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City Officials Offer Strong Rebuttal to Senate Property Tax Committee

On March 21, the Senate Select Committee on Property Tax Reform and Relief was in Lubbock for its third public hearing. Like the previous hearings, much of the public testimony and committee discussion centered on whether revenue caps are the best solution to provide property tax relief.

City officials testifying at the Lubbock hearing built upon the arguments of public officials from the previous hearings to offer the strongest rebuke yet to revenue cap proponents. The overall theme of city testimony was that every city is different, and that a one-size-fits-all property tax mandate from Austin ignores their unique financial realities. That is why cities are governed by locally-elected leaders who are in the best position to assess their citizens' specific local needs.

Through the first three public hearings across the state, many city officials have shown up to make the case that revenue caps are the wrong way to provide tax relief. Those include:

- Mary Dennis, Mayor, Live Oak
- Sheryl Sculley, City Manager, San Antonio
- Ben Grozell, Chief Financial Officer, San Antonio
- Pete Perkins, Mayor, Ingleside
- Jim Gray, City Manager, Ingleside
- Paul Harpole, Mayor, Amarillo
- Suzanne Bellsnyder, City Manager, Spearman
- Charles Kelly, Mayor, Perryton
- David Landis, City Manager, Perryton

The League salutes these individuals for standing up on behalf of cities across the state.

The next [stop for the committee](#) is at the University of Texas at Arlington on April 27 at 10:00 a.m. City officials in that area who are concerned about the impact of revenue caps are strongly encouraged to testify.

Proposed Rules: Animal Shelters and Veterinarians

The Texas Board of Veterinary Medical Examiners (TBVME) is seeking feedback on a potential rule defining “designated caretaker” as it relates to veterinarians working for animal shelters. City officials can participate by: (1) providing written feedback to the TBVME; or (2) attending a [stakeholder meeting](#) on March 30 at 1:00 p.m. at the Hobby Building, located at 333 Guadalupe Street in Austin.

TBVME is considering the adoption of a new rule because the Third Court of Appeals recently invalidated the previous rule in [Texas State Board of Veterinary Medical Examiners v. Jefferson](#). The designated caretaker exemption is one of the exemptions that veterinarians may rely on to provide care and treatment to shelter animals without running afoul of the Veterinary Licensing Act. More details about the exemption and potential rule are available here: https://www.veterinary.texas.gov/documents/rules/Stakeholder_Meeting_Information.pdf.

Written feedback to the TBVME should be submitted to Maggie Griffith, TBVME General Counsel, by email at maggie@veterinary.texas.gov or mail at 333 Guadalupe Street, Suite 3-810, Austin, Texas, 78701.

Please contact Christy Drake-Adams, TML Legal Counsel, at christy@tml.org with questions.

TOMA and Campaign Season: Incumbents Beware!

As campaign season approaches, new candidates and incumbents seeking elected municipal positions will be asked to participate in a variety of political events. Candidate forums and fundraisers are two examples. For new candidates, the Texas Open Meetings Act (Act) does not apply because they are not yet members of the city council. For incumbents, however, the Act may create legal pitfalls.

The Act is intended to allow the public to view the business of the city council. But does the Act distinguish between “official” meetings and campaign gatherings that include a quorum of the city council? Absolutely not. If a discussion about city business amongst a quorum of incumbents takes place anywhere, a “meeting” of the city council may have occurred, and all the Act’s requirements (e.g., a properly posted agenda, public access, and a specific listing of subject matter) may apply.

Several attorney general opinions have broadly interpreted the definition of a meeting to include the attendance by a quorum of a governmental body at various lectures or gatherings. For example, opinion [JC-0203 \(2000\)](#) concludes that the Act applies if: (1) a quorum of a governmental body attends the same speaking engagement or lecture; (2) an attending member participates in the discussion; and (3) the deliberation relates to public business or public policy over which the quorum of the governing body in attendance has supervision or control. Opinions [JC-0248 \(2000\)](#) and [JC-0308 \(2000\)](#) come to similar conclusions. (Opinion JC-0308 was overruled by [statute](#) in 2001, but the analysis is still relevant.) Thus, if a quorum attends a chamber of commerce meeting, and discussion there concerns an issue over which the city council has authority (e.g., street repairs or economic development incentives), councilmembers may not participate in the meeting unless all requirements of the Act are met.

