



Texas Commission on Fire Protection

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October 30, 1991

20-249 ID# 14073 me

The Honorable Dan Morales
Attorney General
State of Texas
P. O. Box 12548
Austin, TX 78711-7548

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Attn: Opinion Committee

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RE: Whether Section 2(g) of the Open Meetings Act permits discussion, in executive session, regarding persons considered for appointment to advisory committees created pursuant to §§ 419.023 and 419.072, TEX. GOV'T CODE

Dear General Morales:

Senate Bill 383 of the 72nd regular session of the Legislature created a new agency, the Texas Commission on Fire Protection (hereafter Commission). The bill consolidated the Commission on Fire Protection Personnel Standards and Education and the Fire Department Emergency Board. It also transferred supervision of the State Fire Marshal's Office and key rate municipal inspections from the State Board of Insurance to the new Commission. The bill requires in § 419.023 of the Texas Government Code that the Commission establish and appoint a fire protection personnel advisory committee to assist the Commission in matters relating to fire protection personnel and fire departments. The members serve at the will of the Commission. The committee is required to review rules relating to fire protection personnel and fire departments and recommend changes to the Commission. If the Commission does not approve a rule developed by the committee, the rule is returned to the committee for further development, along with the Commission's reasons for disapproval.

Similarly, § 419.072, TEX. GOV'T CODE requires that the Commission establish and appoint a volunteer fire fighter advisory committee to assist the Commission in matters related to volunteer fire fighters and volunteer fire departments. The volunteer fire fighter advisory committee has similar responsibility for rulemaking relating to the program under subchapter D of Chapter 419.

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As Interim Executive Director of the Texas Commission on Fire Protection, I would respectfully request your opinion as to whether Section 2(g) of the Open Meetings Act, V.T.C.S., art. 6252-17, would permit the Commission to discuss in executive session the qualifications of persons considered for appointment to the respective advisory committees created pursuant to §§ 419.023 and 419.072, TEX. GOV'T CODE.

Section 2(g) of art. 6252-17 provides:

"Nothing in this Act shall be construed to require governmental bodies to hold meetings open to the public in cases involving the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear complaints or charges against such officer or employee, unless such officer or employee requests a public hearing."

Although members of the advisory committees would probably not be employees of the Commission under Section 2(g), the members of the fire protection personnel advisory committee will be fully paid employees and instructors in fire departments employed by local governments. In addition, many of the members of the volunteer fire fighter advisory committee may also be employees of rural fire prevention districts created pursuant to Chapter 794 of the Health and Safety Code or emergency service districts created under Chapters 775 and 776 of the Health and Safety Code. We believe the members of the respective advisory committees may be considered "public officers or employees" for purposes of determining whether the Commission may meet in closed session. In Attorney General Opinion H-1045 (1977), the Attorney General stated that the primary purpose of Section 2(g) is to avoid "possible unjustified harm to the reputation of the individual officer or employee under consideration." The advisory committee members are not independent contractors as considered in Attorney General Opinion MW-129 (1980) or third party recipients of an honorary degree as considered in Attorney General Opinion H-246 (1974). Moreover, the advisory committees created in Chapter 419 are not typical of "advisory" committees inasmuch as the committees can exercise a form of veto over any proposed rule change in matters requiring their consideration.

Although members of advisory committees appointed under Chapter 419 may not receive compensation for service on the advisory committee, under § 419.008 a member is entitled to reimbursement for actual and necessary expenses incurred in

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performing services as a member of the advisory committee, subject to applicable limitations provided by the General Appropriations Act.

The provisions creating the advisory committees, the mandatory consideration and recommendation of rule changes by the committees, the provisions for reimbursement of expenses, and the primary purpose of Section 2(g) should be considered in determining that a closed session would be authorized under the circumstances.

The appointment of members to the fire protection personnel advisory committee and the volunteer fire fighter advisory committee is scheduled for consideration at the Commission's next meeting on November 25 and 26, 1991. The Commission would like to discuss the persons under consideration for appointment in executive session. Therefore, it is respectfully requested that consideration of this opinion request be expedited in order that the Commission may properly comply with the requirements of the Open Meetings Act, including notice requirements applicable to both open and closed meetings.

Sincerely,


Ernest A. Emerson
Interim Executive Director

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