

**San Jacinto College District Board Workshop
August 14, 2017
District Administration Building, Suite 201**

MINUTES

	Board Workshop Attendees:	Board Members: Erica Davis Rouse, Marie Flickinger, Dan Mims, John Moon, Jr., Keith Sinor, Dr. Ruede Wheeler, Larry Wilson Chancellor: Brenda Hellyer Others: Lisa Brown (Thompson & Horton), Teri Crawford, Sandy Hellums via conference call (Thompson & Horton), Chet Lewis, Mandi Reiland, Steve Trncak
	Agenda Item:	Discussion/Information
I.	Call the Meeting to Order	Board Chair, Marie Flickinger called the workshop to order at 4:35 p.m.
II.	Roll Call of Board Members	Board Members: Erica Davis Rouse, Marie Flickinger, Dan Mims, John Moon, Jr., Keith Sinor, Dr. Ruede Wheeler, Larry Wilson
III.	Open Meeting Act and Public Information Act Training	<p>Marie Flickinger stated that Lisa Brown with Thompson and Horton would present on the open meetings act (OMA) and public information act training. After the training, the Board will enter into closed session for additional consultation with the attorney and for a personnel issue. The Board members will then have an opportunity to consult with the attorney on this training.</p> <p>Lisa Brown gave an overview of the Texas Open Meetings Act. She explained that the purpose of the act is open governmental decision-making to the public and to safeguard public's interest in knowing the workings of its governmental bodies. The key features of the act are the requirement that most meetings of governing bodies be open to the public, requires that governing bodies give advance written notice of the subjects to be discussed at each meeting, requires that all votes occur in public, and provides criminal penalties for violations. This act applies to all state, county, and local "governmental bodies," including city councils, commissioners' courts, and school boards. It does not apply to meetings conducted by employees of the governmental body and it does not apply</p>

		<p>to purely “advisory” groups that do not control or supervise public business.</p> <p>In regards to Advisory Committees and Subcommittees, a committee that does not control or supervise public business is not subject to the Act even if its membership includes some members, but less than a quorum, of the governmental body. If, however, the governing body routinely rubber stamps the committee’s recommendations, then the Attorney General has concluded that the Act might apply. Lisa explained that a meeting is defined as a gathering of a quorum of board members to deliberate over public business over which the governmental body has supervision or control is discussed or considered or during which formal action is taken. The act also includes a gathering between a quorum of a board and another person. The definition generally excludes social functions that are unrelated to public business (<i>e.g.</i>, workshop, ceremonial event, press conference, convention).</p> <p>Marie commented that the College posts and livestreams the Board Building and Finance Committee meetings.</p> <p>Lisa explained that an amendment, effective September 1, 2017, provides that the definition of a meeting does not include the gathering of a quorum of a governmental body at a candidate forum, appearance, or debate to inform the electorate, if formal action is not taken and any discussion of public business is incidental to the event. A quorum is a majority of the total number of board members. She stated that “deliberation” is a “verbal exchange during a meeting” concerning an issue within the jurisdiction of the governmental body. The definition of “meeting” does not turn on either the <i>location</i> of the gathering or on the <i>physical presence</i> of board members. An illegal meeting could take place in a bathroom, on the phone, or through email.</p> <p>Lisa pointed out that a “walking quorum” and “daisy chains,” which are private, serial meetings of less than a quorum, may violate the Act when the purpose of the gatherings is to avoid the Act’s requirements. Marie pointed out that the key part of this is that it may violate Act if the intent was to avoid the Act’s requirements.</p>
--	--	--

