



Department of  
**Environment &  
Conservation**

# OPEN MEETINGS PRIMER

# Open Meetings

## INTRODUCTION

- What is the Open Meetings Act?
- What is a “meeting” (and what’s not)?
- What is required for a meeting covered by the OMA?
  - Notice, Agenda, Public Presence, Minutes
- If the board violates the OMA?
  - Nullity; Costs taxed to the board, other penalties



# Open Meetings

Open Meetings are defined in Tenn. Code Ann. § 8-44-101(a):

The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.

“It should, therefore, 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.”

*Metro. Air Research Testing Auth., Inc. v. Metro. Gov't of Nashville & Davidson Cnty.*, 842 S.W.2d 611, 616 (Tenn. Ct. App. 1992)

# Open Meetings



Tenn. Code Ann. § 8-44-102

- “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.”

**The OMA applies to all boards and commissions.**

- See T.C.A. § 8-44-102(b)(1)(A). “Governing body” means: 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...

# Open Meetings

## Points to remember:

- “Meeting” means 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...
- This includes committee and subcommittees, not just the full board
- Special meetings are also included
- “Meeting” for OMA purposes does **not include**:
  - **Any on-site inspection of any project or program**
  - **A chance meeting of two or more members of a public body**
  - **Breaks (lunch, restroom, smoke); recesses between morning and afternoon sessions, adjournments between two days of a multi-day meeting.**
  - **Executive sessions**

# Open Meetings

More points to remember:

- **What if one or more members cannot attend a meeting in person?**
  - The absent member may participate telephonically, but **all** votes must be roll call votes. That is so the public may know how any given member voted on each issue.
  - If those members present in person make a quorum, then the meeting may proceed as normal with the other members participating by phone.
  - But if the in-person members cannot make a quorum, then the board must adopt and promulgate a Statement of Necessity. Then the meeting can go forward. **T.C.A. § 8-44-108(b)(3)**

# Open Meetings

- Executive Session?
  - Executive sessions occur when one or more members meet with the board's attorney, *and*
  - The board is under lawsuit or has been threatened with suit, *and*
  - The members ask their attorney questions related to such a suit.

The board may **NOT** deliberate about any specific matter before it or potentially before it in any executive session.



# Open Meetings

## NOTICE

### **Three-Prong Test for “Adequate Public Notice”:**

- 1) The contents of the notice must reasonably describe the purpose of the meeting or the proposed action to be taken;
- 2) Notice must be posted at a time sufficiently in advance of the actual meeting in order to give citizens both an opportunity to become aware of and to attend the meeting;
- 3) Notice must be posted in a location where a member of the community could become aware of such notice (internet).

**Adequacy is based on the facts and circumstances and no single factor is dispositive.**

# Open Meetings

- Penalties for violations

## Legal Effect:

Board actions taken in violation of the Open Meetings Act are void (except actions affecting the public debt of the entity concerned)

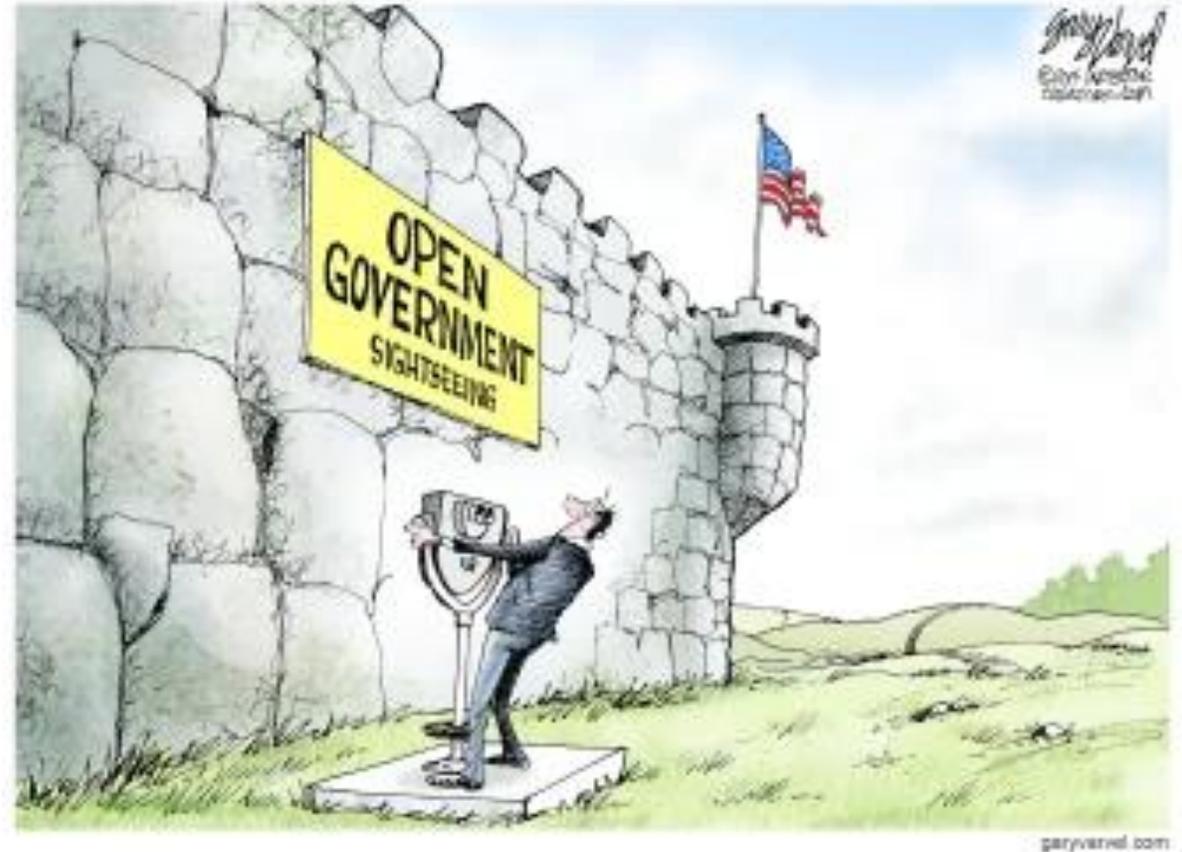
## Practical Impact:

Substantial costs and other remedies as determined by a court of competent jurisdiction  
(T.C.A. § 8-44-106(a)-(d))

# Open Meetings

## Takeaways

- The Open Meetings Act is designed to make sure all board business is conducted in a way accessible to the public.
- It applies to both individual members and collectively as a board.
- All gatherings of more than one member are “meetings” and are covered by the Act, including regular, special & emergency meetings, and including committee & sub-committee meetings.
- The major exception is the Executive Session, which is the opportunity to ask the board attorney questions, but the board may not deliberate or decide.



# Open Meetings

## Takeaways Cont.

- For every meeting, the board must give adequate public notice (in content, location & time).
- If the board violates the law, any violative acts are void.
- In addition, costs of litigation as well as other remedies as determined by a court of competent jurisdiction may be assessed against the board.

# Questions?

