



Municipal Technical Advisory Service  
INSTITUTE *for* PUBLIC SERVICE

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## Governing Body

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

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 municipal 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 MTAS website material.

Sincerely,

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## Governing Body

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A two-pronged test must be used to analyze a meeting to determine if the Tennessee Open Meetings Act (hereinafter "TOMA") applies. First, a city/town must determine if the entity that is planning to meet is a "governing body" as defined in the TOMA. If the answer to that question is yes, it must then be determined if the governing body will be deliberating towards or making decisions on public business during the course of the meeting. If the governing body will be deliberating towards decisions or making decisions on public business during the course of a meeting, the meeting is subject to the TOMA, which means that it must be open to the public, there must be adequate public notice of the meeting provided and there must be minutes of the meeting recorded.

With regard to the first prong of the test, "governing body" is defined in T.C.A. § 8-44-102 as:

(A) *The 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 ...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.*

Clearly, your city/town's legislative body fits this definition, but what about other boards or bodies established by your city/town or boards that include city/town officials? Court opinions shed some light on this issue.

The Tennessee Supreme Court provided guidance as to what types of entities constitute a "governing body" in *Dorrier v. Dark*, 537 S.W.2d 888 (Tenn. 1976). The court states:

It is clear that for the purpose of this Act, the Legislature intended to include any board, commission, committee, agency, authority or any other body, by whatever name, whose origin and authority may be traced to State, City or County legislative action and *whose members have authority to make decisions or recommendations on policy or administration* affecting the conduct of the business of the people in the governmental sector. *Id. at 892 (emphasis added).*

Based upon the language in *Dorrier*, in order for a board or body to be subject to the TOMA, it must have been formed by an ordinance, resolution, private act, or general law and it must have some authority to affect decisions related government business. Based on this reasoning, the Tennessee Court of Appeals ruled that a grievance committee created by the South Central Human Resource Agency is not subject to the TOMA, despite being established under a specific law, since the "sole function of the committee is to hear and dispose of personnel complaints in accordance with the policies and procedures of the governing board." *Hastings v. South Central Human Resource Agency*, 829 S.W.2d 679, 686 (Tenn. Ct. App. 1992). The committee did not have the authority to make recommendations to the agency on matters of policy, rather it had the purpose of applying established policies in grievance hearings and, as such, was not subject to the TOMA.

In another case, the Court of Appeals determined that the "governing body" definition applied to a preferred provider organization's (PPO) board of directors on grounds that the PPO's charter indicated that it was created as a government instrumentality of the county general hospital district. *Souder v. Health Partners, Inc.*, 997 S.W.2d 140 (Tenn. App. 1998). The PPO further made policy decisions and commingled funds with the county general hospital district. The court found the PPO to be subject to the TOMA and actions taken in closed meetings were invalidated.

If a board or committee appointed by your governing body is authorized to make recommendations to the governing body that may affect policy or decisions, the committee or board is a "governing body" subject to the TOMA. Such boards include planning commissions, beer boards, boards of zoning appeals, and economic development boards.

Boards that have the authority to carry out the policies of a city/town's governing body, do not necessarily meet the definition of "governing body" found in the law. Questions related to whether a board, commission, or council is a governing body should be referred to the city/town attorney or to your MTAS Management Consultant.

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