

Board of Health Work Session

Monday, April 16, 2018

Lentz Health Center Board Room

5:40 p.m.

The work session of the Metropolitan Board of Health of Nashville and Davidson County was called to order by Chair Carol Etherington at 5:40 p.m.

Present: Carol Etherington, MSN, R.N.
Francisca Guzman
Alex Jahangir, M.D., MPH
Bill Paul, M.D., MPH

Margreete Johnston, M.D., MPH
Thomas Campbell, M.D.
Quan Poole, J.D., Metro Legal
Dr. Sanmi Areola, Deputy Director

Q&A with new legal counsel Quan Poole

Quan Poole referred to (then Metro Director of Law) Karl Dean's memo of October 2003 regarding Compliance With Open Meetings Act (Attachment), and answered Board members' questions.

Review of Transition Committee(s) Structure

The structure of the proposed hiring panels was reviewed and Board members were advised to send names of potential panel members to the Board's recording secretary, to be forwarded to Metro Human Resources.

Dr. Jahangir volunteered to serve on the interview panel. Dr. Campbell offered to serve as back up.

Ms. Guzman requested updates during the various phases of the process.

Upcoming MPH D meetings/events and Board logistics

Chair Etherington advised that times would be offered for the Board members to attend a meeting to include the Department's Executive Leadership Team. The purpose of the meeting would be to discuss ongoing challenges and concerns of the department.

An additional work session will be scheduled in late July.

Other Business

Dr. Johnston commended Dr. Paul's dedication and hard work during the two-year transition period.

Ms. Guzman requested an update on the Community Health Assessment at a regular meeting.

The meeting adjourned at approximately 7:05 p.m.

Respectfully Submitted,
Carol Etherington, Chair



Department of Law
Karl F. Dean, Director
862-6341

MEMORANDUM

TO: MEMBERS OF ALL BOARDS & COMMISSIONS OF THE METROPOLITAN GOVERNMENT

FROM: KARL DEAN, DIRECTOR OF LAW *KLD*

SUBJECT: COMPLIANCE WITH OPEN MEETINGS ACT

DATE: OCTOBER 16, 2003

The laws of the State of Tennessee provide that it is "the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret." *T.C.A.* §8-44-101(a) Commonly referred to as the "Open Meetings Act", the law is applicable to all meetings of all boards and commissions of the Metropolitan Government. *T.C.A.* §8-44-102((b)(1). The Metropolitan Code also has an open meeting requirement for its boards and commissions.¹ As one who has agreed to serve on a board or commission for the Metropolitan Government, it is important for you to understand the scope of the requirements of this act. The Open Meetings Act is considered remedial legislation and is, therefore, construed broadly "to promote openness and accountability in government, ... and to protect the public against closed door meetings at every stage of a government body's deliberation." *Metropolitan Air Research Testing Auth., Inc. (MARTA) v. Metropolitan Gov't*, 842 S.W.2d 611, 616 (Tenn.App.1992).

"Meeting." The law defines a "meeting" 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 on any matter." The act specifically excludes the chance meeting of two or more members of a public body from being considered a "meeting" but goes on to prohibit such chance meeting or electronic communication from being used to deliberate or decide public business. *T.C.A.* §8-44-102(c) Therefore, even meetings at a social gathering could be construed to violate the Open Meetings Act if business of the board or commission is deliberated between or among the members. Likewise, communication by telephone or electronic mail that amounts to deliberation between or among members about board or commission business also could be determined to be a violation of the Act.

¹ 2.68.010 Regular and special meetings--Location--Open to public.

A. Each board or commission of the metropolitan government shall hold its regular and special meetings in a suitable place in one of the buildings of the metropolitan government. All meetings of metropolitan boards and commissions shall be open to the public.

