STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 14-96

Authority of County Legislative Body to Establish a Partisan Caucus

QUESTION

Can members of a county legislative body establish partisan caucuses for the purpose of outlining and meeting party objectives and goals?

OPINION

Yes, but meetings of a partisan caucus of a county legislative body may be subject to the Open Meetings Act.

ANALYSIS

Art. VII, § 1, of the Tennessee Constitution requires that the qualified voters of each county elect a legislative body. Such legislative body shall be composed of no more than 25 representatives from districts in the county, with no more than three representatives from a single district.[1] Article VII, § 1, also authorizes the General Assembly to "provide alternate forms of county government including the right to charter."

The powers and duties of county legislative bodies are set forth in Tenn. Code Ann. §§ 5-5-101 to -127. Nothing in these statutes would limit the authority of a county legislative body to establish a partisan caucus. Provisions for the operation of a charter form of county government are set forth in Tenn. Code Ann. §§ 5-1-201 to -215. Nothing in these statutes would limit the authority of a county legislative body to establish a partisan caucus, except to the extent the county charter itself provides otherwise. Therefore, a county legislative body would not be prohibited under state law from establishing a partisan caucus.

As this Office opined in Tenn. Att'y Gen. Op. 94-094 (Aug. 30, 1994), however, meetings of such a partisan caucus may be subject to the Open Meetings Act, which applies to all meetings of any governing body. Tenn. Code Ann. § 8-44-102(a). The term "governing body" is 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

[1] A county organized under the consolidated-government provisions of Article XI, § 9, of the Constitution is not subject to these requirements.

recommendations to a public body on policy or administration." *Id.* § 8-44-102(b)(1). Assuming that a partisan caucus of a county legislative body has at least two members, it would meet this definition of a governing body.

A "meeting" is defined as the "convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter." Tenn. Code Ann. § 8-44-102(b)(2). The term "deliberate" has been defined by the courts as: "to examine and consult in order to form an opinion" and "to weigh arguments for and against a proposed course of action." *Neese v. Paris Special Sch. Dist.*, 813 S.W.2d 432, 435 (Tenn. Ct. App. 1990) (quoting *Black's Law Dictionary* 384 (5th ed. 1979)). *See Johnston v. Metro. Gov't of Nashville and Davidson Cnty.*, 320 S.W.3d 299, 311 (Tenn. Ct. App. 2009). To the extent that members of a partisan caucus engage in deliberations regarding public business during meetings of the caucus, such meetings would be subject to the Open Meetings Act. *See* Tenn. Att'y Gen. Op. 94-094, at 4 ("If the purpose of a meeting of a partisan caucus of a county legislative body is to transact party business that is not within the authority of the county legislative body, . . . such a meeting is not subject to the requirements of the Open Meetings Act. On the other hand, if the purpose of the meeting is to decide or deliberate toward a decision on public business that does fall within the authority of the county legislative body, then the Act applies.").

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