



**TENNESSEE HUMAN RIGHTS COMMISSION**  
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**March 22, 2019**  
**Board of Commissioners'**  
**Meeting Minutes**

**Commissioners Present:**

Commissioner Arnwine (Phone)  
Commissioner Behler (Phone)  
Commissioner Crafton (Phone)  
Commissioner Crider  
Commissioner Derryberry  
Chair Houston  
Commissioner Martin  
Commissioner Sloss  
Commissioner White (Phone)

**Commissioners Absent:**

**Staff Present:**

Veronica McGraw, Communications Director  
Lynn Cothren, Special Assistant to the Executive Director  
Sabrina Hooper, Deputy Director  
Gabrielle Lyons, Title VI Compliance Director  
Dawn Cummings, General Counsel  
Saadia Williams, Housing Coordinator  
Lisa Lancaster, Executive Assistant  
Gretchen Reese, Compliance Officer

**Guests:**

Allen Staley, Fiscal Officer

**Call to Order**

Chair Houston called the meeting to order at 9:05 a.m. CDT and following a moment of silence roll call was taken.

Board Chair Houston noted that Executive Director Watts is absence due a medical reason. Deputy Director Hooper will provide the executive report.

Chair Houston noted that she sent out an email reminding Commissioners to be mindful of our Sunshine laws and asked General Counsel Cummings to explain the parameters of the Sunshine Laws. General Counsel Cummings stated the Tennessee Open Meetings Act also known as the Sunshine Law and the Tennessee Public Records Act go hand-in-hand and are based on the presumption of open government.

The Tennessee Open Meetings Act states that it is a policy of the state that the formation of public policy decisions and public business shall not be conducted in secret and is designed so that deliberations/decisions will be made public. Both laws are found in our State Constitution and there are numerous judicial decisions that have elaborated on the subject.

In the Open Meetings Act the question is “what is a meeting?”. The best definition is when a governing/public body convenes to make a decision or deliberate toward a decision in any matter. The key is deliberations must be made public and the issue now is what is a deliberation? The courts have refused to define deliberations and have said, “we know it when we see it”. One definition is to examine and consult in order to form an opinion or to weigh arguments for and against a purposed course of action. This definition was taken from a court decision.

Another definition says it is our opinion that it is members of the public body will face very few situations, if any, in which they will not be aware of the existence or non-existence of a quorum and whether or not they are in course of deliberation towards a decision on policy or administration.

There are exemptions to the Open Meeting Act but there only two. The first is a chance meeting of two or more members of a public body is not considered a meeting as long as you are not talking about public business. This is designed to allow members to socialize without violating the law.

A chance meeting can quickly become a deliberation and that would be a violation of the Open Meeting Act. The second is the attorney client privilege which Associate General Counsel, William Wade will be discussing today.

No chance meetings informal assemblages or electronic communication shall be used to decide or deliberate in public business. When these chance meetings begin to discuss in any way a matter pending before the board or personal matters or personal opinions on topics that may be coming before the board, it may be considered deliberative.

It is also required that we give adequate notice of the meetings and that minutes are published per the Open Meetings Law.

In the Tennessee Open Public Records Act states in part that all state county municipal records shall at all times during business hours be open for personal inspection by any citizen of the state and those in charge of records shall not refuse such rights. What are records, documents or papers, letters, maps, books, pictures, microfilms, electronic data, films, recordings, minutes, emails on private email accounts are public if they deal with the discussion or transaction of public business. This definition has been defined by the courts.

The law also requires that we respond to the requests and that we have legal bases for any type of denial. There are a lot of exemptions to the Tennessee Open Public Records Act the most recent count being 538. Example: THRC Investigative files are not open to the public for inspection.

Our federal counterpart is Freedom of Information Act (FOIA) and our laws are designed like FOIA but Tennessee is more stringent than the federal laws.

Chair Houston noted that the statement by General Counsel Cummings was developed in advance of this meeting. Commissioner Crider noted that it is good to be reminded of laws that we operate under. He questioned if he sent out an email or received an email about a topic, are we in violation of the law?

General Counsel Cummings noted that the Open Records Act tells us we have to turn over records but the concern would be that we are conducting business and if any subject that the board would be discussing at an upcoming meeting then that would be violation of the law.

Chair Houston noted that as we serve on boards across the state we are challenged to comply with these laws. The main point is any subject that the board will be deliberating Commissioners cannot have conversations prior to the open public meeting.

The minutes of the January 25, 2019 Board of Commissioners' meeting were reviewed. Commissioner Behler made a motion to approve the minutes and Commissioner Derryberry seconded the motion. A vote was taken and passed.

