

# OVERVIEW OF OPEN MEETINGS IN TEXAS

Loren B. Smith  
Olson & Olson, L.L.P.  
Wortham Tower, Suite 600  
2727 Allen Parkway  
Houston, Texas 77019  
(713) 533-3800  
E-Mail: [lsmith@olsonolson.com](mailto:lsmith@olsonolson.com)

WHAT YOU NEED TO KNOW ABOUT PUBLIC RECORDS  
AND OPEN MEETINGS IN TEXAS  
Lorman Educational Services  
Houston, Texas  
December 9, 2008

**TEXAS OPEN MEETINGS ACT:  
Notice, Notice, Notice**

*“... to retain respect for sausages and laws, one must not watch them in the making.”<sup>1</sup>*

**I. INTRODUCTION**

Regardless of what kind of respect observing the making of laws at all levels in the State of Texas breeds, all have the right to watch our laws being made. The Texas Open Meetings Act (“TOMA”) broadly requires that each “regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter.”<sup>2</sup> Accordingly, the Texas Supreme Court has held that the purpose of the TOMA is to assure “that the public has the opportunity to be informed concerning the transactions of public business.”<sup>3</sup> The application and impact of the open meetings requirement are generally found in the definition of the terms used to implement this broad legislative requirement. Thus, this paper will examine what entities qualify as governmental bodies, what constitutes a meeting, what notice of the meeting is sufficient to comply with the requirements of the TOMA, and the consequences of violating the TOMA.

**II. WHAT MEETINGS MUST BE OPEN?**

**A. Governmental Bodies**

The open requirements provided by the TOMA apply, by definition, to governmental bodies. A governmental body is defined as:

---

<sup>1</sup> Quote generally attributed to Otto Von Bismarck, Chancellor of Prussia, though it is not clear precisely who authored the quote.

<sup>2</sup> TEX. GOV'T. CODE ANN. § 551.002 (Vernon 2008).

<sup>3</sup> *Acker v. Texas Water Commission*, 790 S.W.2d 299, 300 (Tex. 1990).

(A) a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members;

(B) a county commissioners court in the state;

(C) a municipal governing body in the state;

**(D) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;**

(E) a school district board of trustees;

(F) a county board of school trustees;

(G) a county board of education;

(H) the governing board of a special district created by law;

(I) a local workforce development board created under Section 2308.253;

(J) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and

(K) a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code.<sup>4</sup>

While the definitions set out above may seem, for the most part, self-explanatory, the inquiry may not end at simply reading these definitions. Questions have frequently been raised regarding whether a committee, sub-committee, or other board or commission of a governmental body is required to comply with the TOMA. The general rule governing these “sub-bodies” of a governmental entity is determined by whether that committee, sub-committee, board or commission is “a deliberative body” with “rulemaking or quasi-judicial power.”<sup>5</sup> Quasi-judicial power is defined to include:

---

<sup>4</sup> TEX. GOV'T. CODE ANN. § 551.001(3) (Vernon 2008) [emphasis added].

<sup>5</sup> TEX. GOV'T. CODE ANN. § 551.001(3)(D) (Vernon 2008).

(a) the power to exercise judgment and discretion, (b) the power to hear and determine or to ascertain facts and decide, (c) the power to make binding orders, (d) the power to affect personal or property rights of private persons, (e) the power to examine witnesses, compel the attendance of witnesses, and hear the litigation of issues, and (f) the power to enforce decisions or impose penalties”<sup>6</sup>

The determination of whether a particular body is a governmental body within the meaning of the TOMA, the question often hinges on whether the particular body has final decision making authority or if its function is simply to make recommendations to a governmental body.<sup>7</sup>

It should be noted, however, that there are numerous statutory exceptions to this rule and often times these exceptions are found within the text of the enabling legislation for that particular body.<sup>8</sup> For instance, the typical planning and zoning commission of a city in which the city council has retained plat approval authority has no rulemaking authority. Therefore, most planning and zoning commissions would not be a “deliberative body” with “rulemaking or quasi-judicial power” and, therefore, would not be subject to the TOMA. Planning and zoning commissions, however, are specifically mandated to be subject to the provisions of the TOMA.<sup>9</sup> Additionally, the legislature made it clear in the Development Corporation Act<sup>10</sup> that corporations created pursuant to that authority, such as economic development corporations, are not to be considered political subdivision of the governmental body creating them. Nevertheless, the legislature specifically made the meetings of a board of directors of a corporation created under Article 5190.6 to be subject to the requirements of the TOMA.<sup>11</sup> Additionally, note that

---

<sup>6</sup> *Fiske v. City of Dallas*, 220 S.W.3d 547, 551 (Tex. App. – Texarkana 2007, no writ), citing *Parker v. Holbrook*, 647 S.W.2d 692 (Tex. App. Houston [1st Dist.] 1982, writ ref’d n.r.e.).