		<p>Larry Wilson asked for clarification on the definition of workshop. Lisa explained that this is in reference to a workshop at a conference. A member can discuss opinions on college business but if a quorum is present, members need to be aware that they cannot appear to be deliberating.</p> <p>Lisa explained the following examples of questionable practices:</p> <ul style="list-style-type: none">■ When a quorum of board members signs a group letter expressing agreement on a matter of public business that the board has not voted on.■ When a majority of board members discuss public business on Facebook with each other. <p>Lisa covered telephone meetings, videoconferencing, and message boards. The general rule is that conference calls are permitted only in emergency situations when it is difficult to convene a quorum in person. Videoconferencing also is permitted under certain circumstances, but strict requirements apply. A governmental body may consult with its attorney by telephone, by videoconference call, or over the Internet if the attorney is not an employee of the governmental body.</p> <p>Lisa explained the notice requirements for open meetings. Written notice must give the date, hour, place, and subject of each meeting and the notice must be posted for at least 72 hours prior to the meeting. The location of the posted notice will depend on the entity. The Act prescribes different posting requirements for different entities. Emergency Meetings require a two-hour notice requirement and applies to emergencies and matters involving urgent public necessity (imminent public health and safety). The notice must identify the emergency. If the notice does not identify the emergency, the meeting will violate the Act even if there really was an emergency. Notice requirements must disclose actual subjects to be discussed. “New business,” “old business,” “staff reports” are insufficient. The general rule of thumb is that, the greater the public interest in the matter, the more specific the notice should be. However, the purpose of the specific notice is to inform the public, not the person whose interest is at stake. The notice does not have to identify all of the consequences that might flow from action on a particular matter. A notice violation may occur if the notice deviates from the entity’s well established custom or practice. If a board has a custom of providing</p>
--	--	---

		<p>very detailed notices that exceed the requirements of the Act, an abrupt departure from this practice may violate the Act.</p> <p>Lisa stated that although citizens have a right to attend each open meeting, they do not have a right under the OMA to participate at the meeting. If the board provides time for citizens, the notice may say “Open Forum,” “Hearing of Citizens,” “Citizen Input,” or “Public Comment.” The board may impose reasonable rules on speakers, including limits on the length of presentations. Generally, board members cannot respond substantively to inquiries made by citizens during a public meeting. Board members are limited to: (1) briefly responding with a statement of specific factual information; (2) reciting an existing policy; or (3) proposing that the board place the item on the agenda for a future meeting.</p> <p>Boards must keep a tape recording or minutes of each open meeting. Any person attending the open meeting may record the meeting with his or her own equipment. Boards must maintain a “certified agenda” or recording of each closed meeting. The OMA restricts access to the closed meeting certified agenda or recording. Minutes must reflect the subject matters of each item discussed or deliberated, and they must reflect each vote, order, decision, or other action taken by the governmental body. The minutes/tape recording (open session) are subject to the Texas Public Information Act. Meetings must be open to the public unless a specific exception applies. The most common exceptions are: attorney-client consultation, real property negotiations, personnel matters, and security matters. Every meeting must begin in public even if the closed session is the only thing on the agenda. The public has a right to know which board members are present and whether there is a quorum. No final action may be taken in closed session. Lisa explained that the presiding officer must announce the section or sections under which the closed session will be held. No one has a “right” to attend a closed session except for the board members themselves. A board may include employees whose participation is necessary to the matter under consideration. The OMA allows closed meeting to deliberate the “appointment, employment, evaluation, reassignment, duties, or discipline” of an employee or officer. A complaint against an employee may be heard in closed session unless the employee who is the subject of the</p>
--	--	--

		<p>complaint wants an open hearing. The specificity of the notice will depend upon the public interest in the matter. Lisa gave examples of those that would or would not meet these specifications. Section 551.071 allows a board to hold a closed meeting with its attorney regarding pending or contemplated litigation, a settlement offer, or other matters protected by the attorney-client privilege under Texas law. An attorney-client consultation must be properly posted. The posting need not (and should not) contain privileged information. General discussions of policy are not permitted merely because an attorney is present. Under Texas law, a privileged and confidential communication with a lawyer will lose its protected status if it is disclosed to a third party who is not an agent of either the client or the attorney.</p> <p>Lisa clarified that a board member commits a misdemeanor if he or she “knowingly conspires to circumvent” the Act by meeting in numbers less than quorum for secret deliberations. A board member commits a misdemeanor if a closed meeting is not permitted and the member knowingly calls or aids in calling a closed meeting or participates in a closed meeting. It is an affirmative defense to prosecution that the member acted in reasonable reliance on a written interpretation of the OMA from a court, the Attorney General, or the entity’s attorney.</p> <p>Lisa stated that sections 551.128 and 551.1282 address Internet broadcasting of meetings. Any community college may broadcast a meeting over the Internet, but a community college with a total student enrollment of more than 20,000 in a semester must broadcast any regularly scheduled meeting, excluding a closed session, to the public over the Internet. The entity must make a video broadcast and recording of “reasonable quality” for each regularly scheduled board meeting that is not a work session or special called meeting, make the recording available on the entity’s website not later than seven days following the date the recording was made, and maintain the recording on the entity’s website for not less than two years after the date the recording was first made. Compliance is excused if compliance is not possible because of an “act of God” or a similar cause not reasonably within the governing board's control.</p>
--	--	---

