

AGENDA ITEM 22

Discuss and take appropriate action on the park advisory committee.

No action was taken on this agenda item.

AGENDA ITEM 23

Discuss real estate (EXECUTIVE SESSION as per VTCA Govt. Code sec. 551.071 consultation with attorney.)

The scheduled Executive Session was canceled.

No action was taken on this agenda item.

COMMISSIONERS' COURT RECESSED AT 10:40 A.M. ON TUESDAY, JANUARY 21, 2003.

COMMISSIONERS' COURT RECONVENED AT 10:45 A.M. ON TUESDAY, JANUARY 21, 2003.

AGENDA ITEM 24

Discuss and take appropriate action on real estate.

No action was taken on this agenda item.

AGENDA ITEM 25

Comments from Commissioners.

Commissioner Heiligenstein commented that he and Judge Doerfler attended the last CUC Meeting with the new Attorney General. The Attorney General commented at the meeting that he considers himself a strict constructionist on his opinions. This is important because no matter what the legislature's intent was, whatever is in writing or in the Bill is what he is going to opine is what their intent was. He will not go back to discussions like some Attorney Generals have done in meetings.

Dale Rye presented a briefing to the court on the Texas Open Meetings Act regarding procedures for Executive Sessions.

< Attachment >

The Texas Open Meetings Act

Executive Session Briefing Notebook

Eugene D. Taylor, County Attorney

The Texas Open Meetings Act

Executive Session Briefing Notebook

Eugene D. Taylor, County Attorney

Government in the Sunshine

Examples of this policy in action:

- Public Information Act
- Conflict of Interest Legislation
- Financial Disclosure
- Campaign Finance Reporting
- Bidding Statutes
- And (our special interest today)...
- The Open Meetings Act

Government in the Sunshine

- The conduct of public business is too important to be left to the government.
- The public therefore has a right to know what its government is doing.
- There is a fundamental public policy that favors openness and publicity.

The Texas Open Meetings Act

- With few exceptions, all deliberations of a governmental body must be held in public.
- Notice must be given of the meeting and what will be deliberated.
- The members cannot meet privately for the purpose of violating the Act.

The Texas Open Meetings Act

- Can a governmental body ever meet in a private session?
- Yes, but...
- Only under highly restrictive conditions.

Illegal Executive Sessions May Have Consequences

- Actions may be invalidated and have to be repeated, causing added delay and expense.
- The government and officials may be sued.
- They may be liable for a \$100-500 fine.
- They may be removed from office.
- They may go to jail for from 1 to 6 months.

Executive Sessions May be held

- Only if proper procedures are followed
- Only to discuss certain limited subjects

Executive Sessions May be held

- Only if proper procedures are followed
- So, what are those procedures?

Executive Session Procedures:

Notice

- Same public notice as for any other meeting or agenda item.
- 72 hours notice (except two in an emergency).
- Must be specific enough to give actual notice.
- The more important the subject, the more specific the notice should be.
- Agenda may (but need not) identify the matter as one that will be discussed in a closed meeting.

Executive Session Procedures:

Entering

- Body must meet first in a public session.
- The presiding officer should announce that the body is going into closed session.
- The announcement must reference the specific grounds that allow the meeting to be closed.
- If the closed meeting lasts more than one day, each sitting must convene in an open meeting.

Executive Session Procedures:

Attendance

- To be legal, ALL of the public must be excluded.
- Therefore, the only persons permitted in a closed session are the members of the body and any other persons whose presence is necessary for the body to transact its business.
- Nobody can attend if they have an adverse interest to the governmental entity.
- Therefore, face-to-face negotiations cannot be conducted in a closed meeting.
- The presence of unnecessary people can make the entire meeting illegal.

Executive Session Procedures:

Record

- The body must either keep a certified agenda of the closed meeting or tape-record the session.
- The presiding officer is responsible for keeping and certifying the record, although someone else can take the notes or operate the recorder.
- The tape or certified agenda must contain announcements by the presiding officer of the session's beginning and ending times (and a tape should be the right length).
- The recording or certified agenda must be preserved, but may not be disclosed except on the order of a district court determining that the session should have been open.

Executive Session Procedures:

Certified Agenda

- Must include a statement of the subject matter of each deliberation.
- Must include a record of any further action taken.
- Must include the beginning and ending time announcements.
- Must be certified by the presiding officer as a true and correct record of the proceedings.
- The agenda guarantees that nothing will be deliberated in secret that was not included in the notice for the meeting and justified in the announcement of the closed session.

