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February 24, 2011

Ramon Garcia, County Judge
1615 S. Closner, Suite J
Edinburg, Texas 78539

Via Facsimile

Pct. #1 Commissioner Joel Quintanilla
1902 Joe Stephens Avenue
Weslaco, Texas 78596

Via Facsimile

Pct. #2 Commissioner Hector "Tito" Palacios
301 E. State
Pharr, Texas 78577

Via Facsimile

Pct. #3 Commissioner Joe M. Flores
724 N. Breyfogle
Mission, Texas 78572

Via Facsimile

Pct. #4 Commissioner Joseph Palacios
1501 N. Doolittle Rd.
Edinburg, Texas 78542

Via Facsimile

RE: Certified Agenda

Dear Judge and Commissioners:

Texas Government Code Section 551.103 provides a governmental body shall either keep a certified agenda or make a tape recording of the proceedings of each closed meeting, except for a private consultation permitted under Section 551.071.

The exception under Section 551.071 concerns consultation with attorney. Government Code Section 551.071 provides a governmental body may not conduct a private consultation with its attorney except:

- (1) When the governmental body seeks the advice of its attorney about:
 - (A) pending or contemplated litigation; or
 - (B) a settlement offer; or
- (2) on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

Therefore, the certified agenda does not apply to consultations between a governmental body and its attorney when those consultations comply with Section 551.071, i.e. when only Section 551.071 matters are discussed. Texas Attorney General Opinion No. JM-840.

Texas Attorney General Opinion No. JM-840 also provides the following:

This office cannot, however, set forth iron-clad guidelines for complying with the statutory requirements in every situation. It is clear that the agenda must contain at least a brief summary of every specific subject actually discussed, not just those originally intended for discussion. So long as discussion is restricted to matters contained in the notice for the executive session and matters for which an executive session is authorized, a "certified agenda" need not contain a detailed summary or paraphrase of each question or idea presented on the general subject of the executive session. Keeping a more detailed record of discussions will, however, serve to protect the governmental body from violating section 2A. If a discussion addresses something that does not appear in the notice or should not be discussed in executive session, greater detail is necessary. Enough detail should be included to enable a district judge to determine whether the act has been violated. If discussion strays into topics for which executive sessions are not authorized, the certified agenda must state that those topics were discussed but may also state that the governmental body remedied the error by repeating the discussion in open meeting. The greater the likelihood of violation, the greater the detail necessary. Governmental bodies can avoid problems in this area of ambiguity by opting to keep a tape of executive sessions rather than a "certified agenda".

The presiding officer must certify that the agenda kept is a true and correct record of the proceedings.

However, Section 551.0725 specifically requires a Commissioners Court to keep a tape recording when it conducts a closed meeting to deliberate business and financial issues relating to a contract being negotiated. Section 551.0725 states:

"(a) The commissioners court of a county with a population of 400,000 or more may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting:

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(1) the commissioners court votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person; and

(2) the attorney advising the commissioners court issues a written determination that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person.

(b) Notwithstanding Section 551.103(a), Government Code, the commissioners court must make a tape recording of the proceedings of a closed meeting to deliberate the information." (emphasis added).

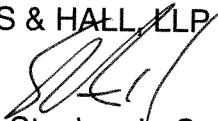
Therefore the Commissioners Court would be required to keep a tape recording if it meets in closed session for the purposes outlined in Section 551.0725. A certified agenda will not be sufficient. Currently this is the only statute we have found that specifically requires a closed session be tape recorded.

We have enclosed a form of certified agenda for your review.

Very truly yours,

ATLAS & HALL, LLP

By:


Stephen L. Crain

SLC/mt
Enclosure

HIDALGO COUNTY COMMISSIONERS COURT

CERTIFIED AGENDA

CONFIDENTIAL: No one shall, without lawful authority, knowingly make public this certified agenda of a closed or executive session. A person who violates this subsection shall be guilty of a Class B misdemeanor and further shall be liable to any party injured or damaged thereby. Tex. Rev. Civ.Stat. Ann.Art.6252-17.2A(h).(1).

CERTIFIED AGENDA OF CLOSED SESSION

Meeting of the Commissioners Court of Hidalgo County

“The Commissioners Court of Hidalgo County on _____, 201__, beginning at _____, convened in closed session in accordance with the Texas Open Meetings Act.”

SUBJECTS DISCUSSED IN THE SESSION CLOSED TO THE PUBLIC:

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

“The Commissioners Court of Hidalgo County ended its closed session at _____ on _____ 201_.”

RECORD OF FURTHER ACTION TAKEN, IF ANY, ON ABOVE ITEMS IN THE SUBSEQUENT OPEN SESSION:

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

I hereby certify that the foregoing is a true and correct record of the proceedings on the above date.

RAMON GARCIA, COUNTY JUDGE