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AA-952

Opinion Committee  
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April 1, 1997

The Honorable Dan Morales  
Attorney General  
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RECEIVED # 39667  
APR 03 1997 D. # ML-39498-9  
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GOVERNMENTAL INQUIRY  
UNIT

Re: Whether Rule 6.2 of the City Council Rules of Procedure for the City of Dallas, Texas, As Adopted 8/11/93 and Amended by Resolutions violates the Provisions of the Texas Open Meetings Act, Tex. Gov't Code, §551.001 et seq.

Dear General Morales:

Pursuant to Section 402.042 of the Texas Government Code, please consider this letter as an official request for a written opinion on the following question affecting the public interest:

**Does Rule 6.2 of the City Council Rules of Procedure for the City of Dallas, Texas, As Adopted 8/11/93 and Amended by Resolutions violate the Provisions of the Texas Open Meetings Act, Tex. Gov't Code, §551.001 et seq. ?**

I.

Rule 6.2 of the City Council Rules of Procedure for the City of Dallas, Texas reads as follows:

6.2. **Presentations by Members of Council.** The mayor shall include on an agenda any item requested by five city council members or by a majority of a city council committee to be brought before the city council. The item must be placed on the first voting agenda scheduled at least 30 calendar days after receipt of request, unless the request is withdrawn by any of the five city council members or by a majority of the city council committee, whichever applies.

Rule 6.2, City Council Rules of Procedure, City of Dallas, Texas, As adopted 8/11/93 and Amended

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by Resolutions Nos. 94-0297, 94-2571, 94-3328, 94-3675, 95-1545, 95-2450, 95-2451, 95-2760, 95-4204, and 96-0713.

As applied by the Dallas City Council, this rule has been utilized to prohibit placement of an item on the council's agenda unless request for placement has been made by five city council members, or by a majority of a city council committee. This rule has been utilized to severely circumscribe and restrict what matters of public interest come before the council for consideration.

As applied, this procedural rule would appear to violate the letter, as well as the spirit of the Texas Open Meetings Act, which, of course, is applicable to the City of Dallas.<sup>1</sup> Pursuant to Section 551.041 of the Act,

A governmental body shall give written notice of the date, hour, place and subject of each meeting held by the governmental body.

Tex. Gov't Code, § 551.041. (Emphasis supplied.) Citing this provision, as well as constitutional provisions and case law, it has previously been determined that absent specific statutory authority to the contrary, the governmental body as a whole has the authority to determine its own agenda. Furthermore, in that this authority is vested in the body as a whole, each member of the body "must be permitted to place on this agenda any item of his choosing." Tex. Atty. Gen. Op. JM-63 at 3 (1983). See also, Tex. Atty. Gen. Op. DM-228 at 1 (1993); Tex. Atty. Gen. Op. LO 95-032 at 2; Hansbro v. Neiderhofer, 83 S.W.2d 685, 685-686 ((Tex. Civ. App. - Beaumont 1935, no writ). In Attorney General Opinion DM-228, your office went further to explain:

**This conclusion does not mean that a commissioners court cannot adopt a procedure for placing items on the agenda. The net effect of any procedure adopted, however, cannot be to preclude a member of the court from placing an item on the agenda so that it may be discussed publicly. While votes on any particular matter may be subject to majority rule, we cannot condone the implementation of any procedure that would effectively preclude a duly elected representative on the commissioners court from at minimum providing a public forum for discussion of any particular issue.**

Tex. Atty. Gen. Op. DM-228 at 2. (Emphasis supplied.)

While the authorities cited above specifically address whether a county commissioners court may enact procedures which preclude individual commissioners from placing items on the agenda

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<sup>1</sup>Pursuant to Section 551.002 of the Texas Government Code, all regular, special, and called meetings of a governmental body are subject to the provisions of the Open Meetings Act. Under Section 551.001(3)(C) "governing body" includes "municipal governing bod[ies] in the state".

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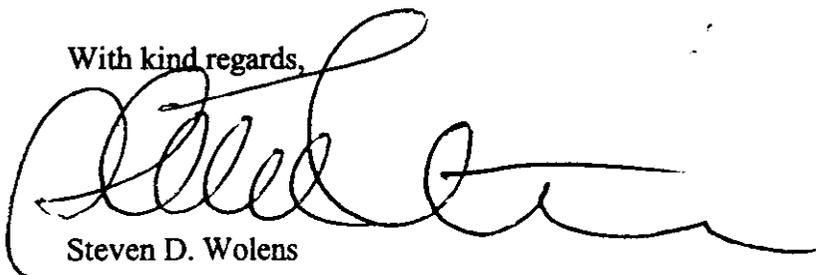
of the court, no different result is warranted with respect to the governing body of a municipality, (including home rule cities), which are also subject to the provisions of the Open Meetings Act. See Tex. Gov't Code, §551.001(3)(C). The letter and the spirit of the Open Meeting Act would be defeated if by procedural mechanism the City of Dallas is able to "effectively preclude a duly elected representative on the [city council] from at minimum providing a public forum for discussion of any particular issue" which the council member deems to be of interest to his or her constituents, or the interests of the city as a whole, Tex. Atty. Gen. Op. DM-228 at 3. Such a rule is destructive to the fundamental principal of giving all citizens a voice in government. If that voice can be silenced by a rule which precludes from discussion and consideration matters which are not agreed to by at least four other council members or a majority of a council committee this cornerstone of our system of government is irreparably eroded, and the underlying purpose of the Open Meetings Act, facilitation of open government, is ill served.

While home-rule cities have broad, discretionary powers under the Texas Constitution, these powers do not extend to the power to enact procedures which contravene, or are "inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State." Tex. Const. art. XI, § 5. See, Dallas Merchants v. City of Dallas, 852 S.W.2d 489 (Tex. 1993). Rule 6.2 of the City Council Rules of Procedure for the City of Dallas, Texas is inconsistent with the provisions of the Texas Open Meetings Act, §551.001 et seq. of the Texas Government Code. Since this procedural rule is in violation of the general law, it is invalid and unenforceable.

## II.

For the reasons set forth above, it is hereby respectfully requested that your office issue an opinion whether Rule 6.2 of the City Council Rules of Procedure for the City of Dallas, Texas, violates the provisions of the Texas Open Meetings Act (Article 551.001, et seq., Government Code).

With kind regards,

A handwritten signature in black ink, appearing to read 'Steven D. Wolens', written over a horizontal line.

Steven D. Wolens

SDW/cb