Executive Session Procedures:

No Action Taken

- A governmental body may not take any final action, decision, or vote except in an open meeting after proper public notice.
- Obviously, therefore, no action, decision, or vote may be taken in a closed meeting.

Executive Session Procedures:

No Action Taken

- This does not prevent true deliberation; the members of the body are free to express their opinions and argue for their preferences in an executive session, even if this reveals how they are likely to vote, so long as no "straw polls" or other votes are taken.
- No members can commit themselves in advance to vote a particular way when formal action is taken.
- Just to avoid the impression of a previously-made decision, it may be wise for the members of the body to explain the reasons for their votes during the open session.

Executive Sessions May be held

- Only to discuss certain limited subjects
- What are those subjects?
- The following are the most likely to come up in local government:

Executive Session Subjects:

Consultation with Attorney

- Normally, a governmental body may not conduct a private consultation with its attorney.
- For example, a general discussion of policy cannot be conducted in private just because a lawyer is present.

Executive Session Subjects:

Consultation with Attorney

- There are just three exceptions that allow legal consultations to occur in an executive session:
 - (1) When the body seeks the advice of its attorney about pending or contemplated litigation;
 - (2) When the body seeks the advice of its attorney about a settlement offer; or
 - (3) When the attorney determines that a public consultation would violate his duty to the body under the Texas Disciplinary Rules of Professional Conduct.

Executive Session Subjects:

Real Property

- A governmental body may hold a closed meeting to discuss or deliberate the purchase, exchange, lease, or value of real property.
- However, a public session is required unless deliberation in an open meeting would have a detrimental effect on the position of the body in negotiations with a third person.
- The usual rules restricting who may be in a closed session still apply.
- Therefore, face-to-face negotiations cannot be conducted by a quorum of the body in a secret meeting

Executive Session Subjects:

Personnel

- A governmental body may hold a closed meeting to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public official or employee; or
- To hear a complaint or charge against an officer or employee.

Executive Session Subjects:

Personnel

- A governmental body may not hold a closed meeting to discuss a personnel matter if the individual in question requests a public hearing.
- The open meetings exception applies only to officials and employees, not to independent contractors such as engineering, architectural, or consulting firms.
- The closed discussion must relate to a particular person, not to a class of employees.
- For example, the salary and benefits of an individual may be deliberated in private, but the body's general employment and compensation policies may not.

Executive Session Subjects:

Economic Development

- A governmental body may hold a closed meeting to discuss or deliberate regarding information from a business prospect with which the body is conducting economic development negotiations.
- A governmental body may also hold a closed meeting to deliberate the offer of a financial or other incentive to such a business prospect.
- Again, the usual rules restricting who may be in a closed session apply, so face-to-face negotiations cannot be conducted by a quorum of the body in secret.

The Texas Open Meetings Act

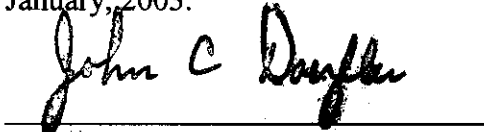
- Guarantees public access to government.
- Generally requires open meetings.
- Allows closed meetings when needed,
- if only proper subjects are discussed and
- all the proper procedures are followed.
- When in doubt, ask your lawyer!
- If still in doubt, hold an open meeting.

Commissioner Boatright thanked Dale Rye for his help on parks issues.

Judge Doerfler stated that in the next few weeks he would like to put on the agenda next year's budget. He is very concerned, and wants deliberation, comments and direction for the planning of next year's budget. Last week Workmen's Compensation went up from \$315,000 to \$965,000. What he initially is proposing to consider is the possibility of no salary increases, no reclassifications, and no new employees except those that can present a case in which the internal auditors' report recommends that their manpower is too low to accomplish the job as it should be done.

COMMISSIONERS' COURT ADJOURNED AT 11:40 A.M. ON TUESDAY, JANUARY 21, 2003.

THE FOREGOING MINUTES recorded on Minutes Pages 1 through 201, inclusive had at a Special Session of Commissioners' Court of Williamson County, Texas, having been read are hereby approved this 28th day of January, 2003.



John C. Doerfler, County Judge

ATTEST: Nancy E. Rister, Clerk County Court & Ex-officio Clerk,
Commissioners' Court, Williamson County, Texas

By: 
Deputy Clerk