<sup>7</sup> *City of Austin v. Evans*, 794 S.W.2d 78 (Tex. App. – Austin 1990, no writ).

<sup>8</sup> Please note that while the author provides some examples of these exceptions, no attempt is made to provide an exhaustive list.

<sup>9</sup> TEX. LOCAL GOV’T. CODE ANN. § 211.0075 (Vernon 2008).

<sup>10</sup> TEX. REV. CIVIL STAT. ANN. Art. 5790.6 (Vernon 2008).

<sup>11</sup> TEX. REV. CIVIL STAT. ANN. Art. 5790.6 § 11 (b) (Vernon 2008).

the TOMA itself has a specific exception related to certain homeowners' associations.<sup>12</sup>

## II. WHAT IS A MEETING?

### A. Defined

The TOMA defines a meeting as follows:

(A) a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action; or

(B) except as otherwise provided by this subdivision, a gathering:

(i) that is conducted by the governmental body or for which the governmental body is responsible;

(ii) at which a quorum of members of the governmental body is present;

(iii) that has been called by the governmental body; and

(iv) at which the members receive information from, give information to, ask questions of, or receive questions from any third persons, including an employee of the governmental body, about the public business or public policy over which the governmental body has supervision or control.<sup>13</sup>

Fortunately, a meeting specifically defined to exclude social gatherings “unrelated to public business that is conducted by the body” and attendance of a quorum of the governmental body at a convention or press conference.<sup>14</sup>

Two more definitions are vital to our understanding of when a meeting under the TOMA occurs. First, the Act defines deliberation to mean “a verbal exchange during a meeting . . . concerning an issue within the jurisdiction of the governmental body *or any public business.*”<sup>15</sup> Second, a quorum is a majority of the governmental body “unless defined differently by

<sup>12</sup> TEX. GOV'T. CODE ANN. § 551.0015 (Vernon 2008).

<sup>13</sup> TEX. GOV'T. CODE ANN. § 551.001 (4) (Vernon 2008).

<sup>14</sup> *Id.*

<sup>15</sup> TEX. GOV'T. CODE ANN. § 551.001 (2) (Vernon 2008) [emphasis added].

applicable law or rule or the charter of the governmental body.”<sup>16</sup>

Meeting in numbers less than a quorum and discussing official business has been referred to as a “walking quorum.”<sup>17</sup> Note that the TOMA further prohibits a member or group of members of a governmental body from knowingly conspiring to “circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.”<sup>18</sup> Intent to circumvent the TOMA is not necessarily a prerequisite to a “walking quorum.” Based on these definitions, it is possible for a meeting subject to the TOMA to take place by telephone conference, email, or other means of communication.<sup>19</sup> In considering whether an informal discussion between members of the governmental body constituted a meeting governed by the TOMA, the Texas Supreme Court stated: “When a majority of a public decisionmaking body is considering a pending issue, there can be no ‘informal’ discussion. There is either formal consideration of a matter in compliance with the Open Meetings Act or an illegal meeting.”<sup>20</sup> Moreover, the Attorney General has opined that a “verbal exchange” not only includes an exchange of spoken words, but may also include non-spoken words.<sup>21</sup>

### **B. Meeting by Teleconference or Videoconference**

In certain, limited circumstances, and subject to specific procedural requirements, a governmental body may meet by teleconference. With the exception of some specifically listed

---

<sup>16</sup> TEX. GOV'T. CODE ANN. § 551.001 (6) (Vernon 2008).

<sup>17</sup> *Esperanza Peace and Justice Center v. City of San Antonio*, 316 F. Supp 2d 233 (W.D. Tex. 2001).

<sup>18</sup> TEX. GOV'T. CODE ANN. § 551.143 (a) (Vernon 2008).

