



Violation and Remedies

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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If a citizen brings a legal challenge, a court can find that the action taken by a governing body related to public business in a private meeting, in a meeting that was not adequately noticed, and/or at a meeting with insufficient minutes is a violation of the Tennessee Open Meetings Act (hereinafter "TOMA") and is therefore void, unless the action taken concerns the public debt of the city/town. T.C.A. § 8-44-105. A violation can be cured if the matter is brought before the governing body at an adequately noticed public meeting, the body fully discusses and makes a decision on the matter during an adequately noticed public meeting, and the minutes reflect that the issue was properly addressed.

A violation of the TOMA by a committee that reports to a governing body may be cured by the governing board but only if a full discussion and reconsideration of the matter occurs. In the unreported opinion *Allen v. City of Memphis*, 2004 WL 1402553 (Tenn. Ct. App. June 22, 2004), the Court of Appeals found that a committee appointed by the city council to analyze costs associated with a proposed annexation violated the law by failing to keep minutes of meetings. In one committee meeting held between the first and second readings on the ordinance, the scope of the annexation was changed by removing an area from the property description. The committee meeting was open to the public and proper notices were posted, but minutes were not kept of the discussion that led to the alteration of the ordinance. The Memphis City Council later approved the amended ordinance after a public hearing, but there was no discussion of the reasons the ordinance was changed. The court, citing the *Neese v. Paris Special School District* opinion, stated:

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. *Id.* at *5, citing *Neese v. Paris Special School District*, 813 S.W.2d 432, 436 (Tenn. Ct. App. 1990).

The court found that the city failed to cure the violation of the law since there was no new and substantial reconsideration of the issue in the council meeting.

In contrast, the court held that Kingsport's Board of Mayor and Aldermen acted appropriately to cure a violation of the TOMA by holding numerous public meetings and engaging in new and substantial reconsideration of an issue that the members met about and discussed privately. *Dossett v. City of Kingsport*, 258 S.W.3d 139 (Tenn. Ct. App. 2007). In this unreported case, some members of Kingsport's Board of Mayor and Aldermen attended private meetings to discuss a potential sale of city property. Despite such private meetings, the Court of Appeals found:

After two private meetings, each of which included two members of the Board, the entire Board then met in several public meetings to consider selling the EAP Building to TriSummit. After carefully reviewing the record, including the minutes of these public meetings, we hold that the Board conclusively established that it cured the alleged violations of the Open Meetings Act by fully and fairly considering the proposed sale during its five public meetings following the last private gathering. It is undisputed that the public was afforded at these five public meetings both ample opportunity to know the facts and to be heard as to the proposed sale. It was only after these public meetings that the decision to sell the property ultimately was made. *Id.* at 150.

Governing bodies that violate the TOMA and do not take appropriate corrective action may be sued in circuit or chancery court by any party affected by the board action. T.C.A. § 8-44-106. If the trial court determines that the Act has been violated, it will issue an order called an "injunction" that permanently forbids the governing body from violating the law. The court will have jurisdiction over the governing body for one year, during which time the council or board must report to the court twice, in writing, regarding its compliance with the TOMA T.C.A. § 8-44-106(c),(d).

Even if a governing body takes action to cure a defect in the meeting minutes or deliberates an issue a second time at a properly noticed meeting, the body may not be able to avoid a court order. If a lawsuit has been filed and the court determines that a violation occurred, whether intentional or not, an order may be issued that requires the governing body to remain under the court's watch for a full year. *Zselvay v. Metropolitan Government of Nashville and Davidson County*, 986 S.W.2d 581 (Tenn. Ct. App. 1999).

Once city officials realize that a violation of the TOMA has occurred, the governing body must act to place the issue on the next meeting agenda for full discussion and reconsideration. If an ordinance was passed following discussions that violated the law, the ordinance should be reconsidered and the readings and votes should be repeated as soon as possible, in order to avoid litigation.

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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