

Commissioners Court:
Postings, Agendas & the Open Meetings Act

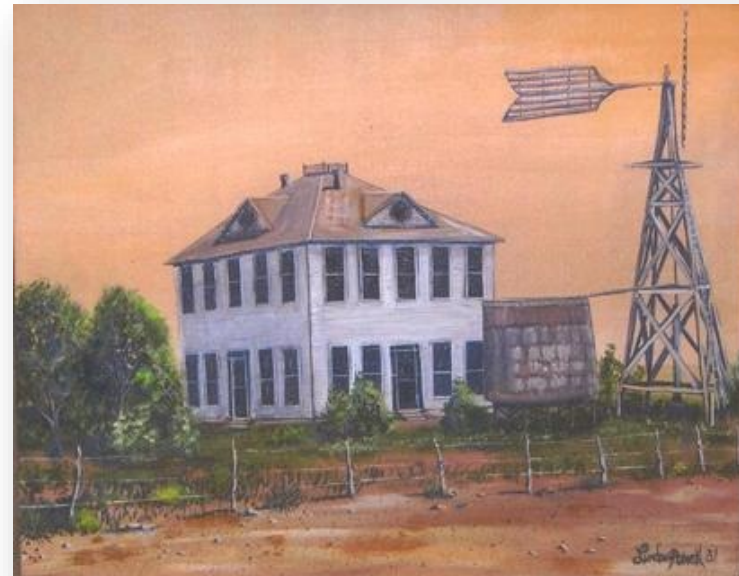
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TEXAS ASSOCIATION *of* COUNTIES

County Court Assistants Training
February 2020

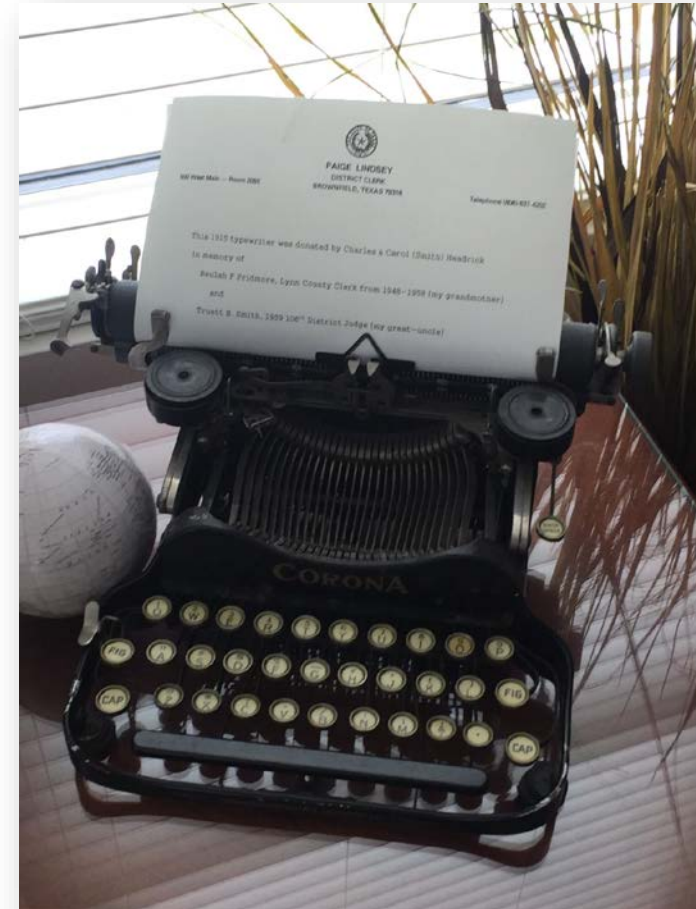
COMMISSIONERS COURT

- Not the same as constitutional county court, but older cases refer to it by previous name -- the “county court of the county”
- Commissioners court sets county-wide policies and, when allowed by law, enacts legislation in the form of court orders.



MINUTES

- Commissioners court must keep minutes or make recording of all open meetings.
- County clerk is clerk of the court, keeps minutes and attests to actions taken.
- Minutes must state subject matter of deliberation, and indicate each vote, order, decision or other action taken.



COUNTY CLERK

- Clerk shall:
 - (1) serve the court during each of its terms;
 - (2) keep the court's books, papers, records, and effects; and
 - (3) issue the notices, writs, and process necessary for the proper execution of the court's powers and duties.
- Clerk shall record proceedings of each term of court AND record court's authorized proceedings between terms.
- Clerk shall attest to accuracy of record.
- Record may be in a paper or electronic format.



QUORUM

- Only need to count to 3
- 3 for a quorum & 3 voting for if all members present
 - 4 members present to levy a tax
- If quorum cannot be present because of catastrophe, court may convene at later time within 72 hours without further posting.



CATASTROPHES ARE...

Fire, flood, earthquake, hurricane, tornado, wind, rain, or snow storm, power failure, transportation failure, interruption of communication facilities, epidemic, riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence.