### **Strategic Plan Discussion**

Commissioner Derryberry reported that the Commission is in great shape with the addressing the short term strategic goals, such as the Commission meeting format with staff providing highlights to the Commissioners and we've approved an elevator speech that the Communication Director will discuss in her section.

### **Education and Outreach Committee Report**

Chair of the Committee, Commissioner Derryberry noted the committee met via conference call to discuss the Wurzburg Award which is the most prestigious award that we give annually. Last year, we honored Rev. Paul McDaniel for his lifetime achievements in working for human rights. Please think about people in your community or across the state that could be nominated. The nominations must be submitted to Communication Director McGraw on the form that was sent out to Commissioners on March 7, 2019. The form must be received by April 1, 2019.

Chair Houston asked that the nomination packets be resent and any questions about the process should be directed to Committee Chair Derryberry. The Education and Outreach Committee will meet again in April to review the nominations received and the results will be discussed at the May 17, 2019 Commission meeting.

Commissioner Sloss made a motion to accept the Education and Outreach Committee report. It was seconded by Commissioner Martin. A vote was taken and passed.

### **Law & Legislation Committee Report**

Committee Chair, Commissioner Sloss reported that the Law & Legislation met on February 25, 2019 to review several bills that directly affect the Commission. The first one attempts to regulate the attendance of Commissioners at Commission meetings and requires their removal of members who do not meet the requirements.

This Commission has not experienced Commissioners missing three consecutive meetings which would require their removal from the Commission. This issue is addressed in THRC By-Laws and the committee had no problem with the bill.

House Bill 998 would expand the Commissions duties to include recommending methods to eliminate discrimination and intergroup tensions and furnishing technical assistance to facilitate progress in human relations. The committee noted that this is already included in our current law. General Counsel Cummings noted that this bill has been withdrawn on the house side and has not been addressed in the Senate.

General Counsel Cummings returned to the attendance bill HB1253 and noted that it has been discovered that this bill is a caption bill which means any ordinance attached to a bill allows amendments to occur throughout the statute. Therefore, HB1253 in its final form could have nothing to do with the attendance requirement, it a place holder. There is an amendment on the desk that has not been published yet, we will continue to monitor and provide updates. Commissioner Crider noted that legislators like to keep a couple of caption bills off to the side in case a constituent or agency requests to have a revision that could fit that ordinance.

Commissioner Sloss inquired about the Sunset bill. General Counsel Cummings noted that we are scheduled for next year, 2020. Deputy Director Hooper added that the program audit will be conducted this year.

Committee Chair Sloss continued with HB1190 the Landlord Tenant Bill that addresses support and service animals. It establishes a process for landlords to verify need of tenants and prospective tenants to have pet policies waived to accommodate the need for a service or support animal and creates penalties for misrepresentation.

Deputy Director Hooper noted that Executive Director Watts, General Counsel Cummings and herself met with the sponsors of this bill, Senator Bell and Rep. Terry. THRC was asked by them to provide language regarding our concerns with the bill.

General Counsel Cummings noted that the revised language is provided in your materials packet which suggested that the criminal penalty for misrepresentation be removed and add language that outlines the responsibilities of the landlord and tenant to authenticate medical documentation. Criteria were also outlined to verify that documents are reliable. The sponsors rolled the bill so they could discuss and develop an amendment. The bill will be heard on Tuesday and THRC staff will be present.

Commissioner Crider asked what parts of the proposed bill would not be compliant with federal law. General Counsel Cummings noted that the Class B misdemeanor penalty for misrepresentation of documentation is not part of the Fair Housing Act. The Act presumes that documentation is reliable.

Commissioner Crider asked if the state has the ability or the authority to include language about misrepresentation of documents. General Counsel Cummings noted that the state has the ability to include language whether constitutional or un-constitutional but our concern is that it could be a violation of the Fair Housing Act.

Commissioner Crider stated that there is no lawful way that states could include language regarding penalties for misrepresentation of documentation that would be in compliance with federal fair housing laws. General Counsel Cummings agreed. If HB1190 pass and was challenge in court, it would up to the judge to decide. She also noted that it is the

opinion of legal and THRC staff that this language would be in conflict with the Fair Housing Act.

Commissioner Sloss asked HB1900 pass could this jeopardize our substantial equivalency with HUD? General Counsel Cummings noted that THRC has a MOU with HUD that gives us the authority conduct fair housing investigations and one requirement is that we have a state law that is substantially equivalent to the federal Fair Housing law.

