motor Vehicle Safety Responsibility Act has now been codified at chapter 601 of the newly enacted Transportation Code. Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 1, 1995 Tex. Sess. Law Serv. 1025, 1703.

TAIPA is administered by a governing committee composed of fifteen members. *Id.* § 2(b). Eight of the members represent the interest of insurers and are elected by the members of TAIPA. *Id.* § 2(b)(1). Five members represent the interest of the public and are nominated by the Office of Public Insurance Counsel and selected by the commissioner. *Id.* § 2(b)(2). Two members must be licensed recording agents, as defined by TAIPA's plan of operation. *Id.* § 2(b)(3).

TAIPA's governing committee has responsibility for the administration of TAIPA through a plan of operation. *Id.* § 3(a). The governing committee may propose and amend the plan of operation, subject to the commissioner's approval. *Id.* § 3(c). The commissioner must notify the governing committee in writing any time the commissioner believes that any part of the plan of operation is not in accordance with the purposes of the Safety Responsibility Act. *Id.* § 3(d).

The plan of operation must contain incentive programs to encourage members to write insurance on a voluntary basis and to minimize the use of the association as a means to obtain insurance. *Id.* § 3(e). The commissioner must approve these programs. *Id.* The plan of operation must also include a voluntary, competitive limited assignment distribution plan that allows members to contract directly with a servicing carrier to accept assignments to that carrier by the association. *Id.* § 3(f). The governing committee may adopt reasonable rules for the conduct of business under the contract and may establish reasonable standards of eligibility for servicing carriers. *Id.*

The commissioner determines the appropriate rates to be charged for insurance provided though TAIPA. *Id.* § 5(a). The commissioner does so after conducting a hearing at which TAIPA may appear and present information for the commissioner's consideration. *Id.* In addition, the commissioner must promulgate reasonable rules and statistical plans to be used by each member insurer in the recording and reporting of its premium, loss, and expense experience. *Id.* § 5(b).

We will first consider whether TAIPA's governing committee is "directed by one or more elected or appointed members." In *Gulf Regional*, the court considered whether the board of directors of the Gulf Regional Education Television Affiliates ("GRETA"), a group of independent school districts and private schools that provided education television programming in conjunction with the public television station of the University of Houston, was subject to the act. *See Gulf Regional*, 746 S.W.2d 803. GRETA's board of directors consisted of fourteen representatives elected by the member schools. The University did not play a role in the selection of GRETA's board of directors, either to cast a vote in the election or to appoint any of the fourteen board members. The court determined that GRETA was directed by one or more elected or appointed members.

In Attorney General Opinion DM-284 (1994), this office determined that the board of directors of the Texas Property and Casualty Insurance Guaranty Association ("TPCIGA") was subject to the act. TPCIGA's board of directors consisted of four

members appointed by the commissioner and five members appointed by TPCIGA's members with the commissioner's approval.

The selection process for TAIPA's governing committee does not mirror that of either GRETA or TPCIGA, but has elements of both. The commissioner selects five members of TAIPA's governing committee and TAIPA's members elect eight members.[4] Thus, because five members of TAIPA's governing committee are selected by the commissioner, and eight members are elected by TAIPA's members, TAIPA's governing committee is "directed by one or more elected or appointed members." *See Gulf Regional*, 746 S.W.2d 803; Attorney General Opinion DM-284 (1994).

Furthermore, because the commissioner must approve TAIPA's plan of operation and all amendments to that plan, TAIPA's governing committee is "within the executive . . . branch of the state," as an entity within and subordinate to the Department of Insurance for purposes of the definition of governmental body in section 551.001(3)(A) of the act. *See* Attorney General Opinion DM-284 (1994). We must consider whether TAIPA has supervision or control over public business or policy or whether, on the other hand, TAIPA serves a purely advisory function, with no power to supervise or control public business.

The primary function of TAIPA is to provide a method of equitably assigning insurance among Texas insurance companies for high risk insureds who have been unable to obtain in the regular manner automobile liability insurance as required by the Safety Responsibility Act. Thus, TAIPA is a vehicle for accomplishing a purpose of the Safety Responsibility Act, that *all* motorists be able to respond in damages for losses resulting from the operation of a motor vehicle. We believe that providing a method of insuring motor vehicle operators who state law requires to be insured, but who cannot otherwise obtain insurance, is public business.

Moreover, the commissioner's involvement in the administration of TAIPA emphasizes the fact that TAIPA is concerned with public business. *Cf.* Attorney General Opinion DM-284 (1994) (finding commissioner's enforcement role in collection of assessments supports conclusion that board of directors of Texas Property and Casualty Insurance Guaranty Association is governmental body subject to act). The commissioner may bring a disciplinary action under article 1.10 of the Insurance Code if a member insurer fails to pay an assessment. The commissioner must approve the plan of operation and any amendments to that plan. In addition, the commissioner has authority to prohibit an insurer from acting as a servicing carrier and to notify the governing committee in writing if the plan of operation is not in accordance with the purposes of the Safety Responsibility Act.

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[4]Article 21.81 of the Insurance Code does not provide a method of selection for the two governing committee members who must be licensed recording agents. *See* Ins. Code. art. 21.81, § 2(b)(3).

Furthermore, we believe the governing committee exercises control and supervisory authority over, rather than merely advises the commission about, TAIPA. The governing committee has "responsibility for the administration of the association through the plan of operation" and must collect and bring actions for assessments of members. *See* Ins. Code art. 21.81, § 3(a). The governing committee makes and amends TAIPA's plan of operation. *See id.* § 3(c). The governing committee also adopts rules for the conduct of business under the contract between the servicing agent and the insurer and establishes standards of eligibility for servicing carriers. *See id.* § 3(f).

We conclude that TAIPA's governing committee supervises and controls public business. Accordingly, it is a governmental body under section 551.001(3)(A) of the Government Code, and is, therefore, subject to the Open Meetings Act.

SUMMARY

The governing committee of the Texas Automobile Insurance Plan Association established under article 21.81 of the Insurance Code is subject to the Open Meetings Act, Gov't Code ch. 551, because it is a governmental body under section 551.001(3)(A) of the Government Code.

Yours very truly,

Kay Guajardo

Kay H. Guajardo
Assistant Attorney General
Opinion Committee