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May 18, 2000

Opinion No. 00-095

Legality of "Special Call" Meeting of City of Jellico Board of Mayor and Aldermen

QUESTIONS

1. Did the May 9th meeting of the Board of Mayor and Aldermen for the City of Jellico comply with city charter provisions regarding "special call" meetings?
2. Did the May 9th meeting of the Board of Mayor and Aldermen for the City of Jellico comply with the Open Meetings Act?

OPINIONS

1. The meeting appears to have been called in a manner that complies with the city charter.
2. Whether "adequate public notice" of the meeting was given as required by the Open Meetings Act would depend on all the facts and circumstances, a definitive determination of which can only be provided by a court of competent jurisdiction.

ANALYSIS

1. Special Meeting under the Jellico City Charter

This opinion addresses whether a special meeting of the Board of Mayor and Aldermen for the City of Jellico complied with the city charter and the Open Meetings Act. Jellico operates under a private act charter, Chapter 101 of the Private Acts of 1998. Article II, Section 2.02(c) addresses meetings of the Board of Mayor and Aldermen:

The Board shall meet regularly at least once every month at the times and places prescribed by ordinance. The Board may meet in special session on written notice of the mayor or of any three (3) aldermen served on the other members of the Board personally at least twenty-four (24) hours in advance of the meeting. The Board shall have the authority in public assembled session, with a quorum present, to exercise all expressly granted or implied powers[.]

Information supplied with the opinion request indicates that the meeting of the Jellico Board

of Mayor and Aldermen that occurred on May 9, 2000, was called on written notice signed by four aldermen. The meeting was noticed for that day at 5 p.m. and apparently was personally served on the mayor and other aldermen before 3 p.m. the previous day. The language of the charter does not limit the business that may be dealt with in special meetings to emergency situations; rather, it provides that “[t]he Board shall have the authority in public assembled session, with a quorum present, to exercise all expressly granted or implied powers[.]” Accordingly, based on the information we have been provided, the May 9th meeting of the Board of Mayor and Aldermen for the City of Jellico appears to have been called in a manner that is consistent with the city charter.

2. Notice of Meeting under Open Meetings Act

The next question is whether notice of the meeting was given in compliance with the Open Meetings Act, Tenn. Code Ann. §§ 8-44-101, *et seq.* Under the Open Meetings Act, all meetings of any governing body are public meetings open to the public at all times, except as provided by the Tennessee Constitution. Tenn. Code Ann. § 8-44-102(a). All meetings subject to this law must be held on “adequate public notice.” Tenn. Code Ann. § 8-44-103. “Adequate public notice” as used in this section means adequate public notice under the circumstances. *Memphis Publishing Co. v. City of Memphis*, 513 S.W.2d 511, 512 (Tenn. 1974), *rehearing denied* (1974).

In a recent unpublished opinion, the Tennessee Court of Appeals for the Eastern Section outlined a three-prong test for “adequate public notice” under this provision. *Englewood Citizens for Alternate B v. Town of Englewood*, No. 03A01-9803-CH-00098, slip op. (E.S.Tenn.Ct.App. June 24, 1999). Under that test, the notice must be posted in a location where a member of the community could become aware of such notice; the contents of the notice must reasonably describe the purpose of the meeting or the action proposed to be taken; and 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. Slip op. at 2. The Court concluded that posting notice of the meeting in the city hall, the post office, and a local bank satisfied the first requirement of the test. The Court stated “that for purposes of this prong of the adequate notice inquiry, the town can provide adequate notice simply by choosing reasonable public locations and posting notices at those public locations on a consistent basis.” *Id.*

According to information supplied with the opinion request, the City of Jellico’s “normal procedure for announcing all meetings” has copies of the meeting notice “sent to all members of council; city attorney; affected individuals, groups, etc.; local radio station; newspaper; and cable TV outlet.” The information indicates these procedures were not followed with respect to the May 9th meeting. It appears that municipal employees were not aware of the meeting and informed some members of the public that no meeting was scheduled for May 9th, but proposed minutes of the meeting indicate that other members of the public were, in fact, in attendance. It is unclear from the information exactly what notice was given of the meeting to local citizens. Case law under the Open Meetings Act emphasizes that the circumstances of each case must be taken into account to determine the adequacy of notice. *Kinser v. Town of Oliver Springs*, 880 S.W.2d 681 (Tenn.Ct.App. 1994). Accordingly, only a court of competent jurisdiction could provide a definitive decision on

whether notice of the May 9th meeting complied with the Open Meetings Act's requirement of adequate public notice. A governing body that may have violated the Act may cure its violation by conducting a subsequent meeting at which it ratifies the prior action. A cure meeting will not be effective, however, unless the ultimate decision is made in accordance with the Open Meetings Act, and it is a new and substantial reconsideration of the issues involved. *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. Ct. App. 1990).

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