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Opinion No. 01-042

Applicability of Open Meetings Act to Hospital Board

QUESTIONS

1. Is the Unicoi County Memorial Hospital Board a "governing body" within the meaning of Tenn. Code Ann. §§ 8-44-101, *et seq.*, the Open Meetings Act?

2. If so, are board meetings required to be open to the public?

OPINIONS

1. Based on our research, we think a court would conclude that the Unicoi County Memorial Hospital Board is a "governing body" within the meaning of Tenn. Code Ann. §§ 8-44-101, *et seq.*

2. Meetings of any governing body must comply with the provisions of the Open Meetings Act. Under the Act, meetings must be held on adequate public notice and be open to the public. Case law provides a narrow exception for meetings between a governing body and its attorney. *Smith County Education Ass'n v. Anderson*, 676 S.W.2d 328 (Tenn. 1984).

ANALYSIS

1. County Hospital Board as a "Governing Body"

This opinion addresses whether the Unicoi County Memorial Hospital Board (the "Board") is a "governing body" subject to Tenn. Code Ann. §§ 8-44-101, *et seq.*, the "Open Meetings Act." Under the Open Meetings Act, all meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee. Tenn. Code Ann. § 8-44-102(a). The term "governing body" includes:

> 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 . . .."

Tenn. Code Ann. § 8-44-102(b)(1)(A). The Tennessee Supreme Court has concluded that the term "public body" as used in the Open Meetings Act should be broadly interpreted. *Dorrier v. Dark,* 537 S.W.2d 888 (Tenn. 1976), *reh'g denied,* 540 S.W.2d 658 (Tenn. 1976). There, the Court stated:

> It is clear that for the purpose of this Act, the Legislature intended to include any board, commission, committee, agency, authority or any other body, by whatever name, *whose origin and authority may be traced to State, City or County legislative action and whose members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector.*

537 S.W.2d at 892. Research indicates that the Board is the "Board of Control" for a nonprofit corporation, Unicoi County Memorial Hospital, Inc. The charter for this corporation reflects that Unicoi County and the Town of Erwin were the incorporators. We have also received a copy of By-Laws for this corporation. Under Article III of the By-Laws, the Board's purpose is generally to manage the Uncoi County Memorial Hospital.[1] Clearly, then, we think the origin and authority of the Board can be traced to city and county legislative action as contemplated by *Dorrier v. Dark.* Further, we think a court would conclude that the members of the Board "have the authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector" as contemplated by *Dorrier.* For this reason, we think a court would conclude that the Board is a "governing body" within the meaning of the Open Meetings Act. *See Souder v. Health Partners, Inc.,* 997 S.W.2d 140 (Tenn.Ct.App. 1998), *no appeal filed* (a not-for-profit corporation chartered by a public hospital authority is a "governing body" subject to the Open Meetings Act).

2. Requirements of the Open Meetings Act

The second question is whether, assuming that the Board is subject to the Open Meetings Act, its meetings must be public. Under Tenn. Code Ann. § 8-44-102(a), all meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee. Meetings must be held on "adequate public notice", and votes must be made in public. Tenn. Code Ann. § 8-44-103; Tenn. Code Ann. § 8-44-104. We know of no constitutional provision that would prevent meetings of the Board from generally being public as required by the Open Meetings Act. Case law provides a narrow exception for meetings between a governing body and its attorney. *Smith County Education Ass'n v. Anderson,* 676 S.W.2d 328 (Tenn. 1984).

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[1] We assume for the purposes of this opinion that the county and town were authorized to create the nonprofit corporation.

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