TY CLEVENGER
Attorney at Law
1095 Meadow Hill Drive
Lavon, Texas 75166

telephone: 979.985.5289
facsimile: 979.530.9523
tyclevenger@yahoo.com
Texas Bar No. 24034380

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Mr. Coty Siegert, District Attorney
Robertson County Courthouse
Franklin, Texas

Via email attachment

Re: Violations of the Texas Open Meetings Act by Hearne officials

Mr. Siegert:

I write to request an investigation of Mayor Ruben Gomez and council members Hazel Embra, Joyce Rattler, and LaShunda White for criminal violations of the Texas Open Meetings Act ("TOMA"). Yesterday evening, City Attorney Lonnie Gosch was terminated and replaced by Bryan F. "Rusty" Russ, Jr. According to Mr. Gosch, Mayor Gomez told him several weeks before the meeting that the mayor and his allies had enough votes to terminate Mr. Gosch and rehire Mr. Russ.

As you know, Mr. Russ admitted in an August 27, 2015 letter that he met with Mrs. Embra and Mrs. Rattler about being rehired as city attorney, and on September 1, 2015 I copied you on my email to city officials warning that a "walking quorum" still violates TOMA. The law on this issue has been settled for a long time:

> If a governmental body may circumvent the Act's requirements by "walking quorums" or serial meetings of less than a quorum, and then ratify at a public meeting the votes already taken in private, it would violate the spirit of the Act and would render an unreasonable result that was not intended by the Texas legislature. Thus, a meeting of less than a quorum is not a "meeting" within the Act when there is no intent to avoid the Act's requirements. *On the other hand, the Act would apply to meetings of groups of less than a quorum where a quorum or more of a body attempted to avoid the purposes of the Act by deliberately meeting in groups less than a quorum in closed sessions to discuss and/or deliberate public business, and then ratifying their actions as a quorum in a subsequent public meeting.*

Willmann v. City of San Antonio, 123 S.W.3d 469, 478 (Tex. App.—San Antonio 2003, *pet. denied*), quoting *Esperanza Peace and Justice Ctr. v. City of San Antonio*, No. SA–98–0696–OG, 2001 WL 685795, at *30 (W.D.Tex. May 15, 2001). If Mayor Gomez said he already had the votes in advance of the meeting, then it appears that the council majority knowingly violated TOMA even after they were warned.

At the same meeting, the city council voted 3-2 to ratify the decision of City Manager Pee Wee Drake to keep paying an incarcerated city employee, Natividad Rodriguez. The meeting agenda, however, did not give notice that the council would be voting on that issue. The audience at the city council meeting only learned that the council was voting on the Rodriguez matter because Mrs. Rattler accidentally blurted his name out, at which point the audience immediately became angry. In other words, the majority knew that the public would be angry about the decision, so they tried to hide it on the agenda. This too violates TOMA:

> Section 551.041 [of the Texas Government Code] provides that a governmental body shall give written notice of the date, hour, place, and subject of each meeting held by it. The notice must provide full and adequate notice of the subject matter, particularly where the subject is of special interest to the public. *City of San Antonio v. Fourth Court of Appeals,* 820 S.W.2d 762, 765–766 (Tex.1991); *Cox Enterprises, Inc. v. Board of Trustees of Austin Independent School District,* 706 S.W.2d 956, 959 (Tex.1986). In *Cox,* the court concluded that, where a personnel decision is one of special interest to the public and cannot be categorized as an ordinary personnel matter, a label like "personnel" fails as a description of that subject and does not constitute substantial compliance with the notice requirements of the Open Meetings Act. The *Cox* court held that the selection of a school superintendent was not an ordinary personnel matter.

Mayes v. City of De Leon, 922 S.W.2d 200, 203 (Tex. App.—Eastland 1996, *writ denied*). If the council is voting on whether to pay an employee to sit behind bars, that is a matter of "special interest to the public." And if Mrs. Embra, Mrs. Rattler, and Mrs. White are knowingly violating TOMA, as it appears, then criminal charges are the only way to stop them.

Finally, according to today's edition of the *Bryan-College Station Eagle*, Mr. Drake said that Mr. Rodriguez was only paid his vacation and sick time while he was behind bars. I am reliably informed that Mr. Drake's statement is untrue, namely, that Mr. Drake continued to pay Mr. Rodriguez beyond any vacation and sick leave that Mr. Rodriguez had accrued. As a matter of common sense, it is hard to believe that Mr. Rodriguez had accrued more than six months of vacation and sick leave. If so, it appears that Mr. Drake could be indicted for misapplication of fiduciary funds insofar as he knowingly paid an employee who was no longer able to work for the city. *See, generally, Billings v. State*, 725 S.W.2d 757 (Tex. App. – Houston [14th Dist.] 1987, *no pet*.).

Thank you for your consideration.

Sincerely,

Ty Clevenger