Ethical Dilemmas with Advising City Officials

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I. A City as Your Client

A. What is the Law?

Once an attorney has agreed to represent a city, there are a number of questions the attorney should answer before proceeding to provide legal services. They are:

1. Who is the attorney's client?
2. Who does the attorney take direction from and who do they report to?
3. What duties does the attorney have if the interests or actions of the person who is giving the attorney direction becomes contrary to the interests of the city as a whole?
4. Are communications going to be confidential?

While these questions can be difficult or sometimes uncomfortable to discuss and answer, Texas has adopted Rule 1.12 of the Texas Disciplinary Rules of Professional Conduct to help. Rule 1.12 states:

> *(a)* ***A lawyer employed or retained by an organization represents the entity****. While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents, in the situations described in paragraph (b)* ***the lawyer shall proceed as reasonably necessary in the best interest of the organization*** *without involving unreasonable risks of disrupting the organization and of revealing information relating to the representation to persons outside the organization.*
>
> *(b) A lawyer representing an organization must take reasonable remedial actions whenever the lawyer learns or knows that:*
>
> *(1) an officer, employee, or other person associated with the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law which reasonably might be imputed to the organization;*
>
> *(2) the violation is likely to result in substantial injury to the organization; and*
>
> *(3) the violation is related to a matter within the scope of the lawyer's representation of the organization.*
>
> *(c) Except where prior disclosure to persons outside the organization is required by law or other Rules,* ***a lawyer shall first attempt to resolve a***

violation by taking measures within the organization. *In determining the internal procedures, actions or measures that are reasonably necessary in order to comply with paragraphs (a) and (b), a lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Such procedures, actions and measures may include, but are not limited to, the following:*

(1) asking reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(d) Upon a lawyer's resignation or termination of the relationship in compliance with Rule 1.15, a lawyer is excused from further proceeding as required by paragraphs (a), (b) and (c), and any further obligations of the lawyer are determined by Rule 1.05.

(e) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing or when explanation appears reasonably necessary to avoid misunderstanding on their part.

B. Who Is My Client?

The first sentence of Rule 1.12 of the Texas Disciplinary Rules of Professional Conduct clearly states that when you represent an organization, the attorney's client is the entity itself. This concept applies equally to municipalities and private corporations. Because the attorney represents the entity, the Rule also makes it clear that the attorney does not represent the individual members, officers, or employees of the entity. This seemingly straight forward concept is sometimes difficult for council members, employees, or other municipal agents to understand. Accordingly, it should be made clear to the city council and the city staff at the beginning of representation that the attorney only represents the city and not its agents, employees, or officials individually. As new and different issues arise through the course of your representation, it is important to remind city officials and employees of this concept. This will help avoid problems and confusion in the representation.

C. Who Do I Take Direction From and Report To?

Rule 1.12 recognizes that when representing an entity, the entity can only communicate with the attorney through its constituents. Of course, the entity itself may not only have a city council and city manager but may also have a number of other individuals who may or may not be responsible for communicating with the city attorney on behalf of the city. So, the Rule limits who the attorney reports to and takes direction from to those who are "duly authorized" by the city. This usually means the duly elected city council and city manager. But at times it may also encompass other positions such as the chief of police, fire chief, department heads, or anyone who is authorized to act on behalf of the city.

Logically, this qualification requires the attorney to answer additional questions. Has this person been duly authorized to communicate with the attorney on behalf of the city? If so, how were they authorized? Was it by action of the city council through a resolution or ordinance? Was it by authority granted to them by state statute or other law? For example, the city manager of a home-rule municipality who contacts the attorney about a $5,000.00 contract most likely is a "duly authorized" representative of the city. However, working with a city employee on a matter that has not been authorized can create significant potential problems.

As a practical matter, this can also be addressed in the engagement letter between outside legal counsel and the city. The engagement letter should make it clear who is authorized to communicate with the attorney on a routine basis on behalf of the city.

D. What if the Interests of the Person Directing Me is Contrary to the Interests of the City?

Since the attorney's client is the entity itself and the entity can only act through its constituents, the possibility of a conflict between those constituents and the entity may arise. Again, Rule 1.12 gives practical guidance to the attorney.