Metropolitan Code §2.68.010

“Governing Body.” “Governing body” is defined as “members of any public body which consists 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)* That section goes on to say – “(a)ny governing body so defined by this section shall remain so defined, notwithstanding the fact that such governing body may have designated itself as a negotiation committee for collective bargaining purposes, and strategy sessions of a governing body under such circumstances shall be open to the public at all times.” *Id.* Therefore, even a committee or sub-committee with less than the full membership of the board or commission must comply with the Open Meetings Act. *Forbes v. Wilson County Emergency Communication District 911 Board*, 1996 WL 518073 (Tenn. App. 1996)

Adequate public notice. Adequate public notice must be given for all meetings. *T.C.A. §8-44-103* “Adequate public notice” is not defined and the courts have held that adequate public notice means “adequate public notice under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public.” *Memphis Publ’g Co. v. City of Memphis*, 513 S.W.2d 511, 513 (Tenn. 1974) In one case where the notice was held to be inadequate, the court stated that while an agenda need not be included in the notice, the failure to mention a major issue that would be discussed was inadequate. *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. App. 1990) One Tennessee court has determined that adequate public notice for a special meeting requires a three prong test: the notice must be provided in a convenient and accessible location, the notice must provide a reasonable description of the purpose of the meeting or the proposed action to be taken, and the posting must be made at a time that is sufficiently in advance of the meeting to allow the public to attend. *Englewood Citizens for Alternate B v. Town of Englewood*, 1999 WL 419710 (Tenn.App. 1999),²

Actions Void. Any action taken at a meeting that is in violation of the Open Meetings Act is void. *T.C.A. §8-44-105*. Should a board or commission find that it has met in violation of the Open Meetings Act, it should again consider any action taken during the violative

² “In order to qualify as adequate public notice under *T.C.A. 8-44-103(b)*, this Court finds that the notice given by the Town of Englewood must satisfy a three-prong test. First, the notice must be posted in a location where a member of the community could become aware of such notice. Second, the contents of the notice must reasonably describe the purpose of the meeting or the action proposed to be taken. And, third, the notice must be posted at a time sufficiently in advance of the actual meeting in order to give citizens both an opportunity to become aware of and to attend the meeting. Without meeting all three of these requirements, we fail to see how the Town of Englewood could provide adequate public notice for the purposes of a special meeting. [FN1]

[FN1. Our determination of adequate public notice is given only in respect to *T.C.A. 8-44-103(b)* for special meetings under the Sunshine Act and not for regularly scheduled meetings under *T.C.A. 8-44-103(a)*.”

Englewood Citizens for Alternate B v. Town of Englewood, 1999 WL 419710 (Tenn.App. 1999)

meeting and conduct the necessary discussion and deliberations and take the necessary actions at the public meeting.³

Exception. The Supreme Court has determined that there is one exception to the Open Meetings Act. When the attorney meets with a board or commission to discuss present and pending litigation, the attorney may meet with such board or commission in private. However, once the advice has been given, any discussion, whatsoever, must be held in a public meeting. Further, the court cautions attorneys that the attorney's participation in a meeting that is in violation of the Open Meetings Act is an action that can subject the attorney to disciplinary action. *Smith County Education Assoc. v. Anderson*, 676 S.W.2d 328, 334-335 (Tenn. 1984)⁴

The Metropolitan Government could not function without the valuable services provided by the members of its boards and commissions. It is our desire to help you when you have concerns or issues related to the application of the Open Meetings Act. An attorney from this office has been assigned to assist your board or commission. Feel free to contact that attorney whenever you have questions. Additionally, feel free to contact my office any time you need to discuss these matters with me.

³ "We do not believe that the legislative intent of this statute was forever to bar a governing body from properly ratifying its decision made in a prior violative manner. However, neither was it the legislative intent to allow such a body to ratify a decision in a subsequent meeting by a perfunctory crystallization of its earlier action. We hold that the purpose of the act is satisfied if the ultimate decision is made in accordance with the Public Meetings Act, and if it is a new and substantial reconsideration of the issues involved, in which the public is afforded ample opportunity to know the facts and to be heard with reference to the matters at issue." *Neese* 813 S.W. 2d at 436.

⁴ "The exception is limited to meetings in which discussion of present and pending litigation takes place. Clients may provide counsel with facts and information regarding the lawsuit and counsel may advise them about the legal ramifications of those facts and the information given to him. However, once any discussion, whatsoever, begins among the members of the public body regarding what action to take based upon advice from counsel, whether it be settlement or otherwise, such discussion shall be open to the public and failure to do so shall constitute a clear violation of the Open Meetings Act." *Smith County Education Assoc. v. Anderson*, 676 S.W.2d 328, 334 (Tenn. 1984)