

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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Opinion 06-105

Open Meetings Act Application to a “task force committee”

QUESTION

Are meetings of a “task force committee” subject to the Open Meetings Act, Tenn. Code Ann. §§ 8-44-101, *et seq.*, when the committee was assembled by the Director of the Division of Health Related Boards to discuss issues of concern to the Board of Veterinary Medical Examiners (“BVME”); the committee includes as members a BVME member, the BVME Director, and the Health Related Boards Director; and the committee makes recommendations on policy and/or administration affecting the conduct of the business of the BVME and the BVME follows these recommendations?

OPINION

No. The task force committee in question was created by an administrator. No state, city or county legislative action created the Task Force Committee or conferred any authority on it, and the BVME played no role in creating or operating the committee. It is, therefore, not a “governing body” within the meaning of the Open Meetings Act.

ANALYSIS

To better answer this question, this Office reviewed the relevant series of events and learned that additional circumstances were involved that directly affect the issue of whether or not the Task Force Committee is subject to the Open Meetings Act. The Task Force Committee was assembled by the Director of the Division of Health Related Boards. At the December 8, 2005, BVME regular meeting, the Director of the BVME announced the creation of this Task Force Committee, stating: “As a result of the meeting of the Joint Legislative committee, a task force has been formed to explore some of the issues raised at the meeting.” (Minutes, BVME Meeting 12/8/2005). The Director of the BVME then announced that the members of the task force would be one Board member, four veterinarians, and three staff members. *Id.* The staff members included Denise Moran, an Investigator, Robbie Bell, the Director of the Health Related Boards Division, and Lisa Lampley, the Director of the BVME. *Id.* The BVME neither created the Task Force Committee nor charged it with any role or responsibility.

Subsequently this committee met on January 11, 2006. (Minutes, Task Force Committee 1/11/2006). After a general discussion, the Task Force Committee formulated eight

“recommendations”.¹ *Id.* The minutes of the subsequent BVME meeting held on February 16, 2006, reflect that the Director of the BVME read the minutes of the Task Force Committee, which included the list of recommendations developed by the committee. (Minutes, BVME Meeting 2/16/2006). The BVME minutes do not reflect that the Board was asked to, or did, take any action to either adopt or reject the input of the Task Force Committee. *Id.* The minutes of the Board meeting do reflect that, following open public discussion, the BVME adopted the following position statement regarding the distribution of veterinary prescription drugs:

The prescribing, dispensing, or distribution of veterinary drugs not issued in the course of professional practice and without the existence of a proper veterinarian-client-patient relationship not only constitutes a violation of the Practice Act and Regulations but is a substantial threat to the health, safety and welfare of the client and/or the public. The Board of Veterinary Medical Examiners will impose disciplinary action including the assessment of maximum Type A civil penalties in the amount of \$1,000.00 per prescription written in violation of the rules/statutes.

Id.

Tennessee Code Annotated section 8-44-101(a) declares that it is “the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.” The Code further states 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) (emphasis added).

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) (emphasis added). The term “public body” is not defined in the Open Meetings Act; however, the Tennessee Supreme Court has noted that:

¹The committee minutes reflect the following as recommendations made by the task force members:
Respondent of complaint should remain anonymous at first review of complaint to ensure total impartiality in determination of referral or no referral for investigation.
Refer for investigation all complaints received pertaining to the distribution/prescribing of veterinary drugs.
Board of Veterinary Medical Examiners should adopt policy statement regarding the imposition of maximum penalties for violations of rules pertaining to the distribution of veterinary prescription drugs.
Draft legislation and/or rules making failure to cooperate/comply with the investigative process a violation and cause for disciplinary action
Large animal practice and prescribing of veterinary drugs to be primary focus of next newsletter.
Amend rules to better define/clarify what constitutes a “proper veterinary-client-patient relationship”.
Draft legislation that requires veterinary pharmacies to be registered with the Board of Pharmacy.
Draft legislation making failure to cooperate/comply with the investigative process by a pharmacy/pharmacist a violation and cause for disciplinary action.

