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Opinion No. 06-060

Application of Open Meetings and Public Records Acts to City Audit Committee and Internal Auditor

QUESTIONS

1. Whether the Open Meetings Act applies to the Audit Committee and internal auditor of a municipality?

2. Whether the Public Records Act applies to the Audit Committee and internal auditor of a municipality?

OPINIONS

1. The municipality's internal auditor is an individual public official and is excluded from the definition of a public body. Accordingly, the Open Meetings Act would not apply to such an individual. The municipality's Audit Committee was created by the city's legislative body and makes its recommendations to that body. Thus, its "origin and authority can be traced to . . . City legislative action," and its members 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." Accordingly, it is the opinion of this Office that this Committee is a governing body and, therefore, is subject to the provisions of the Open Meetings Act.

2. We are not aware of any state law that would make the working papers of a municipality's audit committee and/or internal auditor confidential. Accordingly, it is our opinion that the working papers of a municipality's Audit Committee and internal auditor are public records and subject to inspection under the Public Records Act.

ANALYSIS

You have asked whether the Open Meetings and Public Records Acts apply to the Audit Committee and internal auditor of a municipality, despite the investigative nature of their work.

Open Meetings Act

The Open Meetings Act, Tenn. Code Ann. §§ 8-44-101, *et seq*., provides that "[a]ll 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" is defined as "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). The term "public body" is not defined in the Act; however, the Tennessee Supreme Court has noted that:

> [i]t is clear that for the purpose of the 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.

Dorrier v. Dark, 537 S.W.2d 888, 892 (Tenn. 1976). In other cases, the Tennessee Court of Appeals has held that the definition of a "public body" excludes individual public officials and that the Open Meetings Act does not apply to committees created by such an individual and whose sole authority is to make recommendations to that individual. *See Fain v. Faculty of College of Law of University of Tennessee*, 552 S.W.2d 752, 754 (Tenn. Ct. App. 1977) and *MARTA v. Metro. Gov. of Nashville*, 842 S.W.2d 611, 618 (Tenn. Ct. App. 1992). Accordingly, as the municipality's internal auditor is an individual public official, he or she is excluded from the definition of a public body and, therefore, the Open Meetings Act would not apply to such individual.

From the information provided to this Office, however, the Audit Committee of the municipality in question was established by a city ordinance for the purposes of overseeing internal and external audits of the municipality. Thus, it appears that the Audit Committee was created by the city's legislative body and makes its recommendations to that body. Its "origin and authority can be traced to . . . City legislative action," and its members 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." *Dorrier v. Dark*, 537 S.W.2d at 892. Accordingly, it is the opinion of this Office that the municipality's Audit Committee is a governing body subject to the provisions of the Open Meetings Act.

Public Records Act

The Tennessee Public Records Act (the "Act") provides that "[a]ll state, county and municipal records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law." Tenn. Code Ann. § 10-7-503(a) (1999). The test for determining whether material is a public record is "whether it was ***made or***

received pursuant to law or ordinance or ***in connection with the transaction of official business by any governmental agency***." *Griffin v. City of Knoxville*, 821 S.W.2d 921, 924 (Tenn. 1991) (emphasis added). In *Griffin*, the Tennessee Supreme Court approved a construction of this language, which is found in Tenn. Code Ann. § 10-7-301, that requires the governmental entity to have made or received the material. Application of the test requires an examination of the totality of the circumstances. The courts construe the Act broadly "so as to give the fullest possible public access to public records" consistent with the requirements of Tenn. Code Ann. § 10-7-505. *Id*.

Tenn. Code Ann. § 6-56-101 requires the governing board of every municipal corporation to have a thorough audit of the financial affairs of the corporation as often as every two (2) years. Tenn. Code Ann. § 6-56-104 specifically provides that the result of any such audit "shall be kept as a public record of the corporation, and shall be always subject to the inspection of each citizen or taxpayer of the corporation." This statute further requires that a summary of the audit, prepared by the auditor, be published in at least one issue of a newspaper of general circulation in the corporation. Tenn. Code Ann. § 6-56-105(a) further requires the governing body of each municipality to conduct an annual audit of the accounts and records of all departments, boards, and agencies under its jurisdiction that receive and disburse funds. Subsection (d) provides that a copy of each audit shall be furnished to the mayor, chief executive officer, each member of the governing body, and the Comptroller. Additionally, copies of the audit are to be made available to the press.

Thus, pursuant to Tenn. Code Ann. §§ 6-56-104 and 6-56-105(d), the biennial audit report of a municipality and the annual audits of all departments, boards and agencies of the municipality are clearly public records and available for inspection. Presumably, however, your question refers to whether the working papers of the Audit Committee and the internal auditor for the municipality are public records. As noted above, the Audit Committee was established by a city ordinance for the purposes of overseeing the internal and external audits of the municipality. Given the statutory audit requirements cited above, the working papers of either the Audit Committee or the internal auditor would certainly be records "made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency" and, therefore, would be public records, unless a state law provides otherwise with respect to the openness of these records. We are not aware of any state law that would make the working papers of a municipality's Audit Committee and/or internal auditor confidential. Accordingly, it is our opinion that the working papers of a municipality's Audit Committee and internal auditor are public records and subject to inspection under the Public Records Act.

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