Commissioner Crider asked what language was included for the sponsors regarding the purchase of a \$40 online certificate of need. General Counsel Cummings noted that HUD has not defined reliable documentation but factors to consider are A: the nature of the relationship between the tenant or prospective tenant and the healthcare provider; B: type of interaction the tenant or prospective tenant had with healthcare provider; C: The number of interactions that the tenant or prospective tenant had with the healthcare provider; simply being an online provider does not automatically make it unreliable.

Commissioner Sloss asked if it was possible to get an opinion from HUD's General Counsel. General Counsel Cummings responded that Executive Director Watts has sent the proposed bill to HUD for review.

Commissioner Crider noted that landlords can charge a pet rent fee and asked is if that violated compliance with HUD. General Counsel noted it does not. Deputy Director Hooper noted that a pet fee is in compliance for a pet but a service/support animal is not considered a pet under the Act.

There were several bills dealing with employment and pregnancy issues and General Counsel Cummings noted that the HB0978 has been taken off the calendar in the House and has not been moved since January 30, 2019. HB0986 deals with private employers, there has been an amendment but it has not been published. There is a hearing on March 25, 2019 and the amendment should be published before that. HB0089 and HB0356 are both caption bills and are being monitored by legal.

Commissioner Crider asked if there is a real or perceived conflict of interest, how should it be handled. Commissioner Sloss noted that if any Commissioner feels they have a real or perceived conflict on any vote, out of an abundance of caution they should recuse themselves from the vote. Chair Houston tabled further discussion because at this point we were introducing new material for discussion and we needed to complete the vote of the Law and Legislation.

Commissioner Behler made a motion to accept the Law & Legislation Committee report. Commissioner Arnwine seconded the motion. A vote was taken and passed.

### **Budget & Audit Committee Report**

Committee Chair, Commissioner Crider turned the report over to Deputy Director Hooper who noted that the committee met and discussed the House and Senate Finance, Ways and Means Budget Questions. Suggestions were made by Commissioner Derryberry to include the requested positions locations; Commissioner Crafton had asked that we include computers with docking stations that could be used with teleworking, which increased our request by \$3,700. Both requests were included in the 2020 budget request.

The House hearing with Finance, Ways and Means occurred on March 18, 2019 and the Senate hearing is scheduled for April 2, 2019. Also, House State Government invited us to present an agency overview to the legislators on April 9, 2019. It was noted that any Commissioner that would like to attend any of the hearings are welcome to attend.

Commissioner Derryberry made a motion to accept the Budget and Audit Committee report. Commissioner Sloss seconded the motion. A vote was taken and passed.

### **Executive Director's Report**

Deputy Director Hooper reported Fiscal Officer, Allen Staley and herself attended the Budget Hearing on March 18, 2019. The presentation included a brief agency overview and the presentation of the budget. Questions were asked and answered by staff but no vote was taken. Allen Staley reported that the presentation of the budget was straightforward and we recommended approximately \$2.6M which includes \$1.8M in state appropriated dollars and \$800K in federal funds with 29 full time positions. Deputy Director Hooper noted that the TN Holler, a blog, aired a portion of the comments made by Rep. DeBerry when he questioned the existence of the agency. I just wanted to inform commissioners of the information.

Agency staffing updates, we have one investigator position in the Nashville office that is open in employment unit. The investigator had a return call from a company she interviewed with prior to accepting our position. I'm unaware of the salary but they offered a work-from-home option.

As of February 11, 2019 the 4 question survey was implemented which includes the investigators sending the questionnaires out at the end of the investigation and a staff member is calling random complainants using the four question survey. At the May commission meeting, we will bring results to the board.

The online complaint form had a soft opening on January 25, 2019. The following Monday we received seven complaints via the new online form. We are monitoring the intake from the online forms. After some tweaking and updating, we will reset the analytics and have communications make a public announcement regarding the launch. The online form is an additional way that complainants can file complaints with us.

April is Fair Housing Month and housing events are scheduled: in Knoxville, ECHO will be on April 5<sup>th</sup> (Chair Houston will do the Proclamation); in Memphis West TN Fair Housing event will be April 11<sup>th</sup>; in Nashville Fair Housing Matters Conference will be April 18<sup>th</sup>.

Executive Director Watts met with the new Commissioner of Human Resources, Juan Williams to discuss the partnership with THRC and DOHR for the Employment Law Seminar. The event will be held on June 12, 2019. Also, discussed the possibility of a joint venture of mini seminars outside of the major cities in Tennessee into 2020

Commissioner Martin made a motion to accept the Executive Report and Commissioner Derryberry seconded the motion. A vote was taken and passed.