<sup>19</sup> *See Acker*, supra; *Harris County Emergency Service District #1 v. Harris County Emergency Corps*, 999 S.W.2d 163 (Tex. App. – Houston [14th Dist.] 1999, no writ).

<sup>20</sup> *Acker*, 790 S.W.2d 299 at 300; *see also Gardner v. Herring*, 21 S.W.3d 767, (Tex. App. – Amarillo 2000, no writ) for a good discussion and application of these definitions. The findings in *Herring* were based on whether or not the appellant met the standards required for summary judgment proof, thus the facts do not provide specific guidance.

<sup>21</sup> Tex. Att’y Gen. Op. No. JC-0307 (2000).

governmental bodies,<sup>22</sup> a meeting by telephone conference may be held only if:

- (1) an emergency or public necessity exists within the meeting of Section 551.045 of this chapter; and
- (2) the convening at one location of a quorum of the governmental body is difficult or impossible; or
- (3) the meeting is held by an advisory board.<sup>23</sup>

Note that the entire telephone conference must be open and audible to the public at the location designated for the meeting in the public notice posted for the meeting.<sup>24</sup> Additionally, each person speaking by telephone conference must be clearly identified prior to speaking.<sup>25</sup>

A meeting may be held by videoconference only if a quorum of the governmental body is physically present at one location of the meeting, unless the jurisdiction of the governmental body extends into three or more counties. The notice of the meeting must specify the location where the quorum of the governmental body will be physically present. The video and audio of each portion of the meeting must be visible and audible to the public. Note also, that a governmental body may allow a member of the public to testify at a meeting by videoconference call.<sup>26</sup> A meeting may also be broadcast over the internet.<sup>27</sup> Finally, it should also be noted that a governmental body may consult with its attorney by telephone conference or videoconference call, subject to the provisions of the TOMA.<sup>28</sup>

---

<sup>22</sup> TEX. GOV'T. CODE ANN. § 551.121 (Vernon 2008) (Governing Board of Institution of Higher Education; Board for Lease of University Lands); TEX. GOV'T. CODE ANN. § 551.123 (Vernon 2008) (Texas Board of Criminal Justice); and TEX. GOV'T. CODE ANN. § 551.124 (Vernon 2008) (Board of Pardons and Paroles).

<sup>23</sup> TEX. GOV'T. CODE ANN. § 551.125 (b) (Vernon 2008).

<sup>24</sup> *Id.* at (e).

<sup>25</sup> *Id.* at (f).

<sup>26</sup> TEX. GOV'T. CODE ANN. § 551.127 (Vernon 2008).

<sup>27</sup> TEX. GOV'T. CODE ANN. § 551.128 (Vernon 2008).

<sup>28</sup> TEX. GOV'T. CODE ANN. § 551.129 (Vernon 2008).

### **III. NOTICE PROCEDURES**

#### **A. When and Where to Post?**

Generally, notices of public meetings of a governmental body must be posted in a place readily accessible to the general public. The notice must be posted, and remain posted at all times, for at least 72 hours before the scheduled time for the meeting.<sup>29</sup> For municipalities, this place “readily accessible to the general public” is statutorily defined as a bulletin board at a place convenient to the public in the city hall.<sup>30</sup> Keep in mind, however, that the notice must be accessible at all times. Therefore, if a city’s bulletin board at city hall is not visible when city hall is not open, notice needs to be posted at a place where it is visible when the building is closed.<sup>31</sup> If the governmental body or economic development corporation maintains an Internet website, the notice must also be posted in the website.<sup>32</sup> Further, posting of the notice on the Internet satisfies the requirement that it be available continuously, eliminating the need to post separately if the city’s bulletin board is not accessible when city hall is closed.<sup>33</sup>

#### **B. What Must be Posted?**

The TOMA mandates: “A governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body.”<sup>34</sup> A governmental body may recess an open meeting to the next day without meeting the requirements of § 551.041 so long as the meeting is recessed and reconvened in good faith and not in an attempt to circumvent

---

<sup>29</sup> TEX. GOV’T. CODE ANN. § 551.043 (a) (Vernon 2008).

<sup>30</sup> TEX. GOV’T. CODE ANN. § 551.050 (Vernon 2008).

<sup>31</sup> *Vamarie, Inc. v. Ball*, 793 S.W.2d 749 (Tex. App. – San Antonio 1990, motion to file mandamus granted, subsequent mandamus proceeding, 820 S.W.2d 762 (Tex. 1991).

