



August 12, 2020

Dear Mayor,

You have asked how a governing body cures a violation or alleged violation of the Tennessee Open Meetings Act (hereinafter “TOMA”). The courts in Tennessee have addressed this issue on several occasions. When examining whether a governing body that violated or allegedly violated the TOMA cured a violation, the courts look to whether the governing body engaged in “full and substantial reconsideration of the issue” that was discussed or allegedly discussed outside of an adequately noticed public meeting, during a subsequent adequately noticed public meeting. *Dossett v. City of Kingsport*, 258 S.W. 3d 139, 141 (Tenn. Ct. App. 2007).

In *Dossett*, at least two members of the Kingsport Board of Mayor and Aldermen (hereinafter “BOMA”) allegedly met in private meetings with other city officials to discuss the sale of a building owned by the city. *Id.* at 147. However, after each of the private meetings, the BOMA met as a whole and discussed the sale of the building at length. *Id.* at 147-148. A lawsuit was filed and the allegations within the lawsuit included that the BOMA violated the TOMA. However, based upon the facts presented, the court determined, “even if the Board violated the Act by some members meeting with Shipley in private, these violations were cured by the Board’s substantial reconsideration of the sale during several subsequent public meetings.” *Id.* at 149.

The *Dossett* court, quoting the court in *Neese v. Paris School District*, 813 S.W. 2d 432, 436 (Tenn. Ct. App. 1990), stated:

T.C.A. § 8–44–105 provides that “[a]ny action taken at a meeting in violation of this part shall be void and of no effect....” 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. See *Alaska Comm. Coll. Fed. of Teachers v. University of Alaska*, 677 P.2d 886, 891 (Alaska 1984).

Id.

The *Dossett* court ultimately holds:

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 AEP 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. Therefore, we affirm the Trial Court's judgment on this issue.

Id. at 150.

The court's holding in *Dossett* is similar to the holding in a number of other cases in Tennessee. See *Watson v. Waters*, 375 S.W. 3d 282 (Tenn. Ct. App. 2012); *Johnston v. Metropolitan Government of Nashville and Davidson County*, 320 S.W. 3d 299 (Tenn. Ct. App. 2009); and *Flat Iron Partners, LP v. City of Covington*, 2015 WL 1952290 at *7 (Tenn. Ct. App. Apr. 30, 2015). In each of the cited cases, the courts held that to the extent the governing bodies engaged in full and fair reconsideration of the issue discussed outside of an adequately noticed public meeting, in a subsequent adequately noticed public meeting, the violation or alleged violation of the TOMA was cured. Based upon the relevant cases reviewed, the courts have not established any additional criteria aside from that set out above, for curing a violation of the TOMA.

Please feel free to contact me, if you have other questions. Additionally, I suggest that you confer with your city attorney and the Office of Open Records Counsel on this issue.

With warmest regards,



Elisha D. Hodge
MTAS Legal Consultant