



11,405
Id RG

AMY AYERS ADAMS
DISTRICT ATTORNEY

Parker County
Weatherford, Texas 76086
(817) 599-6591

RG-6

DONALD SCHNEBLY
Assistant District Attorney

JAMES RUTLEDGE
Investigator

CHRISTOPHER A. CURTIS
Assistant District Attorney

*Parker County District Attorney
One Courthouse Square
Weatherford, Tx 76086*

January 2, 1991

Mr. Rick Gilpin, Chairman
Opinion Committee
Attorney General's Office
P. O. Box 12548
Austin, TX 78711

RECEIVED

JAN 07 91

Opinion Committee

Dear Mr. Gilpin:

A question has arisen as to whether an organization here in Parker County is subject to the Texas Open Meetings Act - the organization being the Parker County Committee On Aging (hereinafter referred to as "PCCOA").

Research reveals the following:

I. What the Act Covers.

The Texas Open Meetings Act was passed to give Texas citizens "government in the sunshine;" that is, to safeguard the public's interest in knowing the workings of its governmental bodies. Sierra Club v. Austin Transportation Study Policy Advisory Committee, 746 S.W.2d 298, 299-300 (Tex. App. -Austin 1988, writ denied). The statute prohibits governmental bodies from holding meetings which are closed to the public. Briefly, the Act is applicable if the following five prerequisites are met:

- (1) The body must be an entity within the executive or legislative department of the state;
- (2) The entity must be under the control of one or more elected or appointed members;
- (3) The meeting must involve formal action or deliberation between a quorum of members;
- (4) The discussion or action must involve public business or public policy; and
- (5) The entity must have supervision or control over that public business or policy.

Page Two
Mr. Rick Gilpin, Chairman
January 2, 1991

Gulf Regional Education Television Affiliates v. University of Houston, 746 S.W.2d 803, 808-09 (Tex. App. -Houston [14th Dist.] 1988, writ denied) citing Op. Tex. Att'y Gen. No. H-772 (1976). The Act defines a "governmental body" as "any board, commission, department, committee, or agency within the executive or legislative department of the state, which is under the direction of one or more elected or appointed members; and every Commissioners Court and city council in the state, and every deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city; and the board of trustees of every school district, and every county board of school trustees and county board of education; and the governing board of every special district heretofore or hereafter created by law." Art. 6252-17, § 1(c).

II. Nature of PCCOA

PCCOA was established as a non-profit corporation on July 21, 1975. (Copies of its Articles of Incorporation, Charter, and By-Laws are attached hereto.) Its purpose, as set forth in the by-laws, is to "serve the special needs of residents of Parker County, Texas, who are sixty (60) years of age or older by assisting them in obtaining help through existing community resources and by providing additional services and facilities to meet needs which are not being adequately served by existing resources." Services provided in Parker County include the staffing and maintenance of a Senior Center where congregate meals are served, craft and social activities occur, and medical needs - such as flu shots and blood pressure checks are met. Transportation and home-delivered meals are also provided for Parker County senior citizens. In addition, the PCCOA recently provided (on an emergency basis) home-delivered meals to approximately 45 home bound individuals in Palo Pinto County, our neighbor to the west, and has since submitted a proposal - which has been accepted - to expand services already existing in Parker County into Palo Pinto County. The activities of the PCCOA are financed by private donations from individuals, businesses and civic organizations, as well as loans and grants from state and federal governmental sources. Membership on the PCCOA is strictly voluntary, with members being selected pursuant to the by-laws.

Page Three
Mr. Rick Gilpin, Chairman
January 2, 1991

III. Does the Open Meetings Act apply?

Based upon the case law, it does not appear that the PCCOA is a "governmental body and, thus, subject to the Texas Open Meetings Act.

