

Adequate Notice of Public Meeting

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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Reference Number:
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Another question that frequently arises under the Tennessee Open Meetings Act (hereinafter "TOMA") is what constitutes adequate public notice for meetings. The TOMA states:

§ 8-44-103. Notice

(a) NOTICE OF REGULAR MEETINGS. Any such governmental body which holds a meeting previously scheduled by statute, ordinance, or resolution shall give adequate public notice of such meeting.

(b) NOTICE OF SPECIAL MEETINGS. Any such governmental body which holds a meeting not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law, shall give adequate public notice of such meeting.

(c) The notice requirements of this part are in addition to, and not in substitution of, any other notice required by law.

No definition of "adequate public notice" is provided in the TOMA. The courts in Tennessee have been reluctant to adopt a specific meaning of "adequate public notice," saying:

We think it is impossible to formulate a general rule in regard to what the phrase "adequate public notice" means. However, we agree with the Chancellor 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 Publishing Company v. City of Memphis*, 513 S.W.2d 511, 513 (Tenn. 1974).

However, an unpublished opinion, *Englewood Citizens for Alternate B v. The Town of Englewood*, 1999 WL 419710 (Tenn. Ct. App. June 24, 1999), provides some guidance concerning what constitutes adequate public notice in the context of special called meetings only. The court in *Englewood* held:

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.

Id. at *2. The *Englewood* case concerns the selection of a route for a highway construction project. A special meeting was scheduled for December 12, and the town recorder testified that notice of the meeting was posted on December 10 at the local post office, at city hall, and at a bank. The city recorder also faxed a copy of the notice to the local newspaper, but the paper did not publish the notice. Although the court found the locations of the posting of the notice to be reasonable, the contents of the notice were insufficient to adequately inform the public of the purpose of the meeting. The notice simply stated "letter to State concerning HWY 411." The court determined that "a more substantive pronouncement stating that the commission would reconsider which alternative to endorse for Highway 411 should have been given." *Id.* at *3.

Notice of a city council meeting to hear an appeal from a discharged police officer was found to be adequate in *Kinser v. Town of Oliver Springs*, 880 S.W.2d 681 (Tenn. Ct. App. 1994). Without discussing the contents of the notice, the court determined that the posting of notices inside city hall, where people pay their water bills and above the entrance to the police department and council room to be sufficient. It is important to note that the *Kinser* case involved an appeal of a termination by an employee and was not a matter affecting a number of city residents.

The Court of Appeals found the content of a meeting notice to be inadequate in *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. Ct. App. 1990). Members of a board of education and the superintendent attended a retreat in another state at which the issue of whether to adopt a clustering plan was discussed. The planned retreat was announced at a prior regular meeting of the board and was further mentioned in media reports. The notice published in the paper stated that two issues would be addressed at the retreat but made no mention of consideration of the clustering plan. *Id.* at 435. The court found the notice to be insufficient, stating "'adequate public notice under the circumstances' is not met by misleading notice." *Id.* at 436.

When providing notice of public meetings, a city/town should follow its normal procedures established for the posting of notices. The attorney general opined that a city did not provide adequate public notice of a special meeting when it failed to follow its normal procedure for posting meeting notices. This attorney general's opinion also considered the fact that city employees were not aware of the meeting, and employees informed some members of the public that no meeting was scheduled for that date. Op. Tenn. Atty. Gen. No. 00-095.

Posting notices of meetings on an Internet site likely will not satisfy the adequate public notice requirement of the TOMA, unless notice is also posted in locations around the city/town and/or through media outlets. Op. Tenn. Atty. Gen. No. 00-090.

A governing body may temporarily adjourn or recess a meeting, but adequate public notice must be provided as to when and where the meeting will be reconvened. Op. Tenn. Atty. Gen. No. 07-30.

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