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RQ-1037

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

Attn: Opinion Committee

Re: Attorney General Opinion Request

Dear General Morales:

Pursuant to Section 402.043 of the Texas Government Code, I respectfully request your opinion on whether a member of a governmental body, who participated in a tape recorded closed executive session of said governmental body is entitled to copy the tape recording of the meeting.

Galveston County Municipal Utility District No. 12 (M.U.D. No. 12) is a duly authorized governmental body which is subject to Chapter 551 of the Texas Open Meetings Act (hereinafter referred to as the Act).

Members of the Board of M.U.D. No. 12 met in a closed executive session to discuss personnel matters under the authority of Section 551.074 of the Act. The meeting was tape recorded in accordance with Section 551.103 of the Act.

M.U.D. No. 12 has not authorized nor promulgated procedures wherein a board member in attendance at a closed meeting can later listen to the recording made of the session or copy the tape recording.

Several days after M.U.D. No. 12 met in executive session, as set out above, a board member who was in attendance at the executive session made a copy of the tape recording for unspecified purposes. This board member, presumably, has possession of this tape at present. There is no indication that this board member has released the tape recording to the public.

Section 551.104 (c) of the Act, states that "the certified agenda or tape of a closed meeting is available for public inspection and copying only under court order issued under subsection (b) (3)." This can only occur when the executive session is under litigation in District Court. The executive session in question is not the subject of any litigation.

Attorney General Opinion No. DM-227 sets out that "a member of a governmental body who participated in a closed meeting may review the certified agenda or tape recording of a closed meeting without such review constituting a release to the public." DM-227 did not address the issue of a member making a copy of a tape recording of an executive session. This writer has found no attorney general nor court opinion that addresses this issue.

It is apparent to writer that the copying of an executive session tape recording by a participating board member does not constitute a release to the public. However, the copying of an executive session tape in the manner outlined seems to increase the likelihood that the confidentiality of the recording will be breached.

The copying of a tape recording of an executive session by a board member closely parallels the facts set out in DM-227. It can be argued, therefore, that the action of copying an executive session tape by a participating board member is allowable, provided the governing body authorizes it and sets out procedural guidelines that help insure the confidentiality of the recording.

An opposing argument can be made. Section 551.104(c) of the Act sets out the only instance where a tape recording of an executive session may be copied. This can be done only pursuant to a court order. No such order existed in this case. If the language of Section 551.104(c) relates, however, solely to the copying of the tape recording for a member of the public, then this argument would not be persuasive when dealing with a participating board member.

Thank you for your assistance with this matter.

Sincerely,



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