1. *Determining the Conflict*

First, the city's attorney should determine whether an employee, officer, or other agent of the city committed or intends to commit a "violation of a legal obligation" of the city or a violation of the law that can be imputed to the city.[1] If such a violation has occurred and can be imputed to the city, the attorney then should ask whether this violation will "likely result in substantial injury" to the city.[2] While a conservative/cautious approach would treat almost any violation of the law to be one that could result in "substantial injury", obviously there is some discretion and judgment that the attorney must employ at this point. Finally, the city's attorney should determine if the violation is related to a matter within the scope of the attorney's

[1] Tex. Disc. R. Prof. Conduct 1.12(b).
[2] *Id.*

representation of the city.[3] If the attorney is acting as the general counsel for the city, then it probably falls within the scope of representation.

2. *The Attorney's Duties when a Conflict Exists*

Once the attorney has determined that there is a conflict, Rule 1.12 provides some guidance by giving some non-exclusive steps the attorney may take. Again, the attorney must exercise judgment by looking at the entire scenario to see how serious the situation is, what the constituent's motives might be behind the conflict, what city policies are implicated, and any other relevant information the attorney may reasonably use.[4] With this background, unless otherwise required by law, the city's attorney should try to resolve the conflict internally.[5] Steps the attorney should take include asking the constituent to reconsider their action or position; advising that they get a second legal opinion; and then referring the matter to the highest level of authority who can act within the organization including the city council.[6] Finally, if necessary, the city's attorney can resign or withdraw from representing the city. If the attorney resigns, they no longer have this duty to the city so long as their resignation or withdrawal is done in accordance with the TDRPC.[7]

In this regard there is one other item to note for attorneys who represent governmental entities. Included in the comments to Rule 1.12 is a discussion on the unique difficulties on applying certain aspects of Rule 1.12 to attorneys who represent governmental entities. These difficulties range from determining who the ultimate entity is if representing a large governmental entity to additional authority that attorney's might have in conducting internal investigations.[8]

Comment 9 to Rule 1.12 states:

> *"The duty defined in this Rule applies to governmental organizations. However, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulations. Therefore, defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context. Although in some circumstances the client may be a specific agency, it is generally the government as a whole. For*

[3] *Id.* at (b)(3)
[4] *Id.* at (c).
[5] *Id.*
[6] *Id.*
[7] *Id.* at (d).
[8] tex. gov't code, Title 2, Subt. G, App. A, Art. X, § 9, Rule 1.12, cmt. 9.

example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the government as a whole may be the client for purpose of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. This Rule does not limit that authority."

II. Attorney Communications with Municipal Officials or Employees

When acting as an attorney for a city, it is common for the attorney to communicate with multiple officers, employees, and agents. The city's attorney is sometimes asked to investigate internal matters and there may even be other laws that could implicate the confidentiality of the attorney's communications such as the Texas Public Information Act. An attorney can reasonably become concerned about protecting the attorney-client privilege and the communications being kept confidential.

A. Does the Attorney-Client Privilege Apply?

As the United States Supreme Court has stated, the attorney-client privilege "is the oldest of the privileges for confidential communications known to the common law."[9] The confidentiality exists because as a society we want "to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." [10] This privilege applies to governmental entities as well.[11] "The privilege aids government entities and employees in obtaining legal advice founded on a complete and accurate factual picture."[12]

Rule 1.05 states, in pertinent part:

"(b) ... a lawyer shall not knowingly:

(1) Reveal confidential information of a client or a former client to:

(i) a[n] [unauthorized] person; or

(ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm."

When city officials or employees communicate with the city attorney in that official or employee's municipal capacity, the communication is protected by Rule 1.05.[13] Accordingly, the

[9] *Upjohn Co. v. United States*, 449 U.S. 383, 389, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981) (citing 8 J. Wigmore, Evidence § 2290 (J. McNaughton rev.1961)).
[10] *Id.* at 389.
[11] *United States v. Jicarilla Apache Nation*, 131 S. Ct. 2313, 2320, 180 L. Ed. 2d 187 (2011).
[12] *Id.* at 2320-21 (quoting 1 Restatement (Third) of the Law Governing Lawyers § 74, cmt. b, pp. 573–74 (1998)).
[13] Tex. Disc. R. Prof. Conduct 1.12, Cmt. 3.

lawyer may not disclose information relating to such representation unless those disclosures are permitted by Rule 1.05.