Consequently, the Act would apply if a quorum of a city council attends a “candidate forum” to debate among new candidates, themselves, or to answer questions from an audience. Why not just post the forum as a meeting of the city council? That’s a possibility, but in that case the dilemma is the inability to list the items for discussion. The attorney general concluded in opinion [GA-0668 \(2008\)](#) that general postings such as “Council and Other Reports” provide insufficient notice to the public. The same would be true of a candidate forum. For example, posting an agenda listing “candidate forum to discuss campaign matters” could be insufficient for incumbents to discuss any specific matter in detail.

The Act does allow a municipal elected official certain latitude at a properly posted meeting. [Section 551.042\(a\)](#) provides that:

If, at a meeting of a governmental body, a member of the public or of the governmental body inquires about a subject for which notice has not been given..., the notice provisions of this subchapter do not apply to: (1) a statement of specific factual information given in response to the inquiry; or (2) a recitation of existing policy in response to the inquiry.

Section 551.042(b) further provides that: “[a]ny deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.” However, attorney general opinion [JC-0169 \(2000\)](#) provides that:

This provision relates to ‘inquiries’ from members of the public. Its purpose is to authorize a governmental body to make a limited response to an inquiry from the public about a subject not included on the posted notice *and to prevent it from engaging in ‘deliberation’...about the subject matter of the inquiry.* When an inquiry or a comment from a member of the public requires such deliberation..., members of the governmental body may respond merely that the matter shall be placed on a future agenda.

Thus, while a new candidate could respond in detail, an incumbent would arguably have to state that he or she cannot do so at the present time, and – of course – it is unlikely that attendees would understand why.

What about fundraisers? [Section 551.001\(4\)](#) exempts from the definition of a meeting:

[T]he gathering of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body, or the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, or press conference, if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, or press conference.

For example, if a quorum attends a Texas Municipal League Conference, that attendance is not generally subject to the Act so long as the members do not take formal action or more than incidentally discuss public business. In addition, if a quorum attends a cocktail party for a friend's birthday or something similar, the Act does not apply.

Some fundraisers could arguably be classified as social functions, but it remains questionable as to whether that social function is "unrelated to public business." Case in point: an incumbent councilmember in a central Texas city attended a private fundraising event held on his behalf. A quorum of other incumbents was present (although none sat at the same tables). The event was essentially a social function, but the incumbent was asked to give a short speech at the end of the evening. His speech was intentionally focused on his local heritage and connection to the community, rather than any specific items related to city business. Technically, that speech shouldn't violate the Act. The councilmember's position was that the event was a social one, and his presentation wasn't about "city business" *per se*.

However, a person in the audience asked an inflammatory question relating to whether the councilmember knew that his constituents believed that he was a poor steward of taxpayer dollars. The councilmember answered in a general way. According to the councilmember, an opponent reported the exchange to the local county attorney's office. The report led to a criminal investigation into the incumbent's behavior at the fundraiser. Ultimately, no charges were filed, but the event led to much publicity regarding the incumbent's integrity.

The League certainly has no position on who is the best candidate for any city council position; that's up to the voters of each city. But every incumbent should be aware of the pitfalls described above. The following ideas may be worthy of consideration:

1. A city might wish to establish procedures for giving proper notice if a quorum will attend outside gatherings, and/or warn councilmembers of the danger of discussions amongst a quorum outside of a meeting.
2. If compliance with the Act is not possible because the gathering of a quorum is not accessible to the public or notice has not been posted, the members in attendance may not deliberate or answer questions regarding subject matter that is within their supervision.
3. If a member is invited to comment on issues raised by attendees, and a quorum is present, he or she should decline to address subjects within the jurisdiction of the city council, explaining that under the circumstances his or her remarks would violate the Act.

