



TENNESSEE
STATE BOARD OF EDUCATION

TENNESSEE OPEN MEETINGS REQUIREMENTS

DECEMBER 2019 BEP REVIEW COMMITTEE MEETING

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COUNSEL

OPEN MEETINGS ACT

- **Tenn. Code Ann. §8-44-101, et. seq**
 - “The formation of public policy and decisions is public business and shall not be conducted in secret.”
 - Applies to “meetings” of “governing body”
- Meetings open to the public at all times
 - Right to attend, not to participate
- Adequate notice to public
- Recorded minutes open to inspection
- All votes shall be by public vote or public ballot or public roll call

OPEN MEETINGS ACT

- **Who does it apply to?**
 - "Governing Body"
 - 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.
- **What does it apply to and when?**
 - "Meeting"
 - A meeting occurs when a governing body of a public body convenes "to make a decision or to **deliberate** toward a decision on any matter."
 - What is deliberation? "to examine and consult in order to form an opinion.... to weigh arguments for and against a proposed course of action."
 - Doesn't apply to informational sessions or workshops- i.e. information gathering

SPECIAL CALLED MEETINGS/ELECTRONIC PARTICIPATION

- Special called meetings are subject to the Open Meetings Act
 - Must give adequate public notice of such meeting
- If a physical quorum cannot be present at a meeting, may allow electronic participation by members if the body determines the matter is urgent and necessary.
 - Must have statement of necessity read into the record and statement must be filed with the Secretary of State's office within two working days after the meeting.
 - Public must be able to hear members participating by phone or other electronic means.
 - Roll call votes must be taken
- If a physical quorum is present, those participating electronically cannot be counted in quorum

EXCEPTIONS

- Chance meetings
 - incidental or unplanned encounters by two (2) or more members — are not considered violations unless they evolve into or are used “to decide or deliberate public business.”
 - Cannot use “chance meetings” to deliberate public business in circumvention of the Act
 - Cannot use email to circumvent the requirements of the Act by deciding and deliberating public business via email. See T.C.A. § 8-44-102(c).
- Attorney-Client Meetings
 - Can discuss courses of action with attorney, but must publicly deliberate which action to take.

ATTORNEY GENERAL'S OPINION

12-60

- Question: "Can members of a county or city legislative body share a meal together and casually discuss county or city business and/or issues before their respective legislative bodies under the Open Meetings Act, if the discussion is for informative purposes only and no decisions are reached or attempts made to obtain commitments?"
- Opinion: "...to avoid any violation of the Act the best advice is that, while two or more members may share a meal together in which public business is discussed, such discussion should not constitute deliberations, *i.e.*, "examin[ing] and consulting] in order to form an opinion ... weighting] arguments for and against a proposed course of action."

CURING A VIOLATION

- A violation may be cured by “new and substantial” reconsideration of the actions; essentially doing it over in a public meeting following the law.

QUESTIONS?