### **Employment Case Report**

Deputy Director, Sabrina Hooper, shared for the period January 1, 2019, to February 28, 2019, case report that two mediations closed with \$9,640 in monetary benefits to the

complainants; three settlements closed with one being a cause case with monetary benefits to the complainants of \$107,610.

There was a 25% increase in complaints received for the period most likely due to the online form being up and running. Sunset Audit update: from July 1, 2018, to January, 2019, all timing milestones were met. Intake is at 38 days for 122 complaints; there were no new reconsiderations in housing and employment had five reconsiderations that were processed timely; 58 Investigative Plans were developed and submitted timely..

Commissioner Crider made a motion to accept the Employment Case Report. Commissioner Sloss seconded the motion. A vote was taken and passed.

### **Housing Case Report**

Housing Coordinator, Saadia Williams reported on the January 1, 2019, to February 28, 2019, time frame noting that 60 inquiries were received and 17 were accepted for investigation and disability continues to be the number one basis.

She stated that timing milestones for sending out acceptance and notification letters within ten days were met. The HUD efficiency goal of closing 50% of cases within 100 days currently stands at 38%. The housing division is currently fully staffed.

Commissioner Derryberry made a motion to accept the Housing Report and Commissioner Martin seconded the motion. A vote was taken and passed.

### **Title VI Compliance Report**

Title VI Compliance Director, Gabrielle Lyons reported that the training of Compliance Officer Jesse Madsen is complete and she completed the compliance review of Veteran's Services. Two findings were issued related to their LEP protocols; this was a result of their staff not being aware of the availability of language interpretation services. A corrective action plan is being developed and monitored for the agency.

The next compliance review will be of the Department of Safety and Homeland Security. We will be checking on-site for LEP posters and Title VI signage. We are on track to complete Program's goal of five compliance reviews before the end of the fiscal year. To date, the Compliance Program has completed compliance reviews for more than half of the 48 state agencies under jurisdiction.

The Compliance Program is working on two new training and education projects. Due to requests from agencies for Title VI training assistance, we have partnered with the Department of Finance and Administration to develop a Title VI training module online in Edison to be accessible to all state employees. We will finalize the content to be appropriate for all Title VI staff in all agencies.

Chair Houston asked how higher education staff will benefit from this training since they do not have access to Edison. Compliance Director Lyons noted that she is working with the coordinator at TBR and hopefully the training can be loaded into whatever online management system is available to their staff.

Compliance Director Lyons noted that she is also working with Communications Director McGraw to develop a Title VI Coordinator's Investigative webinar in the near future.

Commissioner Sloss asked if Title VI Coordinators are required to take the training. Compliance Director Lyons noted that all coordinators have to be trained once a year by the Title VI division.

With no questions a motion was made by Commissioner Behler to accept the Title VI Report and seconded by Commissioner Sloss. A vote was taken and passed.

### **Legal Report**

General Counsel, Dawn Cummings updated the Commission on pending cause cases. In employment cases, one was a retaliation case in which a summary judgment hearing was held on February 13, 2019. The administrative law judge issued a ruling in favor of the Commission. This was followed by a public hearing as to damages; at this time the Commission is awaiting the administrative law judge's ruling as to damages. The THRC resolved the matter with the respondent with training and a monetary amount to help THRC with litigation costs.

Case number two under employment regarding an employee dressing up as Aunt Jemima during a Halloween party was conciliated last week and resolved with the complainant receiving \$7,350 and THRC receiving \$2,000 for post-cause costs, education, and outreach. The respondent will also have diversity, inclusion, and harassment training. Housing case number two is scheduled for a hearing on March 26 and 27, 2019.

Legislative updates include HB1482. This proposed legislation requires the Comptroller, as part of its performance review, to obtain a comprehensive analysis of the extent to which a state entity is in compliance with Title VI, from the THRC. The Comptroller will present these findings to the joint evaluation committee.

Staff that worked on this bill includes Associate General Counsel William Wade, Deputy Director Sabrina Hooper and Title VI Compliance Director Gabrielle Lyons and they met with Rep. Hardaway to explain how Title VI Compliance work is conducted. At first, the bill looked like it was a duplication of services in asking the Comptroller to Audit Title VI. During the discussion, we had three goals- to include a drafted amendment to ensure that Title VI Compliance stayed with THRC; ensure compliance reviews only applies to agencies that receive Federal Financial Assistance (FFA); the Comptroller's office would bring the annual report to joint committee, and THRC will supply the information required.

