County Technical Assistance Service

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Meetings Declared Public

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Capitol Blvd. Suite 400
Nashville, TN. 37219
615-532-3555 phone
615-532-3699 fax
ctas@tennessee.edu
www.ctas.tennessee.edu

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All meetings of any governing body are declared to be public meetings. T.C.A. § 8-44-102. "Meeting" is statutorily defined as "the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision." T.C.A. § 8-44-102(b)(2). "Governing body" is defined in the statute as "any public body consisting of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration." T.C.A. § 8-44-102(b)(1).

The Tennessee Supreme Court has held that the act was intended to apply to "any governmental board, commission, committee, agency or authority whose members have authority to make policy or administrative decisions. "*Dorrier v. Dark*, 537 S.W.2d 888 (Tenn. 1976). In *Dorrier*, the Supreme Court created a two-part test for determining whether an organization is subject to the Sunshine Law: (1) whether its origin and authority may be traced to state, city or county legislative action, and (2) whether its members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people.

The application of the Sunshine Law is very broad. Included, for example, are planning commission meetings (Op. Tenn. Att'y Gen. 88-132 (July 29, 1988)), conferences between a public body and its attorney except those concerning pending litigation (Smith County Education *Ass'n v. Anderson*, 676 S.W.2d 328 (Tenn. 1984)), local school board meetings (*Dorrier*), tenure hearings *(Kendall v. Board of Education*, 627 F.2d 1 (6th Cir. 1980)), work sessions of a legislative body (*State ex rel. Akin v. Town of Kingston Springs*, 1993 WL 339305 (Tenn. Ct. App. 9/8/93)), an out-of-state meeting of some school board members and the superintendent (*Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. Ct. App. 1990)), meetings of a county hospital board (Op. Tenn. Atty. Gen. 01-042 (March 19, 2001)), dismissal or suspension hearings for tenured teachers (Op. Tenn. Att'y Gen. 98-111 (June 12, 1998)), councils on aging and senior citizen center boards (Op. Tenn. Atty. Gen. 84-310 (November 19, 1984)), and the board of directors of a preferred provider organization (PPO) that was a subsidiary of a county hospital district (*Souder v. Health Partners, Inc.*, 997 S.W.2d 140 (Tenn. Ct. App. 1998)).

The statute declares that a meeting occurs whenever a public body convenes for one of two purposes: to make a decision or to deliberate toward a decision. T.C.A. § 8-44-102(b)(2). Therefore, it is not necessary that a decision be reached before the Sunshine Law applies. The statute does state that a chance meeting between two or more members of a public body should not be considered a public meeting subject to the terms of the act. However, the same statute goes on to warn that chance meetings shall not be used to deliberate public business in circumvention of the spirit of the act. T.C.A. § 8-44-102. In the past, courts have held that informal assemblages of a governing body at which public business is discussed and deliberated, including informal telephone discussions between members of a governing body, fall under the Sunshine Law. *See, e.g., Littleton v. City of Kingston*, 1990 WL 198240 (Tenn. Ct. App. 1990). Because of how broadly the courts and the legislature have interpreted this act, the attorney general's office offered the following advice: "Two or more members of a governing body should not deliberate toward a decision or make a decision on public business without complying with the Open Meetings Act." Op. Tenn. Atty. Gen. 88-169 (Sept. 19, 1988). More recently, however, the Court of Appeals has taken a more narrow approach to what constitutes a "meeting" under the Act, holding that email communications between members of the Nashville Metropolitan Council, even emails copied to the entire council, did not constitute a "meeting" as defined in T.C.A. § 8-44- 102(b)(2). According to the Court, "Even though several emails copied all members of the Council, the exchanges among the members do not reflect either an intentional or inadvertent 'convening ... for which a quorum is required' for the purpose of making a decision." *Johnston v. Metropolitan Gov't of Nashville and Davidson County*, 320 S.W.3d 299 (Tenn. Ct. App. 2009), permission to appeal denied (Tenn. 2010). The Court found that some of the emails violated T.C.A. § 8-44-102(c), which prohibits electronic communications from being used to to decide or deliberate public business in circumvention of the Act. In that same case, the Court held that council members gathering in a council meeting room for the purpose of obtaining information--the council members reviewed survey data and petitions and were able to ask questions of various persons involved in the matter at issue--did not constitute a "meeting" within the meaning of the Act.

Local governing bodies and school boards are authorized to communicate via electronic forums only if they follow the procedures set out in T.C.A. § 8-44-109, which requires that such body:

1. Ensures that the forum through which the electronic communications are conducted is available to the public at all times other than that necessary for technical maintenance or unforeseen technical limitations;
2. Provides adequate public notice of the governing body's intended use of the electronic communication forum;
3. Controls who may communicate through the forum;
4. Controls the archiving of the electronic communications to ensure that the electronic communications are publicly available for at least one (1) year after the date of the communication; provided, that access to the archived electronic communications is user-friendly for the public; and
5. Provides reasonable access for members of the public to view the forum at the local public library, the building where the governing body meets or other public building.

The statute also requires that prior to a governing body initially utilizing a forum to allow electronic communications by its members the governing body shall file a plan with the office of open records counsel. The governing body may not initiate the forum until it receives a report of compliance from the office of open records counsel.

The Sunshine Law does not apply to meetings pertaining to decisions that are to be made by a single public official. For example, if a decision is to be made by a county official acting alone, then meetings of a committee appointed to make recommendations to the county official regarding this decision would not fall under the Sunshine Law. *See, e.g., Metropolitan Air Research Testing Authority, Inc. v. Metropolitan Gov't*, 842 S.W.2d 611 (Tenn. Ct. App. 1992). Also, on-site inspections of any project or program are excluded from the definition of "meeting." T.C.A. § 8-44-102(b)(2).

While the Sunshine Law requires that all meetings of governing bodies be "open to the public," the right of the public to be present does not necessarily include the right to participate in the meeting itself. *Lewis v. Cleveland Municipal Airport Authority*, 289 S.W.3d 808 (Tenn. Ct. App. 2008); *State ex rel. Akin v. Town of Kingston Springs*, 1993 WL 339305 (Tenn. Ct. App. 9/8/93); *Whittemore v. Brentwood Planning Commission*, 835 S.W.2d 11 (Tenn. Ct. App. 1992).
