



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

May 9, 1988

Mr. Bob Bullock
Comptroller of Public Accounts
LBJ State Office Building
Austin, Texas 78774

LO-88-52

Dear Mr. Bullock:

You asked several questions about the Texas Racing Commission, created by the 69th Legislature. 69th Leg., 2d C.S., 1986, ch. 19 (codified as article 179e-4, V.T.C.S.). Several of your questions required a formal response and were set up as a formal file, RQ-1390. Three of your questions, however, do not require a formal decision. Two of your questions relate to the Texas Open Meetings Act, article 6252-17, V.T.C.S., and one relates to the Texas Open Records Act, article 6252-17a, V.T.C.S.

You indicate that the commission, or most of the members of the commission, plan to attend national conferences of similar commissions from other states. You ask what actions may properly be taken by commissioners while attending this and similar conferences without violating the Open Meetings Act. A "meeting" under the act means "any deliberation between a quorum of members of a governmental body." See also art. 6252-17, § 4(b) (prohibiting meeting in numbers less than a quorum to knowingly conspire to subvert the act with secret deliberations). Section 1(b) defines "deliberation":

"Deliberation" means a verbal exchange during a meeting between a quorum of members of a governmental body, or between a quorum of members of a governmental body and any other person, concerning any issue within the jurisdiction of the governmental body or any public business.

The 70th Legislature relaxed the act's standards with regard to incidental "deliberations" at conventions and workshops. Section 1(a), which defines "meeting," provides in part:

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It shall not be construed that the intent of this definition is to prohibit the gathering of members of the governmental body in numbers of a quorum or more for social functions unrelated to the public business which is conducted by the body or for attendance of regional, state, or national conventions or workshops as long as no formal action is taken and any discussion of public business is incidental to the functions, conventions, or workshops. (Emphasis added.)

Acts 1987, 70th Leg., ch. 549, § 1, at 4413. Thus, the act allows discussion of public business only so long as it is merely "incidental" to the functions, conventions, or workshops.

You also ask whether the commission may, in light of Attorney General Opinion H-496 (1975), meet in executive session to discuss "such broad general matters as the job description and/or salary range for the position of executive director if the discussion does not focus on individual applicants for the position." Under the Open Meetings Act, all "meetings" of "governmental bodies" must be open to the public unless an executive session is expressly permitted by law. See Cox Enterprises, Inc. v. Board of trustees of the Austin Independent School District, 706 S.W.2d 956, 960 (Tex. 1986); Open Records Decision No. 491 (1988). Section 2(g) authorizes executive sessions to discuss certain "personnel matters."

Section 2(g) provides:

Nothing in this Act shall be construed to require governmental bodies to hold meetings open to the public in cases involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear complaints or charges against such officer or employee, unless such officer or employee requests a public hearing.

In Attorney General Opinion H-496 (1975) the attorney general determined that the legislature intended this provision to protect various aspects of an individual's employment relationship with the governmental body. The opinion concluded that a governmental body could meet to discuss the salary of an individual employee but not

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to discuss generally salaries or salary scales without reference to a specified individual. This opinion controls your question about executive sessions to discuss the general job description and/or salary range for the position of executive director when an individual holds the position of executive director.

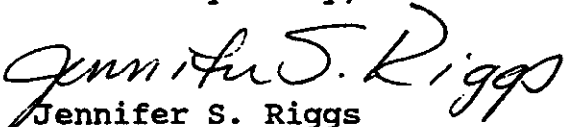
We understand that there may have been some confusion about this exception because the commission may have wanted to discuss the qualifications of specific individual applicants while discussing the job description for executive director. The commission wanted to protect the interests of the specific individuals involved. There was no opinion directly on point. It should be noted, however, that section 2(g) applies only to public employees and officers, not to applicants for public employment or office. See generally Attorney General Opinions MW-129 (1980); H-246 (1974); See also Open Records Decision No. 455 (1987) (provision of Open Records Act applying expressly to employees and officers does not include applicants for employment).

You also ask whether applications for public employment with the commission are subject to required disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. You are concerned about applications for the position of executive director and about applications for other positions. It is well-established that applications for public employment may be withheld only if release of information on the application would constitute an invasion of privacy under the test applied under section 3(a)(1) of the Open Records Act. See Open Records Decision No. 455 (1987) (copy enclosed); See also Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546 (Tex. App. - Austin 1983, writ ref'd m.r.e.); Open Records Decision Nos. 277 (1981); 188 (1978). The test is whether the information is highly intimate and embarrassing such that a reasonable person would object to its release and the information is of no legitimate concern to the public. For example, the fact that a person has applied for a job while holding another position is not protected by privacy.

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Because these questions are relatively straightforward and are governed by prior decisions and well-established case-law, we are addressing them by informal letter ruling. If you have questions about this decision, please refer to LO-88-52.

Yours very truly,


Jennifer S. Riggs
Chief, Open Government
Section of the Opinion
Committee JSR/bra

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RQ-1390

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