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**RQ-1083-GA**

September 11, 2012

Honorable Greg Abbott  
Attorney General  
Attn: Opinions Committee  
State of Texas  
P. O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-47132-12  
LD # 47132

Dear General Abbott:

Please receive this letter as a request for an opinion from your office regarding the ability of city council members to leave an open meeting and confer privately with city employees in the absence of a quorum. In accordance with your requirements I have attached the facts, law, and questions as I understand them.

Your opinion on these questions is greatly appreciated.

Sincerely,

Isidro R. Alaniz  
District Attorney  
Webb & Zapata Counties

IRA:dlr

attachments

## I. QUESTION PRESENTED

May a member of a city council leave a public meeting in progress to consult privately with an employee of the city?

## II. LAW

The Texas Open Meetings Act (“TOMA”), Government Code chapter 551, requires that each meeting of a governmental body to be open to the public. TEX. GOV’T CODE § 551.002. However, because section 551.001(4)(B)(iii) defines a “meeting” as requiring a quorum (a majority) of the members of the body to be present, the Act generally applies only to meetings at which a quorum is present. See TEX. GOV’T CODE § 551.001(6). If no quorum is present, there is no meeting, and thus, no violation of TOMA. Harris County Emergency Serv. Dist. No. 1 v. Harris County Emergency Corps, 999 S.W.2d 163 (Tex. App.—Houston 14th Dist. 1999, no pet.); Willmann v. City of San Antonio, 123 S.W.3d 469, 475 (Tex. App.—San Antonio 2003). When less than a quorum is involved, the Act does not limit the discussions of the members. Harris Co. Emergency Corps, 999 S.W.2d at 170.

However, a governmental body is not allowed to use serial meetings of different members less than a quorum in order to achieve a “walking quorum” and thus circumvent the requirements of TOMA. The “walking quorum” cases have involved schemes and patterns of conduct deliberately designed *by a quorum* to thwart the requirements of TOMA; in these cases, the courts have required a showing that *a quorum* of the governmental body or a committee is attempting to circumvent TOMA by such a scheme of conduct, and absent such a scheme *by a quorum* of the body as a whole or by one of its committees, no violation will be found. Willmann, 123 S.W.3d at 478.

## III. OPINION OF THE REQUESTOR

The Act once contained a specific exception to the open meeting requirement for meetings between the governmental body and its employees for information-gathering purposes, which was superseded by an amendment in 1999. Now, when the governmental body confers with one or more employees of the governmental body, even if the only purpose of the conference is to receive information from or question the employees, TOMA still applies. See Tex. Att’y Gen. Op. No. JC-0169. However, the 1999 amendment in no way changed the presupposition that a quorum must be present before the meeting requirement is applicable in the first place.

The Harris County Emergency Corps case involved a telephone conversation between various board members of the emergency services district. This conference did not constitute a violation because there was neither a quorum present during the calls nor any evidence that the board was attempting to circumvent TOMA by creating a walking quorum. 999 S.W.2d at 168. The same logic should apply when the phone call is between one member and an employee instead of a group of members less than a quorum, and likewise when, as in the question presented, the employee-single member meeting is in person rather than over the phone.

Thus, in the question presented, if a city councilman on his own volition leaves the public meeting and visits privately with city employees, there can be no violation of TOMA. A TOMA-violating scheme can only be initiated by a quorum of the body or a committee, and one member acting alone does not a quorum make. Further, if a single member of the body cannot meet privately with the body’s employees, it would be impossible for the individual members of the body to do what they are supposed to do as individual members of a body politic: to engage in individual investigation to determine what action they must take at the public meeting to represent their constituents. It is unthinkable that a city councilman’s ability to *individually* investigate public matters and *individually* confer with the city’s employees is somehow lost simply because there happens to be a public meeting going on at the same time under the same roof. No such provision exists in TOMA and the case law does not support the reading of such into the law; in fact, the Houston court rejected this interpretation of TOMA as between members less than a quorum. Harris County Emergency Corps, 999 S.W.2d at 170.