



TEXAS FUNERAL SERVICE COMMISSION

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Executive Director

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Opinion Committee

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October 26, 1994

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GENERAL COUNSEL DIVISION

Mr. Dan Morales
Attorney General
P. O. Box 12548
Capitol Station
Austin, Texas 78711-2548

Attention: Mr. Richard Ybarra

Re: Request for Opinion on Open Meeting Requirements

Dear Attorney General Morales:

The Texas Funeral Service Commission requests that you provide an opinion as to whether the Commission's Complaint Review Committee is a "governmental body" (as that term is defined in Tex. Govt. Code §551.001) whose meetings are open to the public and require the giving of notice pursuant to Tex. Govt. Code §§551.002 and 551.551.041. The following background information is provided.

Tex. Rev. Civ. Stat., art. 4582b, (referred to herein as "Texas Mortuary Law") is the statute which created the Commission and delegated to it the authority to license and regulate the practice of funeral directing, embalming, and the operation of funeral establishments.

The Commission has created a "Complaint Review Committee" composed of two staff members (the Executive Director and the General Counsel of the Commission) and two commissioners who are appointed by the Chair of the Commission. One of appointed commissioners must be a licensed funeral director or embalmer and the other must be a public member of the Commission.

The Committee has two functions which have been delegated by the Commission:

1. Investigation review.

The first function of the Committee is to review the results of investigations, conducted by the Commission's staff, of complaints received from members of the public or initiated by the agency. Authority to have the Committee perform this

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function comes from Tex. Rev. Civ. Stat., art. 4582b Section 2.S., which authorizes the appointment of committees to consider matters and to make recommendations to the Commission.

The Committee's review focuses on whether sufficient evidence has been produced to indicate that there has been a violation by a licensee of Texas Mortuary Law. In performing this function, the Committee receives written and oral reports from the Commission's staff investigators and reviews various documents and statements obtained as part of the investigation.

Section 6D(d) of Tex. Rev. Civ. Stat. art. 4582b, declares that information obtained after investigating a complaint is not public information. Attorney General Letter Opinion No. 94-024 has interpreted this provision as applying to the information which was obtained through the Commission's investigation. It further opines that such information is excepted from public disclosure otherwise required by Section 552.101 of the Government Code.

Where the Committee determines that insufficient evidence exists to indicate a violation of Texas Mortuary Law, it recommends to the full Commission that the matter be closed. Any action to actually close the case is taken by the Commission, with the commissioner members of the Committee not voting, in a properly noticed open meeting.

Where the Committee concludes that sufficient evidence exists to indicate a violation, it may direct the staff to proceed by instituting an administrative proceeding to take action with respect to the license. Alternatively, the Committee may recommend to the full Commission that administrative penalties be assessed or warnings issued. Any action to assess such penalties or to issue such warnings, however, is taken by the Commission, with the commissioner members of the Committee not voting, in a properly noticed open meeting.

2. Participation in informal conferences

The second function of the Committee is to participate in informal conferences with licensees who have been given notice that their licenses are subject to revocation, suspension, or other disciplinary action for alleged violation of the Texas Mortuary Law. Tex. Rev. Civ. Stat., art. 4582b, Section 2.A.(5), authorizes commission members to participate in informal conferences, as follows:

Two commissioners may participate in any informal conference relating to a case that awaits a hearing as described in Section 6C of this Act. One of the two commissioners must be a licensed funeral director or embalmer and one must be a public member of the commission.

Such informal conferences are conducted as a means of complying with the requirement of Tex. Govt. Code §2001.054(c) that such a licensee be provided the opportunity, before institution of proceedings to revoke, suspend, annul, or withdraw the license, to show compliance with all requirements of law for the retention of the license. Additionally, the Committee and a licensee may jointly fashion a proposal for an agreed order to resolve the alleged violation. The Committee reports the results of the informal conference, including any proposal for an agreed order, to the full Commission for action in an open, properly noticed meeting. The commissioner members of the Committee do not participate in the vote on such action.

Tex. Rev. Civ. Stat., art. 4582b, Section 6D(g), provides specific authorization that a complainant is entitled to attend any proceeding resulting from the complaint. The Commission has applied this provision to informal conferences in which the Complaint Review Committee participates with licensees, as described herein. In such instances, the complainant is notified of the time of such informal conferences and his/her right to attend and observe.

The Commission believes that its Complaint Review Committee, when meeting to perform either of the above-described functions, is not acting as a governmental body, as that term is defined in Tex. Govt. Code §551.001, and that its meetings are not required to be open or noticed in accordance with §§ 551.002 and 551.041. Its reasoning follows:

The Complaint Review Committee is not a component committee of the Commission itself. Rather, it is a panel created by the Commission on which two commissioners have been assigned to participate, along with two persons who are not members of the Commission.

With respect to the investigative review function, the Committee's activities are treated by the Commission as the final segment of the investigative function which has otherwise been performed solely by the Commission's staff. The information which is reviewed when the Committee meets is not public information and is otherwise excluded from public release. A conclusion that the Complaint Review Committee, when it meets to review non-public information, is a govern-

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mental body (which must conduct that review in a meeting open to the public) would result in the irrational requirement for public disclosure of information which otherwise is properly excluded from public release.

With respect to the informal conferences in which the Committee participates, the enactment of Tex. Rev. Civ. Stat., art. 4582b, Section 6D(g), which declares complainants' entitlement to attend such conferences, strongly suggests that such a right did not exist in the absence of the provision. If informal conferences were intended to be open meetings of a governmental body, it would have been unnecessary to make special provision granting complainants the right to attend such.

Any questions concerning this matter may be directed to me.

Yours truly,



WAYNE L. GOODRUM
General Counsel

cc: Richard Ybarra