Clearly, the PCCOA is not a "board, commission, department, committee, or agency within the executive or legislative department of the state, which is under the direction of one or more elected or appointed members." See Gulf Regional Education Television Affiliates, supra at 809. Regarding the second rung of the definition, just as clearly, it is not a commissioners court or city council. But is it a "deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city?" Considering the phrase in its entirety (there is nothing in my research to indicate otherwise), then the PCCOA is not a "governmental body" under this part of the definition. It is certainly not a "department, agency, or political subdivision of a county or city." Its members are not selected by city or county officials, nor was the PCCOA created or does it exist for the benefit of or on behalf of any county or city government. See Op. Att'y Gen. 1984, No. JM-120 (wherein it was held that industrial development corporations are considered to be "governmental bodies" and, as such, must file notice of meetings and comply with this statute in the same manner and in the same location as the political subdivision whose approval is required and on whose behalf the corporation is created.) If we are to focus just on the phrase "deliberative body having rule-making and quasi-judicial power," then the question is a little closer, but still seems to indicate that the PCCOA is not such a body.

"Quasi-judicial" power may briefly be described as the power or duty to investigate and to draw a conclusion from such investigation. Putter v. Anderson, 601 S.W.2d 73, 76 (Tex. App. -Dallas 1980, writ ref'd. n.r.e.). As the Court in Putter, supra at 76-77, wrote:

In Reagan [v. Guardian Life Insurance Co.] 140 Tex. 105, 166 S.W.2d 909 (1942)], the Court held the Board of Insurance Commissioners to be a quasi-judicial body when it exercised the duty to investigate an applicant for a license to sell insurance and to conclude from that investigation whether the applicant was of "good character and reputation." Other authorities have held, on similar reasoning, that the State Bar Grievance Committee is a quasi-judicial body [citation omitted]; that pardon proceedings before the Governor are quasi-judicial in nature [citation

Page Four
Mr. Rick Gilpin, Chairman
January 2, 1991

omitted]; that a grand jury, before which an accusatory letter is published, is a quasi-judicial body [citation omitted]; that the Railroad Commission . . . is a quasi-judicial body [citation omitted]; and that the Pharmacy Board, before which a drug manufacturer's letter regarding a druggist's practices in dispensing the manufacturer's drug was published, is a quasi-judicial body [citation omitted].

Similarly, the Putter Court found that the Internal Affairs Division of the police department of the City of Dallas is a quasi-judicial body. Putter, supra at 77. See also Carr v. Stringer, 171 S.W.2d 920 (Tex. App. -Fort Worth 1943, writ ref'd w.o.m.).

Returning to the definition of "governmental body," clearly the third part (concerning school boards) is not applicable. Lastly, the question remains whether the PCCOA falls within the provision of "[a] governing board of every special district heretofore or hereafter created by law." In Sierra Club, supra at 301, the Court wrote:

The term "special district" has, unfortunately, not been defined in this context in any case law cited to us by the parties or found by our own search. The term is defined in Black's Law Dictionary as "[a] limited governmental structure created to bypass normal borrowing limitations, to insulate certain activities from traditional political influence, to allocate functions to entities reflecting particular expertise, to provide services in otherwise unincorporated areas, or to accomplish a primarily local benefit or improvement, e.g. parks and planning, mosquito control, sewage removal."

The Court, in Sierra Club, supra, found the Austin Transportation Study Policy Advisory Committee (ATSPAC) to be a "special district," noting, as one of its reasons, that ATSPAC is "an official body designated by the governor." In fact, the ATSPAC was a seventeen-member body composed of state, county, regional and municipal public officials. Sierra Club, supra, at 300. Such is not the case with the PCCOA. See By-laws (attached hereto), Article IV. Therefore, it would appear that the PCCOA is not a "special district."

Page Five
Mr. Rick Gilpin, Chairman
January 2, 1991

I respectfully request your opinion on whether the PCCOA is a "governmental body" and, thus, should comply, in all respects, with the Texas Open Meetings Law.

Thank you for your assistance in this matter.

Sincerely,

Amy Ayers Adams

Amy Ayers Adams
District Attorney

AAA:ms

Enclosures