TERMS OF COURT

- Two types: regular and special.
- Regular terms held once a month.
- If court's business does not require monthly term, court need not hold more than one term a quarter.
- Regular term may continue for up to one week.
- Special terms can be called by the county judge or three county commissioners and may continue until the court's business is completed.



COMMISSIONERS COURT AGENDAS

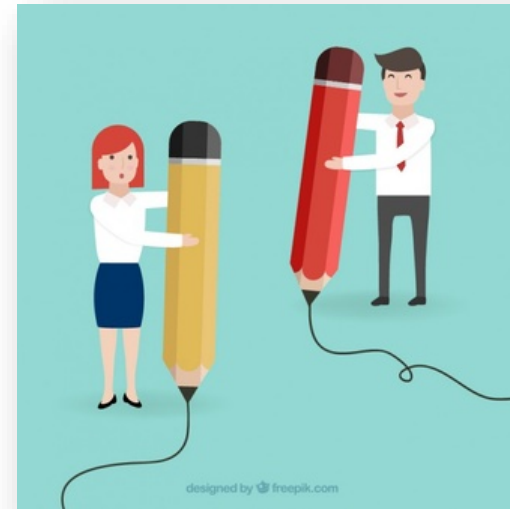
Written notice of the meeting must be posted timely and include:

- Date
- Hour
- Place
- Subjects to be considered



AGENDA LANGUAGE

- No special language or rule regarding how specific an agenda item must be.
- 254 counties and 254 ways of doing it.
 - Consider and/or act upon ...
 - Consider for approval ...
 - Discussion and possible action on ...
- Guideline: Is an agenda item sufficiently described to alert public of proposed matter to be considered by commissioners court?



WHO PREPARES?

- Depends on the county.
- Judge, Clerk, Judge's Secretary
- Neither the county judge nor the county clerk controls the preparation of the agenda for the commissioners court. The commissioners court as a whole has the authority to determine and amend its own agenda.



POSTING

- Must be posted at least 72 hours prior to meeting in place readily accessible to general public at all times.
- County governmental body shall post notice of each meeting on a bulletin board at place convenient to public in county courthouse.
- Also post on county website.



EMERGENCY POSTING

- Notice is sufficient if posted at least two hours before meeting is convened.
- Emergency or urgent public necessity exists only if immediate action required of governmental body because:
 - (1) imminent threat to public health and safety or
 - (2) reasonably unforeseeable situation.
- Clearly identify the emergency or urgent public necessity in notice.
- Post the notice taking at face value the stated reason for emergency or urgent public necessity.
- Notice must be given not later than 1 hour before the meeting to media who have so requested beforehand.



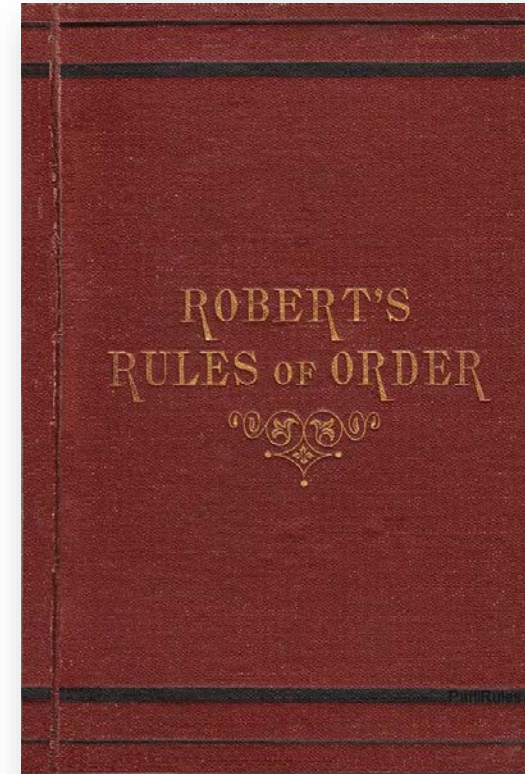
WHO MAY SPEAK?

- OMA requires only that meetings be “open to the public.” It does not require that public be afforded an opportunity to address the court or present views.
- If allowing the public to speak, the governmental body may impose reasonable limits but cannot unfairly discriminate among speakers based on their views for or against a specific matter.



PUBLIC COMMENT

- Many courts have adopted formal rules of procedure, conduct and decorum and forms for public participation.
- County Judges & Commissioners Association of Texas has model rules.
- Robert's Rules of Order apply if the court has adopted those procedures. Commissioners court may require that testimony before the court be given under oath. A person who makes a false statement under oath is subject to prosecution for perjury.



PUBLIC TESTIMONY

The Act **REQUIRES** the commissioners court to:

- Allow each member of the public who desires to address the court regarding an item on the agenda for an open meeting to address the court regarding the item at the meeting before or during the court's consideration of the item.
- The court **may** adopt reasonable rules regarding the public's right to address the court, including restricting the amount of time a member of the public may address the court on a given item.
- A time restriction rule **must** provide that if the court does not use simultaneous translation equipment, a member of the public who addresses the court through a translator have at least twice the amount of time as a member of the public who does not require a translator.
- The commissioners court **may not prohibit** public criticism of the court, any act, omission, policy, procedure, program or service.

