

JD-16379
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Texas Department of Insurance

333 Guadalupe Street P.O.Box 149104 Austin, Texas 78714-9104
512/463-6169 Board Fax 512/475-2025

Claire Koriath-Chair
Richard F. Reynolds-Member
Allene D. Evans-Member
Georgia D. Flint-Commissioner

June 9, 1992

RECEIVED

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Opinion Committee

RD-410

The Honorable Dan Morales
Texas Attorney General
ATTN: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request Concerning Life, Accident, Health and Hospital Service
Insurance Guaranty Association

Dear Attorney General Morales:

The Texas Department of Insurance respectfully requests an opinion from your office regarding the applicability of the Administrative Procedure and Texas Register Act ("APTRA"), TEX. REV. CIV. STAT. ANN. art. 6252-13a (Vernon Supp. 1992), and the Texas Open Meetings Act ("Open Meetings Act"), TEX. REV. CIV. STAT. ANN. art. 6252-17 (Vernon Supp. 1992) to the Life, Accident, Health, and Hospital Service Insurance Guaranty Association ("Association"). The Association was created as a nonprofit legal entity under the Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act, ("Act") TEX. INS CODE ANN. art.21.28-D (Vernon Supp. 1992).

The Association is under the immediate supervision of the Commissioner of Insurance and is subject to applicable provisions of the Insurance Code. It is governed by a nine member board of directors composed of five members representing insurance companies and four members representing the general public. When an insurance company becomes "insolvent" or "impaired," as defined in the Act, the Association is authorized to provide monies for the purpose, inter alia, of paying claims of the insurance company's policyholders or guarantee policies issued by the troubled company. The Association raises monies for these purposes by making "assessments" on "member insurers," which includes writers of all life, health, accident and hospital service and annuity policies and contracts doing business in this state. Assessments are levied and collected according to formulae stated in the Act. Once an insurance company pays an assessment, it may offset the amount of the assessment against premium taxes it owes to the state over a period of years.

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Historically, the staff of this agency's liquidation division has performed many of the administrative functions on behalf of the Association, in conjunction with the handling of receivership estates, as the administration of those estates and the administration of the Association funds and payment of policyholder claims were closely related activities. However, statutory changes to the Act now contemplate a separation of Association functions and receivership functions and a "privatization" of the receivership and claims paying processes. Therefore, this agency has begun reducing its liquidation division staff, and eventually that staff will be reduced to a very small number, with the Association necessarily assuming responsibility for its own operations.

The circumstances regarding this request are as follows. During the 1991 Second Called Legislative Session, substantial amendments were made to the Act. These changes became effective January 1, 1992 and have changed the structure of the Association and its Board. I wish to inquire as to the applicability of APTRA and the Open Meetings Act, to the Association, in particular as it relates to the conduct of its meetings.

Under Section 3 of APTRA, it is unclear whether the Association qualifies as an "agency" so as to subject the Association to the provisions of APTRA. Furthermore, under Section 1 of the Open Meetings Act, it is unclear whether the Association is a "governmental body" such that its meetings must conform to the requirements of the Open Meetings Act. Because the Association's assessment activities potentially affect public tax revenues as discussed above, it is this agency's position that the Open Meetings Act applies to the Association. This agency has endeavored recently to post notice of the Association's board of directors' meetings in accordance with the Open Meetings Act.

Based upon the foregoing, this agency respectfully requests an opinion which sets out the applicability of the provisions of APTRA and the Open Meetings Act to the meetings of the Association.

Should your opinion indicate that the Open Meetings Act applies to the Association, this agency further requests an opinion as to the length of time that the notice of Association meetings must appear under the Open Meetings Act. The Association meetings will be attended by the Commissioner or a member of the Commissioner's staff. Section 3A(h) of the Open Meetings Act indicates that notice must be posted for at least 72 hours preceding the scheduled time for the meeting, except that notice of a meeting of a state board, commission, department or officer having statewide jurisdiction must be posted for at least seven days preceding the day of the meeting. It is unclear whether the nature of the Association and its functions or the attendance by the Commissioner or the Commissioner's staff will make the Association a "commission" or other entity

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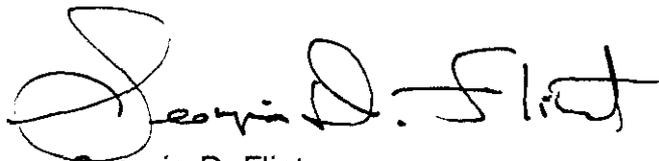
that is subject to the longer notice provisions. It is the Department's position that a seven day posting is required, if the Open Meetings Act applies since the Association has jurisdiction over insurers licensed to transact in this state, any kind of insurance for which coverage is provided under Section 3 of the Act. I respectfully request an opinion regarding the length of time the notice of Association meetings must appear.

Additionally, should your opinion indicate that the Open Meetings Act applies to the Association, I request your opinion whether the Association's board of directors may hold executive sessions to consider matters which are confidential pursuant to Section 12 of the Act.

Finally, should your opinion indicate that the Open Meetings Act applies to the Association, I request your opinion as to whether the Association's board of directors may meet by telephone conference call. Section 10(c)(3) of the Act requires the Association's plan of operations to "establish regular places and times for meetings, including telephone conference calls, of the board of directors." If the Association is subject to the Open Meetings Act, is it possible for the board of directors to meet by telephone conference call?

I extend my respects and appreciation for your early consideration of this matter. If you need further information, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Georgia D. Flint". The signature is written in a cursive, flowing style with a large initial "G".

Georgia D. Flint
Commissioner of Insurance

GDF:JWN:cm