



STATE OF TEXAS §

COUNTY OF COMAL §

RESOLUTION #2009-14
OPPOSING ATTORNEY GENERAL ABBOTT'S OPINION GA-0668 RELATIVE TO
THE NOTICE REQUIREMENTS FOR THE OPEN MEETINGS ACT

WHEREAS, Chapter 551 of the Texas Government Code, namely the "Open Meetings Act" sets the necessary requirements "to safeguard the public's interest in knowing the workings of its governmental bodiesⁱ;" and

WHEREAS, the Open Meetings Act requires every meeting of a governmental body to be open to the public except as provided by the Actⁱⁱ; and

WHEREAS, the Honorable Senator Jeff Wentworth requested an Attorney General opinion on April 4, 2008, as to whether placing "City Manager's Report," "Mayor's Update," and "Council and Other Reports" on a city council agenda provided adequate notice under the Open Meetings Act; and

WHEREAS, Senator Wentworth explained that Reports and Updates traditionally included information about upcoming agenda items, date and time information for local meetings, brief statements about various departments, announcement of awards, and introduction of new department directors; and

WHEREAS, the Honorable Greg Abbott, Attorney General of Texas, opined that the notice did not sufficiently notify the public of the subjects to be addressed and therefore did not comply with the statutory requirements of the Open Meetings Actⁱⁱⁱ; and

WHEREAS, in determining the adequacy of notices governed by the Open Meetings Act, courts have considered diverse factors^{iv}, such factors include: the content of the notice to the action taken at the meeting^v, whether the notice departs from customary practice where the custom establishes an expectation by the public^{vi}, and whether the subject is of special interest to the public^{vii}; and

WHEREAS, Attorney General Opinion GA-0668 is clear in that its conclusion is not altered by the fact of whether the governing body engages in discussion or takes action;

WHEREAS, Attorney General Opinion GA-0668 indirectly has cut off the lines of communication between the members of a governing body and the public by arbitrarily requiring advance posting of every topic that will be addressed;

WHEREAS, the Comal County Commissioners Court had a long standing tradition that would allow for the department heads, elected officials, staff, and Court members to make

comments with regards to upcoming meetings, events, awards, employee recognition, and other topic of general interest prior to Attorney General Opinion GA-0668;

NOW THEREFORE BE IT RESOLVED THAT the Commissioners Court of Comal County, Texas does hereby request that Senator Jeff Wentworth and Representative Doug Miller of the Texas Legislature introduce a bill in the upcoming legislative session clarifying that Attorney General Opinion GA-0668 is not consistent with the intent and purposes of the Open Meetings Act thereby opening the lines of communication between the public's interest and the governmental body's ability to inform its constituents through brief commentary on items not set for decision or action.

PASSED AND APPROVED this _____ day of _____, 2009.

Danny Scheel, County Judge

Donna Eccleston
Commissioner, Pct. #1

Jay Millikin
Commissioner, Pct. #2

Gregory Parker
Commissioner, Pct. #3

Jan Kennady
Commissioner, Pct. #4

ATTEST: _____
Hon. Joy Streater, County Clerk

ⁱ See *Cox Enter., Inc. v. Bd of Trs. Of Austin Indep. Schl. Dist.*, 706 S.W.2d 956, 960 (Tex. 1986).

ⁱⁱ Gov't Code Section 551.002.

ⁱⁱⁱ Attorney General Opinion GA-0668 (2008).

^{iv} Attorney General Opinion GA-0668 (2008).

^v *Markowski v. City of Marlin*, 940 S.W.2d 720, 726 (Tex. App.—Waco 1997, writ denied).

^{vi} *River Rd. Neighborhood Ass'n v. S. Tex. Sports*, 720 S.W.2d 551, 557 (Tex. App.—San Antonio 1986, writ dismissed).

^{vii} *Cox Enters., Inc.*, 706 S.W.2d at 958-59; *Point Isabel Indep. Sch. Dist. V. Hinojosa*, 797 S.W.2d 176, 179-81 (Tex. App.—Corpus Christi 1990, writ denied). Note that the underlying rule is that the provisions of the Act are mandatory to be construed liberally in favor of open government. *City of Farmers Branch v. Ramos*, 235 S.W.3d 462, 467 (Tex. App.—Dallas 2007, no pet.).