Deputy Director Hooper noted that they added the language "most recent report" pertaining to the Compliance Reviews for state agencies. Of the 57 agencies up for sunset next year, only 8 receive FFA and THRC will supply the most recent information.

There were no questions for legal and Commissioner Derryberry made a motion to accept the Legal Report and Commissioner Martin seconded the motion. A vote was taken and passed.

The question from Commissioner Crider that was tabled earlier in the meeting was asked about how real or perceived conflict of interest issues with the Commissioners should be handled within the Commission. General Counsel Cummings explained that a Commissioner should recuse his or herself from voting if they perceive a potential conflict of interest. Commissioner Crider asked, "How do you know if you have a conflict is worthy

of noting?" General Counsel Cummings stated basically if the discussion makes you feel uncomfortable you should recuse yourself from the voting.

(Handouts were given to those present) Associate General Counsel Wade reported that the housing case of Larry Mitchell and Freddy Mitchell went to public hearing in June, 2018, and in December, 2018, the ALJ issued an initial order in the case ruling in favor of the respondent. In January of 2019, the THRC filed a notice of intent to review so the initial order is still pending.

Because the attorney of record is no longer with the agency, Associate General Counsel Wade will be the attorney of record. The decision will have to be decided at a public Commission meeting in May, 2019. Prior to the Commission meeting, a special meeting will be held and will not be deliberative. To maintain attorney client privilege and compliance with the TN Open Meetings Act, Associate General Counsel Wade can give legal advice and answer questions about the case, but there can be no deliberation between Commissioners.

The technical record on the case is approximately 2,000 pages and pertinent parts have been provided to you. If you have questions while reviewing the case Associate General Counsel Wade can be contacted by phone or email. The Commission can affirm the original order and agree with the ALJ or the Commission can reverse it and write its own opinion. The key in this situation is that all deliberation must be conducted at a public hearing.

Commissioner Derryberry asked if a commissioner asked a question and Associate General Counsel Wade gave an answer, can that information be provided to all the other Commissioners. Associate General Counsel Wade stated that he would provide any answers to all the Commissioners.

Commissioner Crider asked what makes a case rise to the level of a special hearing. Associate General Counsel Wade noted that this case went to a contested hearing before an ALJ and he made an initial ruling which would have become final in 15 days. However, the THRC filed a notice to review which means the Commission will review the order before it becomes final. Deputy Director Hooper noted that our statute states if the case is not conciliated then it is reviewed with the ALJ. Once there is a ruling that our Commissioners are the ones to make the final decision.

Commissioner Derryberry suggested the afternoon of May 16, 2019 at 4:00 PM. Associate General Counsel Wade noted that a physical quorum is required for both meetings. Commissioners were polled to see who would be available in person and 7 were available in person and 2 by telephone.

### **Communications Report**

Veronica McGraw, Communications Director, reported that during the period January 1, 2019, to February 28, 2019, highlights include the agency involvement in 23 outreach events around the state. Advertisements in several newspapers, such as the Memphis Flier, reached 400,000 people bringing our year to date total to 1,900,000.

The education and outreach committee discussed THRC by the numbers and moved the education and outreach to the center block. We would like to share this with the public and our partners. The numbers came out of the annual report.

The THRC elevator speech was also reviewed. Commissioner Derryberry asked that we emphasize education over enforcement which involves changing our mission statement and logos used on email signatures of staff. A motion was made by Commissioner Derryberry and seconded by Commissioner Sloss. A vote was taken and passed.

The education and outreach calendar is sent out monthly to Commissioners and highlights events across the state. April is Fair Housing Month and Chair Houston noted that Commissioner support is helpful and appreciated in regards to these events.

There will be a press release regarding Fair Housing Month in April that will go out on April 1, 2019, and Executive Director Watts recorded an advertisement with iHeart Radio which will run from March 27, 2019, through April 24, 2019, on 63 stations across the state. Commissioner Derryberry asked if there were any events in Chattanooga in regards to Fair Housing Month.

The nomination and criteria for the Wurzburg Award and the list of past recipients will be resent today after the Commission Meeting and will be due by April 1, 2019.

A motion was made to accept the Communication Report by Commissioner Behler and seconded by Commissioner Martin. A vote was taken and passed.

There were no public comments.

The next Commission Gathering will be on May 16, 2019, for the legal Housing case review at 4:00 PM followed by the Commission Meeting on May 17, 2019, and both are in-person meetings.

Commissioner Derryberry made a motion to adjourn and it was seconded by Commissioner Martin. The meeting was adjourned at 10:40 AM CST.