<sup>32</sup> TEX. GOV’T. CODE ANN. § 551.056 (Vernon 2008).

<sup>33</sup> TEX. GOV’T. CODE ANN. § 551.143 (b) (Vernon 2008).

<sup>34</sup> TEX. GOV’T. CODE ANN. § 551.041 (Vernon 2008).

the TOMA.<sup>35</sup> If a governmental body continues a meeting to the next regular business day, it cannot continue the meeting to another day without providing notice in accordance with § 551.041.<sup>36</sup> Additionally, a meeting which was properly posted but was prevented from taking place because of a catastrophe may be convened at a convenient location within 72 hours, so long as the action is taken in good faith.<sup>37</sup> A catastrophe includes fire, flood, earthquake, hurricane, tornado, wind, rain, or snow storm, power failure, transportation failure, interruption of communication facilities, epidemic, riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.<sup>38</sup>

### C. Sufficiency of Notice – General Requirements

The purpose of the TOMA is to assure that the public has the opportunity to learn of the transactions of public business. The requirements of the TOMA are considered “mandatory and are to be liberally construed in favor of open government.”<sup>39</sup> Generally, notice is considered to comply with the TOMA if it alerts the general public that a particular topic will be discussed and that some action may be taken.<sup>40</sup> The notice is not intended to provide due process to particular individuals that may have a certain interest in the topic,<sup>41</sup> and is not required to provide notice of all possible results that may arise.<sup>42</sup> “If a ‘reader’ is given notice, the requirement[s] of [TOMA

---

<sup>35</sup> TEX. GOV'T. CODE ANN. § 551.0411 (a) (Vernon 2008).

<sup>36</sup> *Id.*

<sup>37</sup> TEX. GOV'T. CODE ANN. § 551.0411 (b) (Vernon 2008).

<sup>38</sup> TEX. GOV'T. CODE ANN. § 551.0411 (c) (Vernon 2008).

<sup>39</sup> *City of Farmers Branch v. Ramos*, 235 S.W.3d 462 (Tex. App. – Dallas 2007, no pet.).

<sup>40</sup> *Cox Enterprises, Inc. v. Board of Trustees of Austin Independent School District*, 706 S.W.2d 956 (Tex. 1986); see also *Rettberg v. Texas Department of Health*, 873 S.W.2d 408 (Tex. App. – Austin 1994, no writ).

<sup>41</sup> *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762 (Tex. 1991); *Acker*, 790 S.W. 2d 300; *City of Laredo v. Escamilla*, 219 S.W.3d 14 (Tex. App. – San Antonio 2006, review denied); see also *Weatherford v. City of San Marcos*, 157 S.W.3d 473 (Tex. App. – Austin 2004, review denied) (relating to notice of topic of deliberation in executive session).

<sup>42</sup> *Rettberg*, 873 S.W.2d 408; see also *Friends of Canyon Lake, Inc. v. Guadalupe-Blanco River Authority*, 96 S.W.3d 519 (Tex. App. – Austin 2001, review denied).

are] satisfied and its purpose served.”<sup>43</sup> It is clear, however, that the specificity of the notice increases as the interest of the subject to the public increases.<sup>44</sup>

While most of the law in this area focuses on the sufficiency of the notice related to a particular subject matter, it has been held that using the term “consideration” in an agenda does not necessarily preclude the possibility of taking action on that item. For instance, the Texas Supreme Court determined that agenda language which stated that the Texas Turnpike Authority would “*consider* a request . . . to determine the feasibility of a bond issue to expand and enlarge the Dallas Fort Worth Turnpike” was sufficient to allow the Authority to authorize and fund a feasibility study on the Turnpike.<sup>45</sup> Additionally, the term “consideration” in an agenda of the Texas Natural Resource Commission was held to be sufficient to authorize the Commission to take action on the items described.<sup>46</sup>

#### **D. Sufficiency of Notice – Personnel Exceptions**

For what may be obvious reasons, a great number of cases have dealt with the question of whether sufficient notice has been provided to allow a governmental body to take action with regard to an employee or employees. As already discussed, the Texas Supreme Court has held that the TOMA requires provision of full and adequate notice of the topic to be considered, particularly where the subject is of special interest to the public.<sup>47</sup> This principal is frequently applied in determining whether notice of an executive session to deliberate regarding personnel issues, which is a specific exception to the TOMA provided by § 551.074 of the Act, is

---

<sup>43</sup> *City of San Antonio*, 820 S.W.2d 762, 765.

