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December 18, 2007

Ms. Paula Renken  
Superintendent  
Brackett Independent School District  
P O Box 586  
Brackettville, Texas 78832

*paular@brackett.k12.tx.us  
and regular mail*

Re: Questions concerning the Open Meetings Act

Dear Paula:

I am writing in response to various questions that have arisen in the District concerning the Texas Open Meetings Act. I will address the questions in the order in which they arise in a board meeting.

- 1 First, there is the issue of specificity in the agenda items. For many years Attorneys General of Texas have demanded that agenda items be sufficiently specific to inform the public regarding exactly what will transpire. For example, General Cornyn stated, "Notice should be more specific where the matter is of particular interest to the public. In 1975, this office said that such terms as 'new business,' 'old business,' 'regular or routine business,' or 'other business' were insufficient to inform the public of the nature of the items to be addressed." Attorney General Opinion JC-0169 (2000). Accordingly, agenda items must be specific as a general matter, and very specific on subjects of high profile or particular interest in the community.
- 2 Second, there are considerations involving going into closed session. It is axiomatic that a school board may go into closed session only pursuant to one of the specific reasons listed in the Act and Policy BEC (Legal). Perhaps the most frequently used reason is the provision regarding personnel that provides as follows: "A board is not required to conduct an open meeting to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee or to hear a complaint or charge against an officer or employee. However, a board may not conduct a closed meeting for these purposes if the officer or employee who is the subject of the deliberation requests a public hearing." Policy BEC (Legal). If a board goes into closed session under the foregoing personnel provision, it may deliberate in closed session regarding anything that legitimately

falls within the subject set forth in the agenda. For example, if the agenda states that the board will go into closed session for the purpose of evaluating the superintendent, the board may lawfully deliberate regarding anything that is germane to the evaluation, but it may not lawfully depart from that subject and take up something else that is not related to the evaluation.

Prior to 1999, there was a section of the Act that authorized a closed session in order for the board to "receive information from employees; or question the employees." The legislature became suspicious that such briefings could provide an opportunity for "secret deliberations" and deleted the provision from the Act. Since 1999, a board may not go into closed session under any such agenda item. Thus, an agenda item such as "confer with superintendent" or "board concerns" is neither sufficiently specific for the agenda nor a lawful reason to go into closed session. Again, the board may go into closed session only for one of the specific reasons set forth in the Act and Policy BEC (Legal).

3. Third, there is question of the subjects about which the board may deliberate once it goes into closed session under one of the reasons set forth in the Act and Policy BEC (Legal). Here again it is also axiomatic that the board is limited to deliberation regarding the specific subject authorized by the Act and Policy and set forth on the agenda. Thus, if the agenda item is "Evaluation of the Superintendent," that is the only subject about which the board may deliberate in closed session. Anything germane to that subject, however, is lawful and appropriate for deliberation.
4. Fourth, there is the certified agenda or tape recording of the closed session. Texas Government Code, Section 551.102, and Policy BEC (Legal) require that there be either a certified agenda or a tape recording of all closed sessions, except for private consultation with the district's attorney. Regarding the content of a certified agenda, the Policy provides as follows: "The certified agenda must include a statement of the subject matter of each deliberation, a record of any further action taken, and an announcement by the presiding officer at the beginning and end of the closed meeting indicating the date and time. A presiding officer shall certify that a certified agenda is a true and correct record of the proceedings." The point of a certified agenda is to create a record of each and every subject about which a board deliberates in closed session.

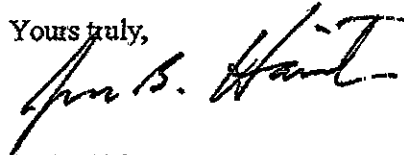
In summary, the agenda item must state with adequate specificity the subject under consideration; any closed session must be pursuant to a specific reason authorized by the Act and Policy; deliberations in closed session must be limited to the specific subject set forth in the agenda and authorized for closed session; the certified agenda must reflect exactly what deliberation transpired in the closed session, including any deliberation not covered by the agenda and authorized for closed session by the Act and Policy.

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I understand that there has been some uncertainty regarding the questions that I have addressed in this letter, and I hope that my efforts to explain this area of the law will be helpful. Please let me know if you have questions or need anything further.

Yours truly,

A handwritten signature in black ink, appearing to read "Joe B. Hairston". The signature is written in a cursive style with a prominent flourish at the end.

Joe B Hairston