



TRAVIS J. KOEHN
CRIMINAL DISTRICT ATTORNEY
AUSTIN COUNTY

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OPINION COMMITTEE

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August 27, 2003

FILE # ML-43241-03
I.D. # 43241

Hon. Greg Abbott
Office of the Attorney General
Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

RQ-0099-GA

RE: Opinion request concerning section 118.001(c) of the Local Government Code

Dear General Abbott:

I am respectfully requesting your opinion on the authority of a county clerk to charge a reasonable fee to a governmental body for receiving, posting and retaining notices required by the Open Meetings Act.

I believe the authority for charging the fee is found in Tex. Loc. Gov't Code Ann. § 118.011(c) and Op. Tex. Att'y Gen. No. M-496 (1969). I have also enclosed a memorandum from my office as per §41.007 of the Tex. Gov't Code.

This issue has become rather contentious in Austin County after a call from your office on August 20, 2003.

On that day, Mr. David Short called the Austin County Clerk's Office to report that he had received a complaint that the clerk was going to charge \$3.00 for performing duties related to Open Meetings Act.

Mr. Short told the clerk she could not charge that fee and he questioned what authority she was basing the fee on.

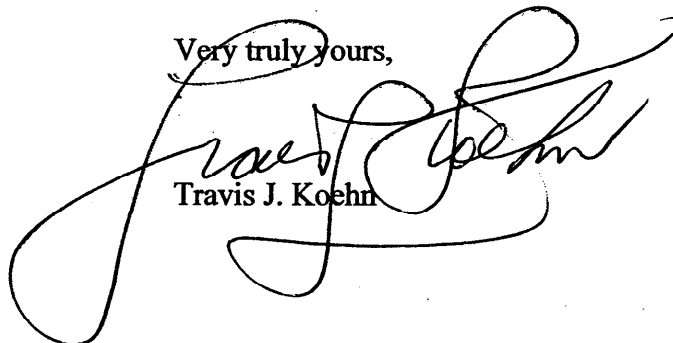
The clerk told him she relied upon section 118.011 (c) of the Local Government Code and that clerks from many other counties were already charging the fee.

Mr. Short told her that he would check with the attorneys and call her back.

Later the same day, Mr. Short called back and said, "No", the clerk could not charge that fee. He also advised that if the clerk did not agree, then the District Attorney could request an opinion, but the answer would still be "No".

I am requesting a written opinion from your office.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read "Travis J. Koehn". The signature is written over the typed name below it.

Travis J. Koehn

Cc: Hon. Carrie Gregor, County Clerk
Hon. Carolyn Bilski, County Judge
Mr. Steve Lackey, President, Bellville Hospital District
Hon. Jo Ann Chastain, President, County and District
Clerk's Association



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August 27, 2003

TO: Carrie Gregor
County Clerk

FROM: Daniel W. Leedy *DWL*

RE: Fee for receiving, posting and retaining notice of public meetings

You have asked for an opinion if you are authorized to charge the Bellville Hospital District a fee of \$3.00 for receiving, posting and retaining its notice of public meeting.

The Open Meetings Act requires that a written notice or agenda be posted at least 72 hours before the scheduled meeting of a "governmental body". Tex. Gov't Code § 551.043. Any action or vote taken in violation of the Open Meetings Act is voidable and may result in writs of mandamus or injunction and criminal prosecution. Tex. Gov't Code §'s 551.141-144.

A governmental body includes the governing board of a special district created by law. Tex. Gov't Code § 551.001 (H). The Bellville Hospital District was created under Article IX, § 9 of the Texas Constitution and Chapter 286 of the Tex. Health & Safety Code after an election on the proposition passed on July 27, 1999. Although not specifically addressing districts created under Chapter 286, the Attorney General has recognized that Hospital Districts are subject to the Open Meetings Act, H-554.

To provide legal notice under the Open Meetings Act, the following is required:

(a) The Hospital District shall:

(1) post notice of each meeting at a place convenient to the public in the administrative office of the district...; and

(2) provide notice of each meeting to the county clerk ...in which the district...is located.

(b) The County Clerk shall post the notice on a bulletin board at a place convenient to the public in the county courthouse. Tex. Gov't Code § 551.054.

Additionally, the Texas State Library and Archives Commission has promulgated rules concerning the retention of these records. Tex. Gov't Code § 441. It has assigned Open Meeting Notices the record series item number 1525-12. Under the Commission's regulations, a county clerk is required to retain the records for two years.

The above referenced state statutes require the clerk to perform a duty, but do not set a specific fee.

Section 118.011(c) of the Local Government Code states:

The clerk shall charge reasonable fees for performing other duties prescribed by statute for which a fee is not prescribed by this subchapter.

Article V, § 20 the Texas Constitution states that fees of the County Clerk are to be "prescribed by the Legislature". Under section 118.011(c), the Legislature has prescribed the fee to be a "reasonable" one.

School Districts at one time were also required to furnish notice of their meetings to the county clerk. The Attorney General ruled in opinion M-496 that county clerks were authorized to charge school districts a reasonable fee for posting the required notice.

One method to determine the reasonableness of your fee is to compare it with other counties in the area. Listed below are the fees that other counties charge for public meeting notices:

| | |
|-------------------|--------|
| Colorado County | \$1.00 |
| Fayette County | \$3.00 |
| Ft. Bend County | \$3.00 |
| Lee County | \$3.00 |
| Washington County | \$3.00 |
| Waller County | \$3.00 |

Based on this comparison, the \$3.00 fee is reasonable.

CONCLUSION

Section 118.011(c) of the Local Government Code authorizes the County Clerk to charge the Bellville Hospital District and other districts, a \$3.00 fee for receiving, posting and retaining the notice required by the Open Meetings Act.