		<p>Lisa updated the members on the 2017 amendment applicable to school districts. House Bill 523 expands the broadcasting requirement to an open meeting that is a work session or special called meeting of a board of trustees of a school district with a student enrollment of more than 10,000 if, at the work session or special called meeting, the board votes on any matter or allows public comment or testimony. Lisa clarified that the way this is worded, this does not apply to community colleges.</p> <p>Lisa explained that “reasonable quality” of video should be of sufficient quality that it is good enough to make out the speaker’s face, hear the audio of the speaker, and hear ambient noises of import (<i>e.g.</i>, a gavel bang). Each speaker, whether a board member, administrator, or member of the public, should be captured by a camera when they are recognized to speak. An entity should avoid vendors that use a “pay wall” or proprietary video formats that are not readily accessible. Before going into closed session, technology staff should verify that the broadcast has ceased, including cessation of recording, during the closed session portion(s) of the meeting.</p> <p>Lisa stated that an issue for the future may be closed captioning of the open meetings. Lisa will provide updates on this if it applies to community colleges in the future.</p> <p>Lisa covered attendance of a Board member by videoconferencing. A member or employee of a governmental body may participate remotely in a meeting of the governmental body by means of a videoconference call if the video and audio feed of the member's or employee's participation, as applicable, is broadcast live at the meeting and complies with the provisions of the Act. A member of a governmental body who participates in a meeting by video conference shall be counted as present at the meeting for all purposes. A 2017 amendment states that a board member who participates by videoconference call shall be considered absent from any portion of the meeting during which audio or video communication with the member is lost or disconnected. The remaining board members may continue the meeting without the disconnected member if a quorum of the body remains present at the meeting location. The meeting need not be recessed or adjourned. The physical location specified shall have two-way audio and video communication with each</p>
--	--	---

		<p>member who is participating by videoconference call during the entire meeting.</p> <p>Lisa concluded her presentation.</p> <p>The Chancellor explained that Lisa Brown would provide consultation to the Board on the Public Information Act in closed session.</p>
IV.	Adjournment to closed or executive session pursuant to Texas Government Code Section 551.071 and 551.074 of the Texas Open Meetings Act, for the following purposes: Consultation with Attorney and Personnel Matters	<p>Adjourned to closed session at 5:31 p.m.</p> <p>Lisa Brown (Thompson & Horton), Teri Crawford, Sandy Hellums via conference call (Thompson & Horton), Chet Lewis, Mandi Reiland, and Steve Trncak were present for executive session.</p> <ul style="list-style-type: none"> a. Consultation with Attorney - For the purpose of a private consultation with the Board’s attorney on any or all subjects or matters authorized by law. b. Personnel Matters - For the purpose of considering the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear complaints or charges against a public officer or employee.
V.	Reconvene in Open Meeting	<p>Reconvened in open meeting at 6:47 p.m.</p> <p>Chet Lewis left the workshop after reconvening.</p>
VI.	Discussion of College Vision and Mission	<p>Brenda Hellyer explained that the Board has an action item this evening to consider ratification of the College’s Vision Statement, Mission Statement, Values, One-College Vision, and Strategic Plan, The action also requests the approval of the 2017 – 2018 Annual Priorities for San Jacinto College. Brenda asked if any of the members would like to have a retreat or workshop to discuss updates or changes to the items that are being ratified. The members present said they do not think it is necessary at this time.</p>
VII.	Discussion of Board Evaluation Process	<p>Brenda explained that it has been several years since the Board has done a self-evaluation. She stated that she would like to research a process and move forward with this in the near future. The members were comfortable with this.</p>
VIII.	Review of Calendar	<p>Brenda Hellyer reviewed the calendar with the Board.</p>

IX.	General Discussion of Meeting Items	Erica Davis Rouse had additional questions on the action items in the Board book. Erica asked about employee raises and the dual credit item. Brenda explained that employee raises are a pool of funds that are then distributed based on employee's performance evaluation ratings. This pool of \$2.6 million was approved with the 2017-2018 budget adoption. On the dual credit item, Brenda explained that the item in the Board book is based on the College's current dual credit model and any legislative impacts in place at this point. We are not aware of any additional legislative items that would impact our agreements. There will be several studies during the interim session that we will monitor. We will also continue to analyze our financial model and its sustainability.
X.	Adjournment	Workshop adjourned at 6:57 p.m.