

TEXAS EDUCATION AGENCY

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Jim Nelson
Commissioner of Education

December 4, 2000 OPINION COMMITTEE

The Honorable John Cornyn
Attorney General of Texas
Price Daniel Building
P.O. Box 12548
Austin, Texas 78711

RQ-0323-jc 1771 SB

OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

Re: Issues Raised by Attorney General's Opinion JC-0308

FILE # MK-41781-00

Dear General Cornyn:

I.D. # 41781

This letter is to request your opinion regarding several issues that may arise in light of your Opinion JC-0308 (2000), holding that a quorum of a governmental body that attends a legislative hearing may be subject to the Open Meetings Act by participating in that hearing. While my concern is with members of the State Board of Education, I am sure these questions are of interest to many other state bodies. In light of the start of a legislative session in the next few months, I would appreciate your expedited consideration. Please assume, for the following questions, that the legislative committee in question is considering matters within the jurisdiction of the governmental body.

My questions are as follows:

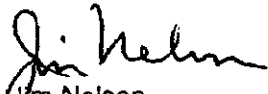
1. Opinion JC-0308 discussed a procedure by which a governmental body could post notice of a meeting for "a range of dates during which the committee may consider matters relevant to the concerns of the agency", post notice of a meeting "the first of those dates" and then "continue" its meeting "until the legislative committee reaches the issue of interest to the agency." My understanding is that legislative committees generally hold regular weekly meetings during a session, but routinely recess those meetings and reconvene one or more days later. The rules of both houses of the Legislature also allow for suspension of posting requirements to allow a legislative committee to meet at other times. May a governmental body post a notice of meeting that states a quorum of the body may attend a regularly scheduled weekly meeting of a legislative committee, as well as any other meetings of that committee following a recess and any other meetings of that committee called until the next regularly scheduled weekly meeting? If your answer is "yes", is it necessary for a quorum of the governmental body to convene at the first posted meeting and recess or may a quorum first convene at one of the subsequent meetings?
2. Assuming a governmental body has not posted a meeting, may a quorum merely attend a legislative committee without testifying or otherwise discussing the business of the governmental body among themselves? If your answer is "yes", if a member of the body is requested to testify by the committee, may other

members of the body leave the hearing until that testimony is completed, thereby reducing the number present to less than a quorum, and then return?

3. Assuming a governmental body has not posted a meeting, if a quorum of a governmental body wish to attend and participate in a legislative hearing, may enough members view the hearing by closed-circuit television from an adjacent "overflow room" to reduce the number present in the hearing to less than a quorum? If your answer is "yes", may the members "take turns" attending and testifying in the hearing room so long as a quorum is never present?
4. Opinion JC-0308 holds that a governmental body is required to "prepare and keep minutes or make a tape recording of " a meeting triggered by attendance of a quorum at a legislative hearing. Legislative committee hearings are routinely tape recorded by their staff. May a governmental body rely on the tape recording made by the legislative committee staff as its minutes?
5. Legislative Committees are required by their rules to post notice of hearings, although the period of posting may be less than that required for a state agency or other governmental body, and the posting rule may be suspended by action of that house of the Legislature. Given the intense public interest in legislative hearings, may a legislative hearing be posted to give notice that a quorum of a governmental body may attend as a substitute for posting by the governmental body?
6. Finally, members of a governmental body may wish to communicate with each other to determine whether a quorum will be in attendance at a legislative committee and so require posting of a meeting. May a quorum of a governmental body communicate, verbally, in writing, or by electronic mail regarding their intention to attend or not attend a particular legislative committee hearing, outside of a posted meeting of that governmental body?

Thank you for your consideration of this request. Should you have any questions, please feel free to contact David Anderson, General Counsel, at 463-9720.

Sincerely yours,



Jim Nelson
Commissioner of Education