GENERAL PUBLIC COMMENTS

If the court provides general public comment sessions

- i.e., an opportunity for a member of the public to address the commissioners court about matters not appearing on the agenda,
- the opportunity must be made available in an evenhanded manner.

For Example:

- reasonable restrictions on the number of speakers and the time allowed to them are permissible.
- **Most importantly**, the opportunity of a person to address the body may not be restricted because of what the person may have to say.
- If a law requires a public hearing, that law may impose additional requirements for members of the public to be heard.

EXECUTIVE SESSION

Exceptions to open meetings requirement (“Executive Session”) include:

- Consultation with attorney
- Real property transaction
- Contract being negotiated
- Personnel matter
- Gifts and donations
- Security devices or security audits



EXECUTIVE SESSION PROCEDURES

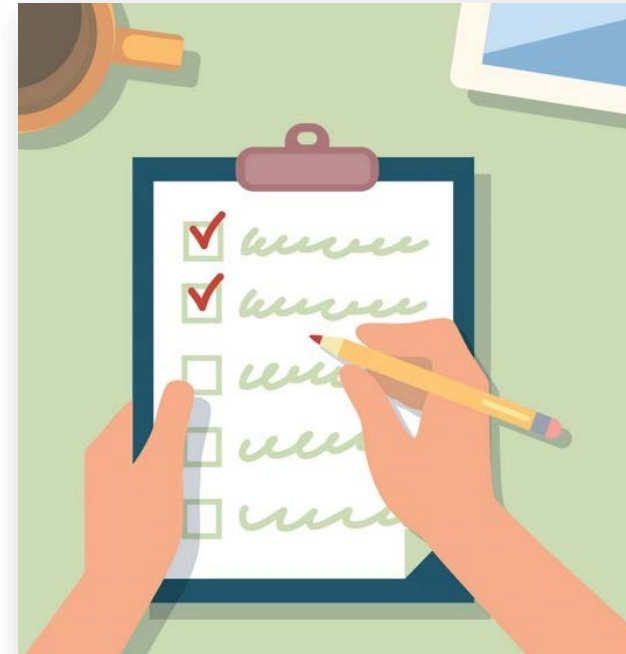
- Post notice of meeting.
- Convene in open meeting with a quorum.
- Identify in open meeting the legal provision authorizing closed session.
- Keep certified agenda or make tape recording.
- Any vote or final action on an issue must be conducted in an open meeting.



EXECUTIVE SESSION: CERTIFIED AGENDA & RECORDINGS

Must indicate:

- Presiding officer announced date and time at both beginning and end of meeting.
- Statement of subject matter of each deliberation.
- Record of any further action taken.
- Presiding officer has certified that agenda is a true and correct record of the closed meeting.



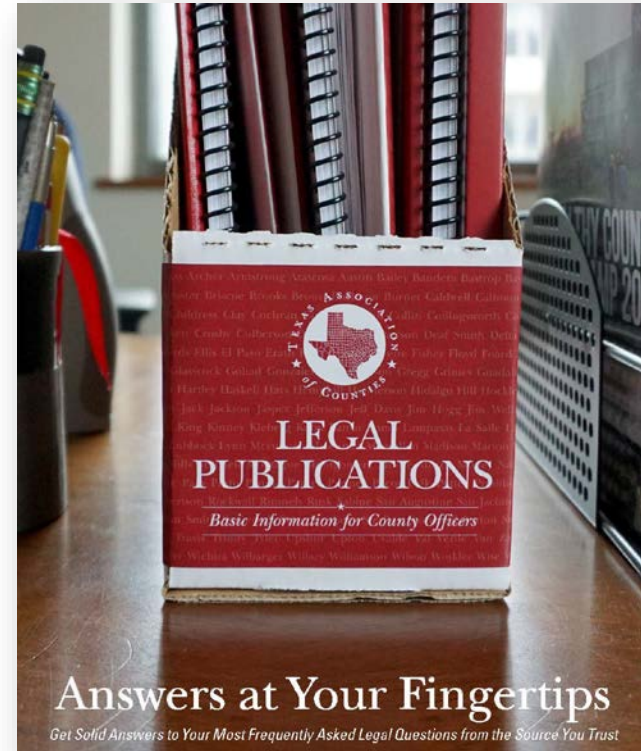
EXECUTIVE SESSION: AGENDA & RECORDING RECORDS

- Certified agenda or tape recording of closed meeting is confidential and not available to the public except by court order.
- Person who knowingly and without lawful authority makes certified agenda or tape recording public commits Class B misdemeanor.
- Certified agenda or tape recording shall be preserved for at least two years.

CONFIDENTIAL

RESOURCES

- TAC Legal has a print and online handbook on the Open Meetings Act at county.org/legalpublications
- Attorney General's Office has online training and a handbook at texasattorneygeneral.gov



HOW TO FIND HELP

TAC Legal

888-ASK-TAC4 (275-8224)

AG's Open Government Helpline

877-OPEN-TEX (673-6839)

