



TEXAS MUNICIPAL LAW BULLETIN

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Trial Court Upholds Open Meetings Act

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On Friday, March 25th, the federal district court in Pecos, Texas, issued its ruling in the much-anticipated City of Alpine case. Officially styled *Asgeirsson v. Abbott*, the plaintiffs were city council members from Alpine and other municipalities. The defendants were the State of Texas and Texas Attorney General Greg Abbott. Plaintiffs sought a declaratory judgment that the Texas Open Meetings Act (TOMA) is unconstitutional. In essence, the plaintiffs argued TOMA:

- Is *vague* because Texas officials do not know what is proscribed; and
- Is *overbroad* because it prohibits a substantial amount of constitutionally-protected conduct; and
- Violates the First Amendment as applied because it causes the plaintiffs to *suppress* their speech in fear of criminal prosecution; and
- Violates the First Amendment as applied because it *discriminates* against speakers based on their identity.

Plaintiffs sought an injunction preventing enforcement of TOMA's criminal provisions. The court rejected these arguments, and upheld TOMA. In its opinion, the court repeatedly stated that TOMA does not censor or prevent speech, but rather mandates disclosure of speech. The court accepted the A.G.'s argument that TOMA demands deliberations be disclosed, not suppressed. In doing so, the opinion professed to reach a balance between two competing "rights": a city council member's right to freedom of speech *versus* a Texas citizen's right to open government.

The conclusion reached by the court was predictable, and will most certainly be directly appealed to the Fifth Circuit Court of Appeals in New Orleans. While the outcome of this case is not a surprise, an interesting aspect of the opinion is the judge's notion that members of a city council who hold a closed meeting in violation of TOMA can "correct their violation" with a subsequent open meeting. The concept of a city council conducting a follow-up meeting to ratify a potential mistake made at an earlier meeting is not new. In fact, ratification is a relatively common way to cure possible defects in agenda notices and prevent an action from later becoming void or voidable. However, the thought of a *criminal* violation of TOMA being remedied by later rehashing the discussion at a properly-noticed, public meeting is novel. There is skepticism that the opinion will be upheld upon appeal.