

Commissioner Mike Morath

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April 24, 2019

FILE # ML-48544-19
I.D. # 48544

The Honorable Ken Paxton
Texas Attorney General
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0285-KP

Re: Continued applicability of civil remedies for violations of the Texas Open Meetings Act

Dear General Paxton:

The Texas Open Meetings Act requires that all deliberations between a quorum of a governmental body or between a quorum of a governmental body and another person during which public business or public policy over which the governmental body has supervision or control is discussed or considered be conducted in an open meeting, except as provided for by the Texas Open Meetings Act.¹ It has been a longstanding principle of Texas law that when members of a governmental body meet in numbers less than a quorum for the purpose of secret deliberations in violation of the Texas Open Meetings Act, their actions are subject to civil consequences as provided by Texas law.² These consequences can include regulatory sanctions.³ If a member or a group of members of the governmental body knowingly conspire to circumvent the Texas Open Meetings Act by meeting in numbers of less than a quorum for the purpose of secret deliberations in violation of the Texas Open Meetings Act, the member or group of members commit a criminal offense.⁴

The Court of Criminal Appeals recently issued a ruling that the provision criminalizing the conspiracy to circumvent the Texas Open Meetings Act is unconstitutionally vague.⁵ Given the ruling in the *Doyal* case, if a quorum of a governmental body subject to the Texas Open Meetings Act deliberates about an item of public business by meeting successively in numbers less than a

¹ See Tex. Gov't Code §551.001(4) (defining "meeting") and §551.002 (requiring meetings be open to the public).

² See Tex. Gov't Code §551.141, Tex. Att'y Gen. Op. No. GA - 0326 (2005), Tex. Att'y Gen. Op. No. JC-0307 (2000), Tex. Att'y Gen. LO-95-055, Tex. Att'y Gen. Op. No. DM-95 (1992), *Esperanza Peace & Justice Ctr. v. City of San Antonio*, 316 F. Supp. 2d 433, 472 (W.D. Tex. 2001), *Willmann v. City of San Antonio*, 123 S.W.3d 469, 2003 Tex. App. LEXIS 8611, *Acker v. Texas Water Com.*, 790 S.W.2d 299, 1990 Tex. LEXIS 64, 33 Tex. Sup. J. 449,

³ See Tex. Educ. Code §§11.051(a-1), 39.057(a)(6), and 39.057(d).

⁴ Tex. Gov't Code §551.143

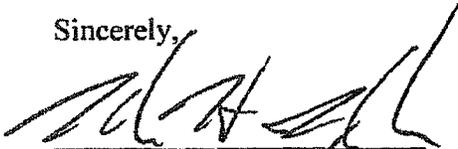
⁵ See *State v. Doyal*, 2019 Tex. Crim. App. LEXIS 161, 2019 WL 944022

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quorum outside an authorized meeting, does the governmental body violate the Texas Open Meetings Act, and, if so, are civil remedies still available?⁶ If civil remedies are available, does this include regulatory actions based on a such a violation.

Your guidance would be greatly appreciated in this matter, and the TEA appreciates your consideration. Due to the importance of this question, please expedite your review. Please contact Mr. Von Byer, General Counsel, TEA, at 512-463-9720 if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Morath', written over a horizontal line.

Mike Morath
Commissioner of Education

⁶ See Tex. Gov't Code §551.141.