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STATE PENSION REVIEW BOARD

RD-407

P.O. BOX 13498 • AUSTIN, TEXAS 78711-3498
PHONE (512) 463-1736 FAX (512)463-1882

RECEIVED

July 23, 1992

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Opinion Committee

The Honorable Dan Morales
Attorney General of Texas
Opinion Committee
Price Daniel Sr. Building

INTERAGENCY MAIL

Re: Request for Attorney General's Opinion
regarding Discussion of Employer Medical
Records at Open Meeting

Dear General Morales:

Section 1630.14 of the EEOC final regulations issued under the Americans with Disabilities Act (29 CFR 1630.14) deals with confidentiality of medical records. Subsection (c) (1) provides that:

(c) Examination of employees. A covered entity may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(1) Information obtained under paragraph (c) of this section regarding the medical condition or history of an employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

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(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials investigating compliance with this part shall be provided relevant information on request.

(2) Information obtained under paragraph (c) of this section regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with this part.

Boards of Trustees of public pension systems are, from time to time, required to rule on application for disability retirement benefits. Many such Boards have no medical committees, and treat applications for disability retirement in the same way they handle other requests for benefits. In the process of doing so, they unavoidably accumulate medical information regarding the applicant, consider that information, then render a decision in their official capacity as a governmental body.

Attorney General's opinion MW-578 (1982) held that "Unless some provision of the Open Meetings Act or the constitution specifically authorizes the commission to adjourn into executive session... it may not do so."

Section 2 (g) of Article 6252-17 provides that:

(g) 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 public officer or employee or to hear complaints or charges against such officer or employee, unless such officer or employee requests a public hearing.

Section 2 (o) of Article 6252-17 provides that:

(o) "Nothing in this Act shall be construed to require medical boards or medical committees to hold meetings open to the public in cases where individual medical and psychiatric records of an applicant for a disability benefit from a public retirement system are being considered."

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Your opinion DM-124 (1992) held that the Americans with Disabilities Act of 1990 and the rules issued thereunder created an exception to the plain language of Article 8303-2.33 V.T.C.S.

Wherefore, your opinion and advice are requested on the following:

During the time it is reviewing and deliberating on medical and psychiatric records of an individual applicant for disability retirement benefits, may the Board of Trustees of a public retirement system close a meeting under any of the following situations:

- a. The cited Federal regulations required the Board to maintain complete confidentiality of the medical records of pension system members and, because of the Supremacy clause, create an exception to Article 6252-17?
- b. The Board is acting in the nature of a medical board or committee as that term is used in Article 6252-17, Section 2(o)?
- c. The Board is making a decision involving the employment, evaluation, or duties of an applicant for disability retirement when ruling on the application?

Please rule on how a Board of Trustees of a public retirement system can comply with both the Open Meetings Act and the Federal regulation quoted above while deliberating on an application for disability retirement benefit

Respectfully submitted,



Rita Horwitz
Executive Director

RH/lb

cc: Mr. Everard Davenport