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OPINION COMMITTEE

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RQ-0451-8

September 25, 2001

By Certified Mail, Return Receipt Requested

The Honorable John Cornyn
Attorney General of the State of Texas
Attention: Opinion Committee Chairperson
P.O. Box 12548
Austin, Texas 78711-2548

FILE # Mh-42237-01
I.D. # 42237

Re: Opinion No. JC-0411; Request for reconsideration

Dear Attorney General Cornyn:

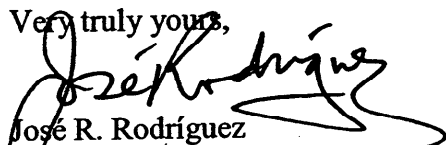
I am respectfully requesting your reconsideration of Opinion No. JC-0411, issued on September 20, 2001. This opinion addresses whether the Board of Trustees of the Risk Pool for the El Paso County Health Benefits Program may meet in executive session to consider a complaint against the third party administrator for the program. The opinion concludes that an executive session is not permitted to consider such a complaint because the subject of the complaint, the third party administrator, is not a public officer or employee within the meaning of Texas Government Code Section 551.074(a)(2), which provides that an open meeting is not required "to hear a complaint or charge against a [public] officer or employee." Tex. Gov't Code Ann. § 551.074(a)(2) (Vernon 1994). However, the opinion does not address whether an executive session is permitted under Section 551.074(a)(1), which provides that an open meeting is not required "to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee." Id. § 551.074(a)(1).

Review by the Board of the third party administrator's denial of health benefits claims does not involve complaints or charges of misconduct against the third party administrator, but rather provides an opportunity for employees to seek a determination by the Board, the final decision-maker, whether such claims are covered under the health benefits program. Both the courts and the Attorney General have concluded that various aspects of the compensation of individual public employees may be discussed in executive session as part of the "employment" of such employees within the meaning of Section 551.074(a)(1). See RQ-0369-JC, 2-3, for examples and a discussion of the personal privacy rationale underlying Section 551.074(a)(1). My question is whether health benefits, which are publicly funded at least in part for all county employees, qualify as another example of the aspects of compensation of public employees that may be discussed in executive session under Section 551.074(a)(1). Accordingly, I request your reconsideration on this specific point.

Attorney General of Texas
September 25, 2001

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Very truly yours,



José R. Rodríguez
El Paso County Attorney