The attorney should be aware that some instances may require him or her to reveal confidential information. The first such situation is when the lawyer has reason to believe that the revelation is reasonably necessary to prevent the client from committing a criminal or fraudulent act.[14] The other such situation involves the lawyer revealing confidential information to the extent necessary to rectify his or her client's criminal or fraudulent act that involves the lawyer's services.[15] It is important that the attorney representing a city knows that confidentiality does apply to communications with city officials or employees, but the traditional limitations of Rule 1.05 remain valid.

A city attorney should take certain precautions when dealing with the constituents of the city as it relates to confidentiality of their communications. For instance, Rule 1.12 recognizes that an attorney for the city may be put in the position of communicating with or investigating employees of the city whose interests are contrary to the city. In that case, while the communications the attorney has as it relates to the investigation may be privileged, the attorney should make it clear with the employee that the attorney represents the city and any information divulged by the employee will be shared with the city.

III. Internal Investigations

A. How to Make Yourself a Witness via Internal Investigations.

A municipal attorney has an obligation to advise his client on the best structure of an internal investigation. Several concerns to be addressed in such advice include:

1. Purpose of the investigation;
2. Need for attorney/client privilege protection;
3. Acts or omissions of the attorney;
4. Relationships with the attorney; and
5. Political concerns.

Once these issues have been addressed, the proper structure for an internal investigation can be determined. Internal investigations are stressful, and properly advising your City Council on how to best structure them is vital. Municipalities and other governmental entities have been facing an often-times confusing and evolving standard regarding the attorney-client privilege in internal investigations. This area of the law is made more confusing when it involves the use of in-house counsel. The goal of this Section is to provide better clarity to all attorneys who

[14] Tex. Disc. R. Prof. Conduct 1.05 (c) (7).
[15] Tex. Disc. R. Prof. Conduct 1.05 (c) (8).

provide legal services to governmental entities. Failure to properly plan and structure an internal investigation can jepordize the information gathered and make the attorney a witness.

The recent decision of the United States Court of Appeals, District of Columbia Circuit in *In Re Kellogg Brown and Root, Inc*. has brought significant clarity to the attorney-client privilege as it relates to internal investigations.[16] The underlying facts of the case centered on a former employee's False Claims Act complaint against the company.[17] The basis of the complaint was that Kellogg defrauded the government by inflating costs and accepting kickbacks.[18] During litigation, the employee sought discovery of Kellogg's internal investigation into the alleged fraud which was overseen by internal counsel.[19]

At the District Court level, Plaintiff argued that these internal investigation records were the result of normal business practices arising out of contractual and statutory obligations.[20] Kellogg argued that the purpose behind the investigation was to obtain legal advice, therefore protecting the investigation documents from discovery.[21] Because of the statutory and contractual obligations of the Company to conduct investigations into potentially improper practices, the District Court held that Kellogg had not shown that "the communication would not have been made 'but for' the fact that legal advice was sought."[22] In essence, the District Court found that any investigation by an attorney that involved mixed purposes (business and legal) would not be protected by the attorney-client privilege. This unprecedented holding set all entities, public and private, on edge.

The attorney-client privilege, under federal law, "applies to a confidential communication between attorney and client if that communication was made for the purpose of obtaining or providing legal advice to the client."[23] This privilege applies to entities as well as persons.[24] The fact that legal communications involve in-house counsel "does not dilute the privilege."[25]

In reversing the Trial Court, the Court of Appeals made numerous holdings that direct entities on the issue of internal investigations:

1. It is not required that an internal investigation be directed or conducted by outside counsel;

[16] 756 F.3d 754 (2014).
[17] *Id.* at 756.
[18] *Id*.
[19] *Id*.
[20] *Id*.
[21] *Id*.
[22] *Id*.
[23] *Id.* (citing *Fisher v. United States*, 425 U.S. 391, 403 (1976) ("Confidential disclosures by a client to an attorney to obtain legal assistance are privileged")).
[24] *Upjohn Co. v. United States*, 449 U.S. 383, 392 (1981).
[25] *In re Sealed Case*, 737 F.2d 94, 99 (D.C.Cir. 1998).

