

## Meeting and Deliberation

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Dear Reader:

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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 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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Table of Contents

Meeting and Deliberation .....	3
--------------------------------	---

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Although your city/town council or board clearly fits the description of a “governing body,” meetings or functions of the body are only required to be open to the public under the law if the board is deliberating towards or making a decision on public business. The Tennessee Open Meetings Act (hereinafter “TOMA”) states:

(2) “Meeting” means 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. “Meeting” does not include any on-site inspection of any project or program.

(c) Nothing in this section shall be construed as to require a chance meeting of two (2) or more members of a public body to be considered a public meeting. No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part. T.C.A. § 8-44-102.

One must examine the topic of discussion as well as the purpose of a meeting to determine if a particular meeting or discussion between board members must be open to the public. For instance, if board members are discussing any matter that is pending before the board, the discussion must be held during an adequately noticed public meeting. If the board members are discussing personal matters or personal opinions on topics that will not come before the board for consideration, such discussions do not have to be open to the public.

Municipal governing bodies may not meet by conference call or other electronic means, except in two limited circumstances. T.C.A. § 8-44-108 permits cities organized under the general law city manager-commission charter, having a population no greater than 2,500 and a governing body of only three members to conduct meetings at which members may participate by electronic or other means when a physical quorum cannot be reached otherwise. Additionally, T.C.A. § 8-44-109 allows certain governing bodies to communicate electronically via an Internet forum. However, before a governing body can utilize an Internet forum, use must be approved by the Office of Open Records Counsel and the communications must be available for public viewing. Aside from these two provisions with limited application, municipal governing bodies may not hold meetings via conference call or any other electronic means.

It is permissible for a governing body to have a “retreat” or a closed-door meeting during which the relations of council members are discussed or the functions of the board are addressed in general, as long as no matters of city business are discussed. However, when board members meet in private it is often difficult to keep them from talking about matters pending before the board.

Such was the case in *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. App. 1990). Members of a board of education and the superintendent attended a retreat in another state where the issue of whether to adopt a clustering plan was discussed. The decision concerning the adoption of a clustering plan had been considered by the board for several years, and following the retreat the board finally approved a clustering plan at the next regular meeting. The plaintiffs argued that the board members discussed the proposed clustering plan at length during the retreat and made their decision before the next board meeting. The court found that the retreat was actually a “meeting” as defined in the TOMA, stating “regardless of whether any Board member made a decision at the meeting, we do not believe that the Board can successfully avoid the fact that it deliberated toward making a decision.” *Id.* at 435. It is important to remember that even in situations when a vote is not taken or no quorum is present or required, the gathering of the members of a governing body may still be subject to the requirements of the TOMA. Any discussion of pending or anticipated city business must be held in an adequately noticed public meeting.

Private meetings may be held with city staff members for the purpose of gathering information if the person seeking comments has the authority to make decisions independent from the governing body. Meetings between city staff members and a purchasing agent in which staff provided their opinions regarding whether a contract should be awarded to a low bidder were found to be exempt from the TOMA, as the purchasing agent had the power to make the decision without staff input and no quorum was required. *Metropolitan Air Research Testing Authority, Inc. v. Metropolitan Government of Nashville and Davidson County*, 842 S.W.2d 611 (Tenn. Ct. App. 1992).

Phone calls made by a county commissioner to his fellow commissioners in which he solicited their support for his appointment as county trustee were determined not to violate the TOMA as no meeting took place as defined under the Act. *Jackson v. Hensley*, 715 S.W.2d 605 (Tenn. Ct. App. 1986).

What about meetings between city officials and consultants in which the consultants solicit the officials’ opinions as guidance? The Tennessee Attorney General has opined that meetings of a third-party consultant with individual board members to discuss each member’s preferences regarding a list of candidates for a new city manager are not subject to the act and may be held privately. Op. Tenn. Atty. Gen. No. 99-193. However, the consultant cannot serve as a conduit taking information back and forth between the members.

Further, language has been added to T.C.A. § 9-3-405(d)(3) that allows local government audit committees and the governing body of a local government meeting with the city/town’s audit committees to go into executive session to discuss pending or ongoing audits and audit related investigations.

*DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.*

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