

Strict Criminal Liability Applied to Open Meetings Act

by Alan P. Petrov

In late 1998, the Texas Court of Criminal Appeals upheld a criminal conviction of a school board president for violating the Texas Open Meetings Act (the "Act") in *Tovar vs. State*. For the first time, the court examined criminal liability under the Act and issued a decision effectively putting thousands of public officials throughout Texas on notice that they will have little excuse for violating the Act. Judge Morris Overstreet wrote for the court's opinion, "the Act places a duty upon members of a governmental body to hold open meetings and a... duty to find an exception to the rule if they desire to have a closed meeting. Neglect of this duty will subject a member of the governmental body to criminal sanction."

Joseph Tovar, a former school board president in San Antonio, was indicted on two charges involving the Open Meetings Act. One indictment alleged that Tovar knowingly participated in a special closed meeting of the school board not permitted under the Act. The other indictment alleged that Tovar knowingly called, and aided in calling and organizing, a special closed meeting of the board not permitted under the Act. Tovar argued in part that he should not be convicted because he did not knowingly violate the Act.

At least five separate briefs were filed with the court by the Texas Association of School Boards, The Texas Association of Counties, The Texas Municipal League and the Texas City Attorney's Association. All of these briefs argued essentially the same point: A governmental official should not be punished if he or she is acting in good faith and does not intentionally violate the Act. Such arguments, however, proved to be unpersuasive with the court.

"Appellant is complaining that he was ignorant of the law. Of course, as the ancient maxim goes, ignorance of the law is no excuse," wrote Judge Tome Price in a concurring opinion.

In addition, Judge Overstreet wrote in the court's majority opinion, "A member of a governmental body can be held criminally responsible for his involvement in the holding of a closed meeting which is not permitted under the Act regardless of his mental state with respect to whether the closed meeting is permitted under the Act."

The message of the Tovar decision is to serve as a warning to all elected officials. Closed sessions must be held in strict conformity within requirements of the Act.

Furthermore, even in those closed sessions that are properly called and noticed, governmental officials must avoid straying from the noticed topics. Even unintentional violations can have dire consequences.