

TO: Members of the Independent Citizens Redistricting Commission, City of Austin

FROM: Steven Aleman, Esq.

DATE: July 22, 2013

RE: Deliberations on Personnel Matters and the Open Meetings Act and Public Information Act

The purpose of this brief correspondence is to highlight and raise awareness of certain provisions of Texas law that might apply to your upcoming deliberations as you consider staffing of the Commission. You are encouraged to verify these points and obtain guidance from the Law Department of the City of Austin and other competent sources before you engage in specific discussions and votes to ensure proper procedures are followed.

In prior meetings some Commissioners have raised the possibility that your body might go into executive session when you are ready to review submissions for positions such as executive director. While there is a personnel matters exception allowing Texas governmental bodies to go into executive session, you should be certain it applies in your circumstance before attempting to invoke it.

In general, the Texas Open Meetings Act¹ requires that all of your meetings occur in public.² The Open Meetings Act, however, has several exceptions that permit a governmental body to go into a private executive session. Specifically, there is an exception in the Open Meetings Act for “personnel matters” to be taken to executive session. This exception allows your body to deliberate in private on the appointment and employment of an “employee.”³ The key question for this Commission is the manner in which you plan to hire staff. For example, if the executive director will be retained as a consultant or an independent contractor, and not as an employee, then the personnel matters exception would not apply and you could not take the review of applications for this position into executive session.⁴

If you elect to utilize an executive session to aid in the selection of staff, the Open Meetings Act has basic procedural requirements. Among other things:

- The Commission must post and hold a public meeting (with a quorum) even if the only business you want to engage in would be during an executive session.⁵
- The posted meeting agenda must state that you may go into executive session and include the specific topic (e.g., executive director position) and a citation to the provision of the Open Meetings Act that authorizes you to meet privately on that topic.⁶

¹ Tex. Gov't Code Ch. 551.

² As a general resource, the Texas Attorney General has a handbook on the Open Meetings Act available online: www.oag.state.tx.us/AG_Publications/pdfs/openmeeting_hb.pdf (last visited July 22, 2013).

³ Tex. Gov't Code § 551.074(a)(1).

⁴ *Swate v. Medina Cmty. Hosp.*, 966 S.W.2d 693, 699 (Tex. App. San Antonio 1998); Tex. Att'y Gen. Op. No. JC-0411 (2001).

⁵ Tex. Gov't Code § 551.101.

⁶ Tex. Gov't Code § 551.101.