2. Interviews can be conducted by non-attorneys working at the direction of in-house attorneys;

3. Entity is not required to use "magic words" letting employees know that this is a legal department driven investigation; and

4. Attorney-Client privilege still exists in a mixed motive investigation, so long as the obtaining or providing of legal advice was a primary purpose of the investigation. It also applies even if the internal investigation was conducted pursuant to a company compliance program required by statute or regulation, or was otherwise conducted pursuant to company policy.

These holdings provide significant clarity to conducting internal investigations.

IV. Texas Public Information Act

The Texas Attorney General has interpreted Section 552.107 of the Texas Government Code to protect the same attorney-client privileged information protected under Texas Rule of Evidence 503.[26] However, when a city receives an open records request that encompasses written material that may be privileged attorney client communication, the burden is on the city to show that the exception applies. In order to meet this burden the city must satisfy the following five-part test:

1. The city must show that the information documents an actual communication;
2. The communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the city;
3. The communication was between or among the city or the city's representatives and the attorney or attorney's representatives;
4. The communication was confidential and not intended to be disclosed to third parties not associated with the respective legal matter; and
5. The city must demonstrate that the communication has remained confidential and that the city has not waived the privilege.

On another note, I think it is important that Municipal Attorneys stay current regarding trends on Open Record Requests. Traditionally, our Firm has sought to be cautious when there are documents that might not seem to be responsive, but are close enough to cause concern. We would file our letter and briefing with the Attorney General and for years regularly received responses that they've agreed or disagreed that such documents were responsive to the request. Over the past 18 months, we have had multiple occasions where the attorney general took the position that if the question was close enough for the municipality to ask, they would simply

[26] Tex. Att'y Gen. Op. No. OR-676 (2002).

presume that there was an obligation to turn such material over. For several months, they refuse to put this position in writing. However, we have secured at least an email from them stating that their current position is that they will not make a ruling allowing a governmental entity to withhold information if the opinion is sought regarding whether such documents are responsive. This change in procedure by the Attorney General could have significant impact on how you advice governmental entities.

V. Conflict Among The Council – "You sued who?"

Although it remains rare that city council members sue one another, the issue of conflict among them is becoming more common. As legal counsel, we are often placed in the position of refereeing, mediating, and/or resolving these disputes. In doing so, it is paramount that the attorney understands his obligations related to individual council members and the entire council.

The premise discussed earlier in this paper does not change. Texas Rule of Professional Conduct 1.12 reminds us that "a lawyer employed or retained by an organization represents the entity." Further, the attorney must proceed in the best interests of the organization.[27] Of course, the organization can only speak, act, and make decisions through its officials, who in this example are feuding. The knowledge and motivation of such officials must always be evaluated when analyzing how to proceed.

Where there is conflict, careful decisions must be made. Where an officer, employee, or other person commits or intends to commit a violation of a legal obligation of the organization or a violation of the law that might be imputed to the organization that is likely to result in substantial injury to the organization,[28] it is much more likely to face the need to remedy the situation internally.

The municipal attorney represents the city. He or she does not represent individual officials, and certainly does not do so in times of conflict. General conflict of interest rules apply. More importantly, those involved are not your client – even if you think one's position is correct. It might even be necessary to send the individuals to separate counsel.

Another difficult situation arises where a city official has an interest adverse to the city. For example, a family member of the city official has a claim against the city or another client of the city attorney has a ticket in the municipal court. Some conflicts might seem more important than others, but all conflicts are worthy of proper analysis. In such instances where a family member is involved in a suit or potential suit we have taken the position that the city official is not entitled to participate in litigation updates. Again, conflict of interest and attorney-client privilege rules generally support this position.

[27] *See* TEX. DISC. R. PROF. CONDUCT 1.12.
[28] TEX. DISC. R. PROF. CONDUCT 1.12(b).

