



THE TEXAS HOUSE OF REPRESENTATIVES  
COMMITTEE ON URBAN AFFAIRS

FILE # ML 38725-96

I.D. # 38725

RECEIVED

FEB 23 1996

OPEN RECORDS DIVISION

FRED HILL  
CHAIRMAN

The Honorable Dan Morales  
Texas Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

Gov  
ML-38990-96  
38990  
2/19/96  
RR-897  
February 13, 1996

- Re: (1) Whether Housing Authorities are Subject to the Texas Open Meetings Act, Chapter 551 of the Texas Government Code; and
- (2) Whether Housing Authorities are Subject to the Texas Open Records Act, Chapter 552 of the Texas Government Code.

Dear Dan,

This letter requests two opinions: (1) whether housing authorities created under Chapter 392 of the Texas Local Government Code are subject to the Texas Open Meetings Act ("TOMA"), Chapter 551 of the Texas Government Code; and (2) whether housing authorities created under Chapter 392 of the Texas Local Government Code are subject to the Texas Open Records Act ("TORA"), Chapter 552 of the Texas Government Code.

**BACKGROUND**

**1. Housing Authorities Law**

Housing authorities in Texas are created by each city and county pursuant to the Housing Authorities Law, Chapter 392 of the Texas Local Government Code. Pursuant to said law, a housing authority is a public corporation and unit of government, exercising public and essential governmental functions, and is a public body corporate and politic. Sections 392.002(1), 392.006, 392.011, 392.051. Municipal and county housing authorities may not transact business or exercise powers until the governing body of the city or county declares by resolution that there is a need for the authority. Sections 392.011 and 392.012. Each municipal housing authority is governed by five commissioners, appointed by the presiding officer of the governing body of the municipality, who also designates one of the initial appointees as chairman; each county housing authority is governed by five commissioners, appointed by the commissioners court of the county, which also designates one of the initial appointees as chairman. Sections 392.031, 392.032, and 392.037. There are no specific provisions in Chapter 392 requiring housing authorities to comply with either the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, or the Texas Open Records Act, Chapter 552 of the Texas Government Code; however, the Housing Authorities Law, Section 392.053, defines "housing project" to include "a

P.O. Box 2910 • Austin, Texas 78768-2910 • FAX (512) 480-0512 • (512) 463-9904

Karyne Jones Conley, Vice Chairman

MEMBERS:

Kevin Bailey • Diana Davila • Harryette Ehrhardt • Todd Staples • Senfronia Thompson • Dale B. Tillery • Beverly Woolley

work or undertaking...that is financed in any way by public funds or tax-exempt revenue bonds", and TORA, Section 552.003, defines "governmental body" to include "(x) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds;... ."

## 2. Texas Open Meetings Act

TOMA provides that a governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body. Section 551.041. The notice of a meeting of a governmental body must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting, subject to certain enumerated exceptions and conditions. Section 551.043. An action taken by a governmental body in violation of TOMA is voidable, and an interested person may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of TOMA by members of a governmental body. Sections 551.141 and 551.142. Under TOMA, Section 551.001(3), a "governmental body" is defined to include:

\* \* \*

- (B) a county commissioners court in the state;
- (C) a municipal governing body in the state;
- (D) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;...
- (H) the governing board of a special district created by law;... .

## 3. Texas Open Records Act

TORA provides that public information be available to the public at a minimum during the normal business hours of the governmental body, and that it be promptly produced for inspection, duplication, or both on application by any person. Sections 552.021 and 552.221. Information requested that a governmental body wishes to withhold from public disclosure as within one of the exceptions under TORA must be timely submitted to the attorney general for a determination of whether the information falls within one of the exceptions. Section 552.301. Absent a timely submission to the attorney general, the information requested in writing is presumed to be public information. Section 552.302. Subject to certain defenses, TORA makes it a crime for a person to (1) willfully destroy, mutilate, remove without permission, or alter public information, (2) distribute information considered confidential under the terms of TORA, or (3) fail or refuse to give access to, or to permit or provide copying of, public information to a requestor as provided by TORA. Sections 552.351, 552.352, and 552.353.

TORA defines "public information" as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body ... ." Section 552.002(a). Under TORA, Section 552.003, a "governmental

body" is defined to include:

\* \* \*

- (ii) a county commissioners court in the state;
- (iii) a municipal governing body in the state;
- (iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality; ...
- (viii) the governing board of a special district; ...
- (x) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; ... .

TORA defines "public funds" as "funds of the state or of a governmental subdivision of the state".

#### QUESTION 1

Please determine if housing authorities are included within any of the foregoing categories of governmental bodies enumerated under Section 551.001(3) of the Texas Open Meetings Act; and if so included, if housing authorities are thereby subject to the Texas Open Meetings Act.

#### QUESTION 2

Please determine if housing authorities are included within any of the foregoing categories of governmental bodies enumerated under Section 552.003 of the Texas Open Records Act; and if so included, if housing authorities are thereby subject to the Texas Open Records Act.

Your prompt attention concerning these two questions is appreciated.

Sincerely,



Fred Hill

FH/dmo