



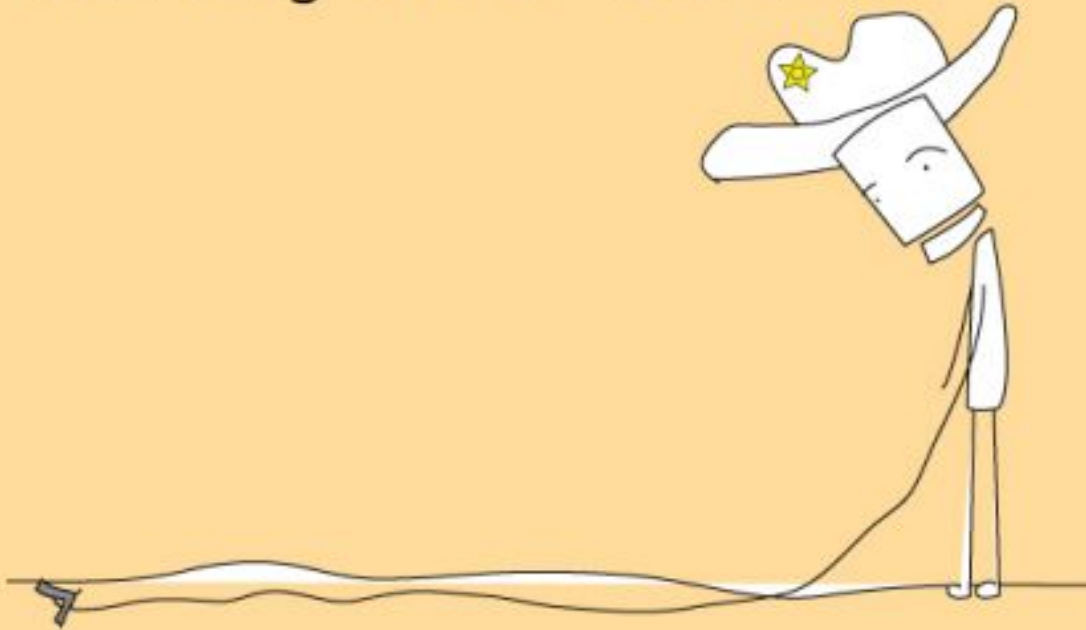
# **BOND ELECTION ADVISORY TASK FORCE**

## **Texas Open Meetings Act DECEMBER 2016**



# Texas Open Meetings Act ... it's the LAW.

the long arm of the law.



- **WHAT IT IS:**

TOMA is a statute (enacted to benefit the public rather than governing bodies) that mandates open public access to all non-excepted meetings of governmental bodies.

- **WHERE IT IS:**

Codified in Texas Government Code, Chapter 551.



## • WHAT IT SAYS:

Requires that every meeting of a subject body, with certain narrow enumerated exceptions, be

- open to the public, and
- posted as to notice of time, place, and subject matter of items to be discussed, and
- memorialized with a record.



# This means YOU.

- **BY STATUTE:**

“Local government corporations” are mandatorily subject to TOMA, per Texas Transportation Code, Section 431.004.

- **BY CODE:**

All city boards are required to comply with TOMA, per City Code §2-1-43(B).



# What is a QUORUM?

- **DEFINITION:**

A simple majority of the members of a body.

- **beat QUORUM:**

This is a 13-member body, so 7 constitutes a quorum.

- **POSTING REQUIRED:**

If a quorum is going to be present at anything other than a purely social or ceremonial function, a meeting notice must be posted.



# What is a MEETING?



# What is a MEETING?

- **DEFINITION:**

A verbal exchange among a quorum of the body ...

- “verbal” also means “non-verbal” texts or emails or interactions (courts and AG).

... or between a member of the public, or staff, and a quorum of the body ...

... during which at least one member of the body is participating in a deliberation of public business over which the body has had, has, or will have control.





# Meeting? Yes, under several scenarios.



# Meeting? Maybe, if social turns to business.



# Scenarios: Is this a quorum necessitating posting a meeting?

- **SCENARIO 1:**

7 BEATF members attend a council meeting, in listening mode only.

- **ANSWER:**

“Members of one body (in numbers constituting a quorum) can attend a meeting of another body to listen to a discussion of business affecting both, but cannot participate.”

- **BUT, CAUTION:**

As soon as any one BEATF member participates in any way, that becomes a meeting of the BEATF with a quorum present – and it should be posted.



- **PROBLEM:**

“Participating in any way” will encompass ...

... a BEATF member hearing information at a council meeting that she/he thinks the BEATF should hear about, and mentioning that to 6 other members (even if not all at once).

... a BEATF member phoning, emailing, texting, or forwarding to another member regarding info she/he thinks the BEATF should hear about, and that email gets passed along to 6 (or more) other members.



# Where and when a quorum holds a “meeting” is irrelevant: Acker case



- **THE FIX:**

“Hold that thought” until bringing it up at a posted BEATF meeting as a future agenda item; or

Email or text Katy Zamesnik (as opposed to a fellow member) and have her include it on an agenda.



# Scenarios: Is this a quorum necessitating posting a meeting?

- **SCENARIO 2:**

7 members attend a social function, or are in a social setting.

- **ANSWER:**

Ditto. All of the above. Same old, same old.





# Scenarios: Is this a quorum necessitating posting a meeting?

- **SCENARIO 3:**

7 BEATF members attend a council meeting to impart info, i.e. give update on progress of Task Force.

- **ANSWER:**

LGC and Council both need to post meeting.





# Subcommittees or working groups

- If more than 6 members serve on any subcommittee or working group , that smaller group is subject to TOMA and its meetings must be posted.
- To avoid being subject to TOMA, a working group
  - must be formed to study a limited issue,
  - must be less than a quorum,
  - must not make final decisions, and
  - must be temporary.



# Walking Quorum

## “Danger, Will Robinson!”

- “It is an offense to knowingly circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations, or
- for members of a governmental body to gather in numbers that do not physically constitute a quorum at any one time but who, through successive gatherings, secretly discuss a public matter with a quorum of the body with the objective of avoiding an open meeting.”



# Walking Quorum

- A quorum does not have to be in the same place at the same time. Sequential contacts, and cumulative contacts, can add up to a quorum.
- Complaints alleging walking quorums are prosecuted by county attorneys, district attorneys, and criminal district attorneys, and the AG can assist in criminal prosecution.
- The AG terms this part of TOMA a “conspiracy provision.”



# Penalties for TOMA Violations

- Actions of the body can be voided, via lawsuit.
- Lawsuits can be brought to force compliance.
- Attorneys fees can be assessed.
- Calling, or aiding in calling, or participating in a meeting in violation of TOMA carries Class C misdemeanor penalties.



**Thank you for  
your service on the  
BOND ELECTION ADVISORY  
TASK FORCE**