A final area of dispute between city officials involves city staff providing false, misleading, or incomplete information to the city council. This is made more difficult when we acknowledge that our day to day communications generally flow through staff. These friendships make it difficult to cross a city employee, especially when doing so can adversely affect your own appointment or employment. Rule 1.12 makes it clear that you represent the entity and that while you will interact with employees, the duty remains to the organization. The lawyer represents the entity as distinct from its directors, officers, and employees.

VI. Closed Meetings – Sharing a Jail Cell

One of the highest ethical obligations an attorney has to a client is to provide good and timely advice to help a client avoid unnecessary trouble. This is especially problematic when city councils meet in executive session. All municipal attorneys have had requests to stretch the letter and spirit of the laws governing executive sessions. Similarly, municipal attorneys have all been in executive sessions where things go off topic. It is vital that the attorney step in to make sure the law is followed. We continue to see complaints from citizens, council members, and former council members regarding improper use of the executive session. Executive sessions are just not as private as we sometimes choose to think. For this reason, I believe it is absolutely necessary to provide council training on this issue on a regular basis.

A. Do Not Let Them Vote.

Neither final action nor straw poll may be taken at a closed meeting. A final action, decision, or vote deliberated in a closed meeting may only be made in an open meeting.[29] Although the council may not vote in a closed meeting, council members may express their opinions and voluntarily announce how they feel about the item, but the actual decision must be made in open session.[30] When the attorney sees a council member attempting to poll the others, it is imperative that the attorney step in and stop such conduct. When the city council returns to open session to vote on a matter deliberated in close session, the motion must adequately describe the action the council wishes to take. The motion cannot be simply "to do what was discussed in closed session."

B. Conducting a Closed Meeting

Before a city council may conduct a closed meeting, a quorum of the council must first convene a properly posted open meeting.[31] At the appropriate point on the agenda during the

[29] TEX. GOV'T. CODE § 551.102.
[30] *Cox Enters., Inc. v. Bd. Of Trs. Of Austin Indep. Sch. Dist.*, 706 S.W.2d 956 (Tex. 1986).
[31] TEX. GOV'T. CODE § 551.101; *Cox Enters., Inc.,* 706 S.W.2d at 956.

open session, the presiding officer must publicly (1) announce that a closed session will be held; and (2) identify the section or sections of the act under which the closed meeting will be held.[32]

Although it is not required that the presiding officer state the actual section number that authorizes the closed meeting, he/she must give enough information about the subject matter of the closed meeting to enable the public to identify the council's authority for the meeting.[33] The presiding officer must announce the date and time at the beginning and end of each closed session.

C. Recording a Closed Meeting

Either a certified agenda or an official recording must be kept of the proceedings of each closed meetings, except for a city council's private consultation with its attorney as allowed under Tex. Gov't. Code § 551.071.[34] This record provides a method of verifying that the city council complied with the requirements of the Act.[35] A certified agenda must also include a statement of the subject matter of each item actually discussed in closed session, and not just each item scheduled for discussion.[36]

The certified agenda must record the presiding officer's statement of the date and time both at the beginning and end of the closed session.[37] An official recording must likewise include an announcement by the presiding officer indicating the date and time at the beginning and end of each closed section.[38] The certified agenda must include a record of any further action taken in open session on the closed session items.[39]

A certified agenda or recording must be maintained for at least 2 years after the date of the closed meeting. If litigation involving the meeting is brought within that time, the certified agenda or recording must be reserved while the litigation is pending.[40] A certified agenda or recording of a closed meeting is available for public inspection and copying only under a court order.[41]

D. Who Can Be There?

A city council may include officers and employees of the city whose participation is necessary to the matter under consideration in a closed session.[42] Members of the public are not