[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). Thus, in order to be considered a “governing body” covered by the Open Meetings Act, an organization must: (1) consist of members of a public body which can be traced back to state, city, or county legislative action and (2) possess authority to make decisions or recommendations concerning policy or administration which affect people in the governmental sector. Op. Tenn. Att’y. Gen. 87-91 (May 15, 1987) citing *Chattanooga Bd. of Educ. v. Chattanooga Educ. Ass’n*, 7 T.A.M. 41 (5/15/87) (Tenn. Ct. App. 1982). See also, *Mid-South Pub. Co. v. Tenn. State Univ. & Cmty. Coll. Sys. Bd. of Regents*, 1990 WL 207410, *3 (Tenn. Ct. App. 1990) (holding that the General Assembly did not contemplate that the Sunshine Law would apply to meetings between individual public officials and their advisors or advisory committees); *Metro. Air Research Testing Auth., Inc. v. Metro. Gov’t. of Nashville and Davidson County*, 842 S.W.2d 611, 619 (Tenn. Ct. App. 1992); perm. app. denied (Tenn. 1992) (holding that a meeting in the mayor's office consisting of various city officials with separate roles in the procurement process was not a meeting of a governing body - as the group was neither created nor recognized by the Metropolitan Charter, the city ordinances, or the rules and regulations of the Division of Purchases; and was not required to have a quorum or to deliberate, or even to make recommendations to a public body).

In *Fain v. Faculty of College of Law of University of Tennessee*, 552 S.W.2d 752, 755 (Tenn. Ct. App. 1977), the court indicated that the entity in question must be ultimately traceable to some type of legislative action, such that its genesis was in the legislature, in order to fall within the Open Meetings Act. In *Fain*, a group of students alleged that meetings of the faculty and meetings of committees composed of faculty members and students were subject to the Tennessee Open Meetings Act. *Fain*, 552 S.W.2d at 753. The trial court reasoned that since the University of Tennessee was created by action of the state legislature and the board of trustees was created by the state legislature to govern the university, the meetings of the faculty and committees of the college of law were “traceable” to state legislative action through the board's delegation of authority to various individuals and groups of individuals. *Fain*, 552 S.W.2d at 755. The Court of Appeals was unconvinced by the trial court’s reasoning and held that the meetings of committees created by the dean were not subject to the Open Meetings Act.

The court examined the issue, “Do the meetings of the faculty and committees of the College of Law constitute the meeting of a ‘governing body’ of a public body with authority to make decisions for or recommendations to a public body, as set out in the Act?”, by investigating the authority held by the dean. *Fain*, 552 S.W.2d at 754. Though the dean in *Fain* had begun soliciting more formal “input” from the faculty by creating committees to advise and assist him in decision making, that did not necessitate that these committees were subject to the Open Meeting Act. *Id.*

The court pointed out that:

The Dean determines the size and members of the committees, defines their purposes and limits of activity. He may dissolve any or all of the committees at any time. He may adopt or reject recommendations of the committees. If recommendations are made which he is without authority to implement he may pass them on to the Vice-Chancellor of the University. The Dean prepares the agenda for the committee and faculty meetings and presides over the meetings. There are no provisions in the Charter or By-Laws of the University authorizing the committees and they exist at the will of the Dean.

Fain, 552 S.W.2d at 754. The court went on to note that the “Committees exist by virtue of having been created by the Dean. They derive their authority from the Dean. Their authority is to make recommendations to the Dean.” *Id.* Due to all of these factors the court held that since the dean was an administrative officer rather than a public body, the faculty meetings and committee meetings of the college of law were not subject to the provisions of the Open Meetings Act. *Id.*

The Court of Appeals reached a similar decision in *Metropolitan Air Research Testing Authority, Inc. v. Metropolitan Government of Nashville*, 842 S.W.2d 611, 619 (Tenn. Ct. App. 1992) perm.app.den. (Tenn. 1992) (holding that the definition of a “public body” excludes individual public officials and the Open Meetings Act does not apply to committees created by such an individual whose sole authority is to make recommendations to that individual).

In the question presented, the Task Force Committee was created solely by the Director of the Division of Health Related Boards (hereinafter “Director”). (Minutes, BVME Meeting 12/8/2005). The BVME was not asked to vote on this committee or approve this committee or take any action with regards to it. *Id.* The committee’s formation by an administrator and its general purpose (“to explore some of the issues raised” at the Joint Legislative committee) were announced to the BVME. *Id.* Thus, neither the creation nor the authority of this committee was discussed or voted on by the BVME. For all of these reasons, the Task Force Committee fails the test set out in *Dorrier*. This Task Force Committee derived from no state, city or county legislative action, and, while its opinion may have been provided to the BVME, it was without authority to make recommendations to that Board. Consequently, the meetings of this committee would not be subject to the Open Meetings Act.

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