



# Texas Department of Insurance

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IO# 16385  
MBS

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

June 9, 1992

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

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Opinion Committee

RE: Request Concerning Texas Property and Casualty 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 Texas Property and Casualty Insurance Guaranty Association ("Association"). The Association was created as a nonprofit legal entity under the Texas Property and Casualty Insurance Guaranty Association Act, ("Act") TEX. INS. CODE ANN. art. 21.28-D (Vernon Supp. 1992).

The Association is subject to examination and regulation by the Commissioner of Insurance. 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 either "insolvent" or "impaired", as defined in the Act, the Association is authorized to provide monies for the purposes, inter alia, of paying contractual obligations of the insurance company to its policyholders or guaranteeing policies issued by the troubled company. The Association raises monies for these purposes by making "assessments" on "member insurers," which include all other licensed property and casualty insurers 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.

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

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handling of receivership estates, as the administration of those estates and the administration of the Association funds and payment of policy holder 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 and the disclosure of the various documents that it may produce.

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 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 that is subject to the longer notice provisions. It is the Department's position that

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a seven day posting is required, if the Open Meetings Act applies since the Association has jurisdiction over all insurers licensed to transact the kinds of insurance specified in 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 13 of the Act.

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 stylized with a large initial "G" and a long horizontal stroke.

Georgia D. Flint  
Commissioner of Insurance

GDF:JWN:cm