



Frank Madla
 Texas State Senate
 District 19

1313 S.E. Military Dr., Suite 101
 San Antonio, Texas 78214-2850
 (210) 927-9464
 FAX (210) 922-9521
 P.O. Box 12068
 Austin, Texas 78711
 (512) 463-0119
 FAX (512) 463-1017
 TDD 1-800-735-2989

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The Honorable John Cornyn
 Attorney General of Texas
 P.O. Box 12548
 Austin, Texas 78711-2548

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 OPINION COMMITTEE

OFFICE OF THE ATTORNEY GENERAL
 EXECUTIVE ADMINISTRATION

FILE # ML-41956-D1¹⁹⁶²
 I.D. # 41956

Dear General Cornyn:

Please accept this letter as one of request for an opinion from your office on the following question:

Are the members of the Texas Railroad Commission empowered under the Texas Constitution or Texas law to promulgate a rule which would impose standards of conduct relating to the recusal of a member in a contested case proceeding which are not consistent with and exceed current law?

The commission is proposing the addition of Section 1.10 to their General Rules of Practice and Procedure which would, if adopted, require:

- 1) a commissioner to "recuse himself or herself from a contested case issue at any time his or her impartiality might reasonably be questioned, including, but not limited to, any time he or she, or anyone within the third degree of kinship by affinity or consanguinity with the commissioner is a party to the proceeding; is acting as counsel to a party; or has a financial or any other interest in the matter in controversy that could be substantially affected by the outcome of the proceeding...";
- 2) a commissioner in such circumstance, who chooses not recuse himself or herself, to place "to "place in the record, and in the *Texas Register*, a written explanation of any potential conflict and a reasoned justification for not complying with the recusal standards."; and
- 3) "a commissioner who believes another commissioner has violated this section ... to raise the issue in a posted meeting at the first opportunity."

A question has been raised as to whether the Commission has the constitutional or statutory authority to impose such sweeping administrative standards which are not consistent with and far exceed the standards currently established for public officials by the legislature in the Article 6447, Vernon's Texas Civil Statutes; Section 572, 001 (a), Texas Government Code; and Section 572.058 (a), Texas Government Code which specifically require that:



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- 1) members of the Railroad Commission must be resident citizens of Texas, qualified voters, and not less than twenty-five years of age and that a commissioner may not be "directly or indirectly interested in any railroad, or in any stock, bond, mortgage, security, or earnings of any railroad... and he or she may not engage in any occupation or business inconsistent with his or her duties as a commissioner"¹;
- 2) that a state official may not have a direct or indirect interest, including a financial and other interest, or engage in business transaction of professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest²;
- 3) an elected or appointed officer who is a member of a board or commission having policy direction over a state agency and who has a personal or private interest in a measure, proposal, or decision pending before the board or commission shall publicly disclose the fact to the board of commission in a meeting called and held in compliance with Chapter 551 (Open Meeting); that such an officer may not vote or otherwise participate in the decision; and that the disclosure shall be entered in the minutes of the meeting³.

For your review, I have enclosed both a copy of the proposed rule and comments drafted by Texas Railroad Commissioner Charles Matthews expressing his concerns.

I thank you in advance for your consideration of this matter. Please don't hesitate to contact me or my Chief of Staff, Sherry Muller, should you have any questions or require further information.

Yours truly,



Frank Madla

FM/sm

cc: Susan Gusky, Opinion Committee

¹ TEX. REV. CIV. STAT. Art 6447 (Vernon 1926)

² TEX. GOV. CODE, Sec. 572.001(a)

³ TEX. GOV. CODE, Sec. 572.058(a)