Keep in mind that the suggestions above are based on existing legal precedent, regardless of whether that precedent is a correct or incorrect interpretation of the Act. City officials should consult with their local legal counsel to determine the proper course of action in any given situation. With regard to candidate forums and fundraisers, it appears that the Act may hinder the free flow of ideas from incumbents to their constituents, while providing new candidates with a political advantage.

In the case of a candidate forum or fundraiser, does the Act violate an incumbent councilmember's right to freedom of speech under the First Amendment to the U.S. Constitution? The U.S. Supreme Court, in the Texas case of *Asgeirsson v. Abbott*, essentially [concluded in 2013](#) that it does not.

Eminent Domain Reporting: It's Required and It's Not Too Late

[Senate Bill 1812](#), passed during the 2015 legislative session, requires cities to fill out a web-based form with the comptroller relating to each city's statutory eminent domain authority. The information was due by **February 1, 2016**, and the failure to fill out the form could result in a \$1,000 penalty against the city. The good news is that the comptroller isn't taking enforcement action at this time. Thus, cities that haven't entered their information can still do so. The electronic reporting form is available at:

<http://comptroller.texas.gov/webfile/eminent-domain/>

Most of the required information is self-explanatory, but League staff has inserted some commentary below that may be of assistance. The reporting consists of providing the following information:

- 1. The entity's full legal name.**
- 2. The entity's address and public contact information.**
- 3. The name and contact information of the appropriate officer, or other person representing the entity.**
- 4. The type of entity.**

Obviously, "city" is the type of entity. However, the form also allows an economic development corporation (EDC) to file, and it lists Local government Code Section 505.105 as that entity's authority. (While most attorneys would agree that an EDC uses the city's eminent domain authority on its behalf, it may nonetheless make sense to report for the EDC.)

Cities with other city-created entities should review the eminent domain authority of those entities to determine whether additional forms should be sent to the comptroller on their behalf. Some statutory provisions are very specific (e.g., authority of cities that have created municipal parking authorities or defense base management authorities, or even a city with a charter-created board of a municipally owned electric utility system that has certain financial obligations).

5. The legal provision(s) granting the entity’s eminent domain authority.

This section of the form is titled “Eminent Domain Provisions: Codes.” It asks “under what code(s) of the law has eminent domain authority been granted to this entity?”

The user selects the appropriate code (e.g., Local Government Code, etc.) and then selects the specific provisions (e.g., 251.001, etc.). Several provisions under each code can be selected by holding down the “control” key while clicking. The process is repeated for each additional code.

Each city should submit its own form after reviewing each of the provisions in these spreadsheets to determine whether they apply to that particular city. The following spreadsheets are available:

- [General law cities – basic provisions](#): Most general law cities will be fine submitting only the provisions listed in this spreadsheet.
- [Home rule cities – basic provisions](#): Most home rule cities will be fine submitting only the provisions listed in this spreadsheet.
- [Comprehensive list of all statutory provisions](#) granting eminent domain authority to cities.

6. The focus or scope of the eminent domain authority granted to the entity.

This section of the forms asks “what types of projects and/or purposes does this entity have eminent domain authority.”

For most cities, it makes sense to choose every project/purpose listed, except for “other.” (Only those cities with a specific project type that is authorized by law but not listed should choose “other” and enter a description.)

7. The earliest date the entity had authority to exercise the power of eminent domain.

For a city, enter the incorporation month and year in this section.

- 8. The entity's taxpayer identification number, if any.**
- 9. Whether the entity exercised its eminent domain authority in the preceding calendar year by filing a condemnation petition under Section 21.012, Property Code.**
- 10. The entity's Internet website address or, if the entity does not operate an Internet website, contact information to enable the public to obtain information from the entity.**

It may be appropriate to seek the assistance of local legal counsel to advise on the reporting. Please contact Scott Houston, TML's general counsel, with questions at shouston@tml.org or 512-231-7400.

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