<sup>44</sup> *Markowski v. City of Marlin*, 940 S.W.2d 720 (Tex. App. – Waco 1997, writ denied); *Point Isabel Independent School District v. Hinojosa*, 797 S.W.2d 176 (Tex. App. – Corpus Christi 1990, writ denied); *Cox*, 706 S.W.2d 956.

<sup>45</sup> *Texas Turnpike Authority v. City of Fort Worth*, 554 S.W.2d 675, 676 (Tex. 1977).

<sup>46</sup> *City of San Angelo v. Texas Natural Resource Commission*, 92 S.W.3d 624 (Tex. App. – Austin 2002, no pet.).

<sup>47</sup> *City of San Antonio*, 820 S.W.2d 762; *Cox Enterprises, Inc.*, 706 S.W.2d 956.

sufficient. The Supreme Court in *Cox*, for example, where the personnel issue is one of special interest to the public, a label generally stating that the governmental body will consider “personnel” is insufficient.<sup>48</sup> Not surprisingly, the Court determined that the selection of a school superintendent is not an “ordinary personnel matter” that could be generally described.<sup>49</sup> Courts of Appeals have agreed. The Austin Court of Appeals ruled that a decision regarding the executive secretary of the State Board of Examiners was not a topic with a significant degree of special interest to the public.<sup>50</sup> A generic “personnel” description was sufficient as to decisions regarding a librarian, teacher, band director, and part-time counselor, but not sufficient when dealing with high school and elementary school principals, according to the Corpus Christi Court of Appeals.<sup>51</sup>

#### **E. Sufficiency of Notice – General Categories/Citizen Comments**

Many agendas posted by governmental bodies contain some sort of general category such as “Public Comments” or “Manager’s Report.” Interestingly, these two types of catch-all categories are evaluated very differently. First, the Attorney General has opined that an agenda item simply described as “Public Comments” is acceptable because the governmental body has no way of ascertaining in advance of the meeting what citizens may wish to discuss.<sup>52</sup> It should be noted, however, that if the governmental body does have advance notice of the specific topic a citizen is planning to address at the meeting, the governmental body should describe that topic as specifically as possible.<sup>53</sup>

---

<sup>48</sup> *Cox Enterprises, Inc.*, 706 S.W.2d 955, 959.

<sup>49</sup> *Id.*

<sup>50</sup> *Rettberg*, 873 S.W.2d 408.

<sup>51</sup> *Point Isabel Independent School District*, 797 S.W.2d 176.

<sup>52</sup> Tex. Att’y Gen. Op. No. JC-0169 (2000).

<sup>53</sup> *Id.*

Often, the bigger question that arises during a public comment portion of a meeting agenda is to what extent members of the governmental body are permitted to engage in a verbal exchange with the commenting member of the public. Fortunately, the TOMA has specifically addressed this issue. If a member of the public makes a comment or inquiry regarding a matter not described on the posted notice of the meeting, the governmental body is limited to providing a statement of specific factual information or reciting the governmental body's existing policy in response to the inquiry.<sup>54</sup> The only deliberation or action that is permitted regarding the inquiry is limited to a proposal to place on the agenda for an upcoming meeting.<sup>55</sup>

While a member of the public is permitted to comment on a matter not on the meeting agenda, similar comments by an employee or member of the governmental body are subject to a different scrutiny. For instance, a posted notice of a Hays County Commissioners' Court meeting described a "Presentation" by a specified County Commissioner. The Austin Court of Appeals found this notice insufficient, specifically citing and quoting Attorney General Opinion No. JC-0169:

"We caution that the use of 'public comment' or similar term will not provide adequate notice if the governmental body is, prior to the meeting, aware, *or reasonably should have been aware*, of specific topics to be raised. (citing *Cox Enters.*, 706 S.W.2d 956). In addition, the relationship the governmental body has with its employees differs from the relationship it has with citizens; 'it knows or can learn in advance the subject matter of reports or briefings by employees, consultants, [or] auditors. . . . Thus, there are no particular difficulties in providing notice of the subject matter of such presentations.'<sup>56</sup>

Note that the Court specifically found that the exception provided in § 551.042 did not apply to the Commissioner's comments.<sup>57</sup>

---

<sup>54</sup> TEX. GOV'T. CODE ANN. § 551.042 (a) (Vernon 2008).

