S T A T E O F T E N N E S S E E
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May 1, 2009

Opinion No. 09-68

Open Meetings Act

QUESTION

When, if at all, is a corporation required to comply with the provisions of Tennessee's Open Meetings Act?

OPINION

To the extent that a corporation falls within any of the categories listed in Tenn. Code Ann. § 8-44-102(b)(1)(B) – (E), then the Open Meetings Act would apply to meetings of the board of directors of that corporation. Additionally, a non-profit corporation whose origins may be traced to the action of a state, county or local legislative body and whose directors are authorized to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector would constitute a "public body" whose board meetings would be subject to the Act. Finally, where a public agency has delegated a portion of its official responsibilities and authority to a nonprofit corporation, such nonprofit corporation is also a "public body" whose board meetings would be subject to the Open Meetings Act.

ANALYSIS

Tennessee's Open Meetings Act 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). Governing body is initially defined as "[t]he 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).

"Governing body" is further defined in Tenn. Code Ann. § 8-44-102(b)(1)(B)-(E) as including:

> (B) The board of directors of any nonprofit corporation which contracts with a state agency to receive community grant funds in consideration for rendering specified services to the public; provided, that community grant funds comprise at least thirty percent (30%) of the total annual income of such corporation. Except such meetings of the board of directors of such nonprofit corporation that are called solely to discuss matters involving confidential doctor-patient relationships, personnel matters or matters required to be kept confidential by federal or state law or by federal or state regulation shall not be covered under the provisions of this chapter, and no other matter shall be discussed at such meetings;
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> (C) The board of directors of any not-for-profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more counties, cities, towns and local governments pursuant to the provisions of title 7, chapter 54 or 58. The provisions of this subdivision (b)(1)(C) shall not apply to any county with a metropolitan form of government and having a population of four hundred thousand (400,000) or more according to the 1980 federal census or any subsequent federal census;
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> (D) The board of directors of any nonprofit corporation which through contract or otherwise provides a metropolitan form of government having a population in excess of five hundred thousand (500,000) according to the 1990 federal census or any subsequent federal census with heat, steam or incineration of refuse;
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> (E)(i) The boards of directors of any association or nonprofit corporation authorized by the laws of Tennessee that:
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> (*a*) Was established for the benefit of local government officials or counties, cities, towns or other local governments or as a municipal bond financing pool;
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> (*b*) Receives dues, service fees or any other income from local government officials or such local governments that constitute at least thirty percent (30%) of its total annual income; and

> (*c*) Was authorized as of January 1, 1998, under state law to obtain coverage for its employees in the Tennessee consolidated retirement system.
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> (ii) The provisions of this subdivision (b)(1)(E) shall not be construed to require the disclosure of a trade secret or proprietary information held or used by an association or nonprofit corporation to which this chapter applies. In the event a trade secret or proprietary information is required to be discussed in an open meeting, the association or nonprofit corporation may conduct an executive session to discuss such trade secret or proprietary information; provided, that a notice of the executive session is included in the agenda for such meeting.

To the extent that a corporation falls within any of these categories, then the Open Meetings Act would apply to meetings of the board of directors of that corporation.

Additionally, Tennessee courts have recognized that the Open Meetings Act is remedial in nature, and, therefore, "should be construed broadly to promote openness and accountability in government . . . and to protect the public against closed door meetings at every stage of a government body's deliberation." *Metropolitan Air Research Testing Auth., Inc. v. Metropolitan Gov't*, 842 S.W.2d 611, 616 (Tenn.Ct.App. 1992); *see also Dorrier v. Dark*, 537 S.W.2d 888, 891 (Tenn. 1976); *Memphis Publ'g Co. v. City of Memphis*, 513 S.W.2d 511, 513 (Tenn. 1974). The definition of "governing body" includes a "the members of any public body" which consists of two or more members. The term "public body" is not defined in the Open Meetings Act; however the Tennessee Supreme Court has noted with respect to the term:

> 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.

Dorrier v. Dark, 537 S.W.2d at 892. Under this test, a non-profit corporation whose origins may be traced to the action of a state, county or local legislative body and whose directors are authorized to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector would constitute a "public body" whose meetings would be subject to the Act. Indeed, this Office has previously opined that the board of directors of a non-profit corporation created by a municipal ordinance to supervise community-based programming is a "governing body" subject to the Open Meetings Act. *See* Op. Tenn. Att'y Gen. 87-91 (May 15, 1987).

Further, in *Souder v. Health Partners, Inc.*, 997 S.W.2d 140 (Tenn. Ct. App. 1998), the Court of Appeals addressed the issue of whether meetings of the board of directors of a nonprofit

public benefit corporation were subject to the Open Meetings Act. That court endorsed the decision of a Georgia court concluding that "an entity to which a public agency had delegated its official responsibilities and authority was the vehicle by which the agency carried out its responsibilities and . . . was subject to the Open Meetings Act." *Id*. at 146 (citing *Northwest Georgia Health Sys., Inc. v. Times-Journal, Inc.*, 218 Ga.App. 336, 461 S.E.d2d 297 (1995)). Based upon this reasoning, this Office has previously opined that where a municipality delegated a portion of its official responsibilities and authority to a nonprofit corporation, the board of directors of such nonprofit corporation is also a "governing body" subject to the Open Meetings Act. *See* Op. Tenn. Att'y Gen. 99-043 (Feb. 25, 1999).

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