

KEN PAXTON  
ATTORNEY GENERAL *of* TEXAS

# The OMA Suspensions and Legal Update

Charlotte Harper  
Deputy Division Chief  
Opinion Committee





# Presentation Outline

## Topics for presentation

1. Current status of OMA suspensions
2. Legislative update
3. Judicial update



# Status of the Open Meetings Act

Provisions of the Open Meetings Act are no longer suspended. The Governor communicated with the Attorney General's office in June that he would lift the suspension as of September 1, 2021.

That means the Open Meetings Act is fully in force as it is written. There are no waivers from its provisions.



# Covid Hotline Statistics

- 500 emails
- Approximately 1400 telephone calls on suspension related hotline
- Over 550 hours of addressing questions



# Open Government Hotline

- Toll free calling at: 877-OPEN-TEX or 877-673-6839



# Legislative Update – Considered Bills

The 87th Legislature considered several bills relating to meetings by telephone conference call and videoconference call in its regular session:

SB 639

HB 2662

SB 861

HB 2683

SB 1515

HB 3139

HB 1888

HB 3330

HB 2560

HB 3793



# Examples of bills on remote meetings

- SB 861
- HB 1888
- HB 2683



# Approaches of the considered bills

SB 861 would have retained separate provisions for telephone meetings and videoconference meetings but modified them to allow more flexibility.

HB 1888 would have done away with separate telephone and videoconference provisions and replaced them with a “conference call” provision.

HB 2683 would have added new provisions to the existing structure of the Act that provided more remote access to members of the public.





# Legislative Update – Adopted Bills

The 87th Legislature adopted three bills related to the Open Meetings Act

- SB 1343
- SB 244
- HB 1154



# Section 551.091 – Usual notice not required

Notwithstanding any other provision of this chapter and subject to Subsection (c),

a commissioners court to which this section applies, may hold an open or closed meeting, including a telephone conference call, solely to deliberate about disaster or emergency conditions and related public safety matters that require an immediate response without complying with the requirements of this chapter, including the requirement to provide notice before the meeting or to first convene in an open meeting.



# Section 551.091 – Notice, action, and record

To the extent practicable under the circumstances, the commissioners court shall provide reasonable public notice of a meeting and if the meeting is an open meeting allow members of the public and the press to observe the meeting.

The commissioners court:

- (1) may not vote or take final action on a matter; and
- (2) shall prepare and keep minutes or a recording and make the minutes or recording available to the public as soon as practicable.



# Section 551.091 - Applicability

Section 551.091 applies to only a commissioners court of a county and only when:

- (1) the Governor has issued an executive order or proclamation declaring a state of disaster or a state of emergency; and
- (2) transportation to the meeting location is dangerous or difficult as a result of the disaster or emergency.



# Legislative Update – Other changes

- SB 244 – amends the definition of “governmental body” to add “a board of directors of a reinvestment zone created under Chapter 311, Tax Code.”
- HB 1154 – amends section 551.1283 to add some requirements regarding Internet posting for certain special purpose districts.
  - Applies to districts subject to Water Code chapters 51, 53, 54 or 55 with a population of 500 or more
  - Such districts must post on an Internet website that the district maintains links to any other Internet website or website the district uses to comply with Section 2051.202 of the Government Code and Section 26.18 of the Tax Code.
  - HB 1154 then states that “[n]othing in this chapter shall prohibit a district from allowing a person to watch or listen to a board meeting by video or telephone conference call.”



# Judicial Update

- *Town of Shady Shores v. Swanson*, 590 S.W.3d 544 (Tex. 2019)
- *Stratta v. Roe*, 961 F.3d 340 (5th Cir. 2020)
- *Mares v. Texas Webb Cnty.*, No. 5:18-CV-121, 2020 WL 619902 (S.D. Tex. Feb. 10, 2020)
- *City of Brownsville v. Brownsville GMS, Ltd.*, 2021 WL 1804388 (Tex. App.—Corpus Christi 2021, no pet.)
- *Leftwich v. City of Harlingen*, 2021 WL 4096148 (Tex. App.—Corpus Christi 2021, no pet. h.)



# *Town of Shady Shores v. Swanson*

*Town of Shady Shores v. Swanson* – The Texas Supreme Court resolved a conflict between decisions of the Fort Worth and Austin Courts of Appeals by concluding the Act allowed a person to seek relief through an injunction or mandamus, but not a declaratory judgment.



# *Stratta v. Roe*

*Stratta v. Roe* – The Fifth Circuit Court of Appeals defined “member of the public” under the Act and concluded that a member of a governmental body could not bypass the Act’s notice requirements by attending a meeting as a member of the public.





# *Mares v. Texas Webb County*

*Mares v. Texas Webb County* – A federal district court considered the adequacy of a notice which read:

Discussion and possible action to adopt the county budget for fiscal year 2016-2017 . . . . The court may make any modifications to the proposed budget that it considers warranted by law[.]

The court found the budget notice item insufficient to address performance issues of a high-level staff member.



# *City of Brownsville v. Brownsville GMS*

The Corpus Christi Court of Appeals concluded that the Act did not support an injunction that prevented the city from terminating a contract with a specific entity or executing a new contract with a different entity when, at the meeting alleged to have violated the Act, the city had not taken any action to do those things.



# *Leftwich v. City of Harlingen*

The Corpus Christi Court of Appeals refused to void an ordinance. The ordinance had been discussed at a September 4 meeting where plaintiff alleged the city violated the public comment provision. Yet the ordinance was adopted at a subsequent meeting on September 17 where no violation was alleged.



# Attorney General Opinion KP-300

## Attorney General Opinion KP-300 (2020)

Considered section 551.007 regarding the public's right to address the governmental body. It considered two practices: (1) holding one public comment period at the beginning of the open meeting; and (2) capping the total amount of time a speaker has to address all agenda items.



# Questions?

Open Government Hotline

Toll free

1 (877) OPEN TEX

1 (877) 673-6839

Open Meetings Act Handbook

[www.texasattorneygeneral.gov/openmeetings\\_hb.pdf](http://www.texasattorneygeneral.gov/openmeetings_hb.pdf)