<sup>55</sup> TEX. GOV'T. CODE ANN. § 551.042 (b) (Vernon 2008).

<sup>56</sup> *Hays County Water Planning Partnership v. Hays County, Texas*, 41 S.W.3d 174, 180 (Tex. App. – Austin 2001, review denied).

<sup>57</sup> *Id.*

The Texas Attorney General again addressed this question recently when asked if topics generally described in a Corpus Christi City Council meeting agenda as “City Manager’s Report,” “Mayor’s Update,” and “Council and Other Reports” provided sufficient enough notice to comply with the TOMA.<sup>58</sup> After a thorough review of the case law and related authority on the subject, the Attorney General concluded that the specified notice was insufficient as a matter of law.<sup>59</sup> “The general and generic nature of the notice does not sufficiently notify a reader, as a member of the interested public, of the subjects of the update and reports to be discussed at any particular meeting.”<sup>60</sup> The opinion further concluded that the fact that the Corpus Christi City Council did not take any action on the items in question did not make the notice adequate and further rejected the argument that the generic topics were excepted by § 551.042.<sup>61</sup>

#### IV. CONSEQUENCES OF TOMA VIOLATION

##### A. Action Voidable

Strict compliance with the requirements of the TOMA by a governmental body is essential. Action taken in violation of the TOMA is voidable.<sup>62</sup> Moreover, any interested person may bring an action for mandamus or injunction to prevent a violation of the TOMA with attorney fees and costs of suit to be taxed against the substantially prevailing party.<sup>63</sup> Moreover, a member of a governmental body that knowingly conspires to circumvent the TOMA or illegally meets in a closed meeting may be found guilty of a misdemeanor and fined up to \$500

---

<sup>58</sup> Tex. Att’y Gen. Op. No. GA-0668 (2008).

<sup>59</sup> *Id.* at 3.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> TEX. GOV’T. CODE ANN. § 551.141 (Vernon 2008); *see also Point Isabel Independent School District*, 797 S.W.2d 176; and *City of Laredo*, 219 S.W.3d 14.

<sup>63</sup> TEX. GOV’T. CODE ANN. § 551.142 (Vernon 2008).

and/or sentenced to jail for up to six (6) months.<sup>64</sup>

### **B. Ratification**

In January of 1990, the City Council of the City of De Leon contained a general notice that it would meet in executive session to “consider the employment and evaluation of city personnel.”<sup>65</sup> Upon reconvening in open session, the City Council voted to terminate its police chief.<sup>66</sup> In the ensuing litigation, the City argued that the Council later ratified its action of terminating the police chief five (5) days later when a motion to reinstate the police chief died for lack of a second.<sup>67</sup> The City further asserted that the Council ratified the termination yet another meeting when the City Council approved the minutes of its termination meeting.<sup>68</sup> Citing a long line of cases that a governmental body may not ratify its prior illegal acts, the Court rejected the City’s arguments.<sup>69</sup> Thus, a governmental body cannot ratify an action taken in violation of the TOMA. The governmental body can, however, provide proper notice of the topic on another agenda for a future meeting. In such an instance, the action in question will be effective from the date of the properly posted meeting, not the date of the previous, illegal meeting.

### **V. CONCLUSION**

Provided that the Texas Legislature has clearly mandated the openness of meetings of our governmental bodies, it is incumbent upon those governmental bodies to comply with the

---

<sup>64</sup> TEX. GOV’T. CODE ANN. § 551.143 and 144 (Vernon 2008).

<sup>65</sup> *Mayer v. City of De Leon*, 922 S.W.2d 200, 203 (Tex. App. – Eastland 1996, writ denied).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* (citing *Lower Colorado River Authority v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975); see also *Fielding v. Anderson*, 911 S.W.2d 858 (Tex. App. – Eastland 1995, writ denied); and *Ferris v. Board of Texas Board of Chiropractic Examiners*, 808 S.W.2d 514 (Tex. App. – Austin 1991, writ denied).

TOMA. As demonstrated in this paper, violation of the TOMA can provide significant legal, financial, and political consequences to both the governmental bodies and its members.