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OPINION COMMITTEE

TEXAS EDUCATION AGENCY

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Michael Williams
Commissioner

March 12, 2014

The Honorable Greg Abbott
Attn: Opinion Committee
Attorney General of Texas
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RQ-1191-GA

Re: Clarification of Section 551.127, Texas Government Code

Dear General Abbott:

I am writing to request your opinion on the ability of members of a governmental body to participate in a meeting by videoconference call under Section 551.127, Texas Government Code ("Section 551.127"). My questions specifically relate to nonprofit corporations that have been granted open-enrollment charters pursuant to Subchapter D, Chapter 12, Texas Education Code¹ and focus on the extent to which some members of the board of an open-enrollment charter school can participate in a meeting by videoconference from locations outside of Texas or the geographic service area of the open-enrollment charter school.

Your office has previously held that a governmental body cannot conduct a meeting outside of the state². However, recent changes to the Texas Open Meetings Act have authorized governmental bodies to hold meetings by videoconference call. Specifically, Section 551.127(c) allows a meeting to be held by videoconference call if the presiding member of the body is physically present at a location open to the public³.

Section 551.127 does not address whether members of a governmental body may participate in a meeting from a location outside of the state. Subsection (c) requires that the member presiding over the meeting be physically at a location that is "open to the public" or a location "in or within a reasonable distance of the geographic jurisdiction"⁴. The requirement that the presiding member be accessible to the public could be considered to satisfy the concerns raised about meetings held outside of the state in previous Attorney General's opinions.

¹ The governing bodies of open enrollment charter schools are "considered to be governmental bodies for purposes of Chapter 551" and subject to "any requirement in Chapter 551...or another law that concerns open meetings...that applies to a school district [or] the board of trustees of a school district..." under Section 12.1051, Texas Education Code. Our assumption is that there is no difference in the application of Section 551.127 for the members of the board of a nonprofit corporation granted an open-enrollment charter, but we would note that a nonprofit corporation could have operations outside of the state in a manner that most governmental bodies would not.

² Texas Attorney General's Opinions JC-53 (1999) and JC-487 (2002). The rationale of these opinions appears to be that a location outside of the state is not open to the public.

³ SB 984 (Acts, 83rd R.S., ch. 159) and HB 2414 (Acts, 83rd R.S., ch. 685) separately amended subsection (c) in Section 551.127. In the amendments, the requirement to have the presiding officer present at a location open to the public appears identical. However, Subsection (c) as amended by SB 984 appears to limit the ability of a local governmental body to conduct a meeting by videoconference to a body that extends into three or more counties.

⁴ Subsection (c) as amended by SB 984 and HB 2414, respectively.

My first question involves the ability, if any, of an open-enrollment charter school to hold a meeting outside of its geographic service area⁵. Section 26.007(b) of the Texas Education Code requires the board of trustees of a school district to "hold each public meeting of the board within the boundaries of the district except as required by law or to hold a joint meeting with another district or with another governmental entity" with concurrent jurisdiction. Chapter 26 of the Texas Education Code does not apply to open-enrollment charter schools⁶. However, Section 12.1051 of the Texas Education Code provides that "any requirement of Chapter 551..., Government Code, or another law that concerns open meetings...that applies to a school district...applies to an open-enrollment charter school..." It is also not clear from the Attorney General's opinions cited above whether the concept of a meeting being open to the public is constrained by state boundaries or by the geographic jurisdiction of the governmental entity⁷. May the governing board of an open-enrollment charter school conduct a meeting outside of the geographic service area of the open-enrollment charter⁸?

My remaining questions involve the ability, if any, of the board of an open-enrollment charter school to conduct a meeting using the provisions of Section 551.127. Subsection (c) as amended by HB2414 appears to allow a meeting to be conducted by videoconference without a quorum physically present, if the presiding member is "in or within a reasonable distance of" the geographic boundaries of the body. However, subsection (c) as amended by SB 984 appears to limit the ability to conduct a meeting without a quorum physically present to a governmental body that extends into three or more counties. My remaining questions are as follows⁹:

May the board of an open-enrollment charter school conduct a meeting by videoconference under Subsection 551.127(c) if the geographic service area of the open-enrollment charter school does not extend into three or more counties?

May the board of an open-enrollment charter school conduct a meeting by videoconference under Subsection 551.127(c) if the presiding member is present within the geographic service area of the charter but other members participate from locations outside of the geographic service area?

If your answer to the preceding question is "yes," may other members participate in the meeting from locations outside of the state?

Thank you for your consideration of these questions. Should you need additional information, please feel free to contact me or David Anderson, General Counsel, at (512) 463-9722.

Sincerely,



Michael Williams
Commissioner of Education

⁵ Each open-enrollment charter school is required to designate a geographic service area from which students may attend the school. See, Subsection 12.111(13), Texas Education Code.

⁶ Section 12.104, Texas Education Code exempts open-enrollment charter schools from many of the provisions of the Education Code. Subsection (b) of that section lists certain provisions that are applicable to open-enrollment charters; chapter 26 is not among those applicable provisions.

⁷ Both of the entities considered in JC-53 and JC-489 were agencies with statewide jurisdiction.

⁸ Please assume for purposes of this question that the meeting is not conducted pursuant to Section 551.127, Government Code, but by a quorum of the open-enrollment charter board that is physically present.

⁹ Please assume for purposes of these questions that all requirements for public notice and technical standards for videoconferencing have been met.