

April 10, 2002

Re: Meetings between Mayor and Council Member

Dear City Attorney:

Your Consultant has conveyed to me your request for an opinion on whether meetings between the Mayor and a member of Council to discuss the preparation of the City's budget would violate the Sunshine Law or Open Meetings Law ( T.C.A. § 8-44-101, et seq.). In my opinion, these meetings would violate the Sunshine or Open Meetings Law unless public notice of the meeting is provided as mandated by that law. Such a meeting without notice would probably be considered an "informal assemblage" held to circumvent the law.

The Sunshine Law provides in T.C.A. § 8-44-102(b)(1) that the term "governing body" to which the law applies means:

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....

In my opinion, the Mayor would be considered a member of the governing body of your City for purposes of the Sunshine Law. The City's charter (Chapter No. 644 of the Private Acts of 1911 as substantially amended by Chapter No. 685 of the Private Acts of 1929, as amended) specifically provides in Article III, § 1 that the Mayor is a member of the governing body:

[T]he governing body of said municipality shall be known as the "City Council" and shall be composed of a Mayor and as many aldermen as there are wards in the City....

See also Article I, § 1. Further, the Mayor presides at Council meetings and votes when there is a tie and in all cases of the election of city officials. (See Article III, § 8 of the charter as compiled in the Lebanon Municipal Code.) The Mayor also appoints standing and special committees. (Article V, § 2). The Mayor may introduce ordinances and resolutions. (Article V, §1). These legislative duties of the Mayor confer potentially great influence by the Mayor over the policy decisions of the City Council. Additionally, the Mayor may also veto any ordinance or resolution. (Article V, § 4). I believe the conclusion is inescapable based upon the plain language of the City's charter and the substantial legislative duties conferred upon the Mayor that the Mayor would be considered a member of the governing body for purposes of the Sunshine Law.

The Sunshine Law provides in T.C.A. § 8-44-102(c) that:

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.

The obvious purpose of a meeting between the Mayor and a Council Member to discuss the preparation of the City's budget would be to deliberate toward a decision on budget matters. In my opinion this would violate the spirit of the law, which is stated in T.C.A. § 8-44-101:

The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.

Only if no decisions are made at such meetings and there is no deliberation toward a decision would these meetings pass muster under the Sunshine Law. Even then, however, meetings like this can give the impression that public business is being conducted in secret, causing perception and political problems for the involved parties.

It should also be pointed out that there are charter provisions these meetings might run afoul of. The last paragraph of Article III, § 6, for example, provides that:

The said City Council shall exercise its powers in sessions duly assembled and no member nor group of members thereof shall exercise or attempt to exercise the powers conferred upon the City Council except through proceedings adopted at some regular or special session.

The charter also has its own version of an open meetings law that, of course, antedated the general law requirements. Article III, § 13 provides:

That all sessions of the City Council shall be public except when acting as a committee of the whole.

The exception for meetings of a committee of the whole would be inoperative now because this conflicts with the Sunshine Law. See *Waldorf v. City of Chattanooga*, 237 S.W.2d 939 (Tenn. 1951), holding that city charter provisions must generally yield to the state general law. After this inoperative provision is elided, the charter requirement is that all sessions must be public. The combination of these two (2) provisions – that no member or group of members may attempt to exercise Council powers except in duly assembled session and the requirement that sessions be public – argues against the legality of private meetings between the Mayor and individual Council Members to deliberate City business. These sections also support the same policy espoused in the Sunshine Law that public business should not be conducted in secret.

I am enclosing a copy of an Attorney General's opinion on exactly this issue. This opinion involved the City of Clarksville. The Clarksville charter provisions were very similar to your City's. The main difference is that in Clarksville the Mayor voted on all matters that Council Members voted upon. Given the substantial legislative duties of the Mayor of your City, however, the result would probably be the same. The opinion is OTAG 88-169 ( September 19, 1988).

I hope this information is helpful. If I may be of further assistance, please contact me.

Sincerely,

Dennis Huffer  
Legal Consultant