[32] TEX. GOV'T. CODE § 551.101.
[33] *Lone Star Greyhound Park v. Tex. Racing Comm'n.*, 863 S.W.2d 742 (Tex. App.—Austin 1993, writ denied).
[34] TEX. GOV'T. CODE § 551.103(a).
[35] TEX. GOV'T. CODE §§ 551.103 – 551.104.
[36] TEX. GOV'T. CODE § 551.103(c)(1).
[37] TEX. GOV'T. CODE § 551.103(c)(3).
[38] *Id.* at (b).
[39] TEX. GOV'T. CODE § 551.103(c)(2).
[40] TEX. GOV'T. CODE § 551.104(a).
[41] TEX. GOV'T. CODE § 551.104(c).
[42] *See* Tex. Att'y Gen. Op. No. JC-0375 (2001).

allowed in closed meetings unless a provision of the Open Meetings Act or other law allows them to participate.[43] This provision is often abused, as many cities have developed a custom over the years of including certain people in all executive sessions. Although awkward, people who are not necessary for discussion of the matter under consideration should be excluded by the presiding officer. If not, it is incumbent upon the attorney to point out the necessary removal of such person.

When a public official has a substantial interest in a business entity or a real property about which the council may deliberate or take action, that interested official must file an affidavit and abstain from further participation in the matter.[44] A public official with a substantial interest may not participate in the council deliberation, but may attend a closed meeting on the subject as long as he/she remains silent. The Attorney General has suggested, however, that a public official should choose to refrain from attending closed meeting that address the matter in order to avoid the appearance of impropriety.[45] If a closed session is convened under the attorney consultation exception, the city council may not admit an individual whose presence would prevent privileged communication between the council and its attorney.[46]

E. Are These Conversations Really Private?

It is potentially a criminal violation for a person present at a closed meeting to disclose to the public the subject matter of closed meeting deliberations.[47] However, other penalties may apply. For example, a council member may violate Tex. Penal Code § 39.06 if he/she releases "official information." Importantly, a council member who reveals closed-session deliberations is likely violating the council's code of ethics, policies (if any), or their fiduciary duties to the District.

F. Criminal Actions for Closed Meeting Violations

A council member commits a criminal offense if he knowingly calls or aids in calling, calls or aids in closing, or participates in a closed meeting that is not authorized by the Act. This offense is punishable by a fine of $100 to $500, imprisonment in the county jail for one to six months, or both.[48] The Texas Court of Criminal Appeals has interpreted this statute to mean that a council member can be convicted of a criminal violation if he or she participates in an illegal closed meeting, *even if* the council member does not know that the closed meeting is not authorized by the Act.[49] It is a defense to prosecution, however, that the council member acted

[43] Tex. Att'y. Gen. Op. No. GA-511 (2007).
[44] TEX. LOCAL GOV'T. CODE § 171.004.
[45] Tex. Att'y. Gen. Op. No. GA-334 (2005).
[46] Tex. Att'y. Gen. Op. Nos. GC-506 (2002), GM-238 (1984).
[47] Tex. Att'y. Gen. Op. No. GM-1071 (1989).
[48] TEX. GOV'T. CODE § 551.144(a)-(b).
[49] *Tovar v. State*, 978 S.W. 2d 584 (Tex. Crim. App. 1998) (*en banc*).

in reasonable reliance on a written opinion of a court, the attorney general, or the school district's attorney.[50]

A council member who participates in a closed session knowing that a certified agenda or recording of the closed meeting is not being kept commits a Class C misdemeanor.[51] The penalty is a fine not to exceed $500.[52] A person who knowingly discloses a certified agenda or a recording of a closed meeting to a member of the public, without lawful authority, commits a Class B misdemeanor.[53] The penalty is a fine not to exceed $2,000, jail confinement not to exceed 180 days, or both.[54]

Finally, it is a criminal offense for a council member, or a group of council members, to knowingly conspire to circumvent the act by meeting in numbers less than a quorum for secret deliberations. This offense is punishable by a fine of $100 to $500, imprisonment in the county jail for one to six months, or both.[55]

[50] TEX. GOV'T. CODE § 551.144(c).
[51] TEX. GOV'T. CODE § 551.145.
[52] TEX. PENAL CODE § 12.23.
[53] TEX. GOV'T. CODE § 551.146.
[54] TEX. PENAL CODE § 12.22.
[55] TEX. GOV'T. CODE § 551.143; Tex. Att'y Gen. Op. No. CA–98 (2003).