



TENNESSEE
STATE BOARD OF EDUCATION

Open Meetings and Public Records Requirements

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BOARD OF EDUCATION

OPEN MEETINGS

TENN. CODE ANN. §§ 8-44-101 - 111

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 regular or special called 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

- Any action taken in violation of the Open Meetings Act is null and void.
- 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?

TN PUBLIC RECORDS ACT

TENN. CODE ANN. TITLE 10, CHAPTER 7, PART 5

TN PUBLIC RECORDS ACT

- What is a “public record?”
 - Records created or received by local or state government as part of transacting official business are open for inspection by citizens.
 - Whether on paper or in electronic form, it is still a public record.
 - Does not include the device or equipment that may have been used to create or store a public record.
 - Includes records in draft form

TN PUBLIC RECORDS ACT

- Public records shall:
 - At all times during business hours
 - Be open for personal inspection
 - By any citizen of this state
 - Unless otherwise made confidential by state law
- Presumption of OPENNESS!
- Public Chapter 712 of 2018: All state government entities must adopt rules regarding public records.

EXAMPLES OF PUBLIC RECORDS

- Personnel records/applications, resumes, and references
- Contracts/bidding documents
- Emails, text messages
- Travel/leave information
- Documents
- Financial or performance audits
- Annual reports
- Meeting agendas/minutes
- Budgets

COMMON EXEMPTIONS

- All investigative files of the TBI
- Health and medical information in government hands
- Adoption records
- Certain student records (FERPA)
- Records regarding contemplated legal or administrative actions of the state Attorney General
- Personally identifying information of individuals or state, county or public employee
- Law enforcement and school emergency contingency plans
- Library checkout records of individuals
- Most personal or company tax information held by the state revenue department.

RESPONSE REQUIREMENTS

- Records custodian shall promptly make records available upon request.
- If not practicable to make records promptly available, must do one of the following within 7 days:
 - Make the information available,
 - Deny the request in writing with the basis for denial, or
 - Respond with the time reasonably necessary to produce the records or information.
- Requests must be sufficiently detailed so that you can identify the records. Can respond to ask for additional information.
- Failure to respond = denial

QUESTIONS?

THANK YOU!

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