



**TENNESSEE**  
PUBLIC CHARTER SCHOOL COMMISSION

**OPEN RECORDS,  
PUBLIC MEETINGS  
ACT, CONFLICT OF  
INTEREST**

**FEBRUARY 5, 2021**

# OPEN RECORDS ACT

- As used in this part and title 8, chapter 4, part 6, “public record or records” or “state record or records” means:
  - All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.
    - --T.C.A. § 10-7-503(a)(1)(A)
- There are exceptions to the open records act, as indicated in T.C.A. § 10-7-504.
  - Proceed under the posture that Commission documents are subject to the Open Records Act.



# OPEN RECORDS ACT

- Unless an indicated exception applies, **all Commission documents and/or communication** are considered open:
  - Commission and/or Committee Agendas
  - Commission Policies and Procedures
  - Disclosure Forms
  - Charter School Appeal documents and agreements
  - Note: Open Records Act includes emails
    - Use of state email protects personal information



# PUBLIC MEETINGS ACT

- What is the Public Meetings Act?
- What is a “meeting”?
- What is required for a meeting covered by the Public Meetings Act
  - Notice
  - Agenda
  - Public Presence
  - Minutes
- Consequence of violation
  - Nullified Decision



# PUBLIC MEETINGS ACT

- Definition

- T. C. A. § 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.
    - (b) This part shall not be construed to limit any of the rights and privileges contained in article I, § 19 of the Constitution of Tennessee.



# PUBLIC MEETINGS ACT

- Application
  - T. C. A. § 8-44-102(a)
    - “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.”
  - 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...
  - Tenn. Code Ann. § 8-44-103(a), (b)
    - “Regular meetings” and “special meetings” count as meetings, and all are subject to the Public Meetings Act.



# PUBLIC MEETINGS ACT

- Application
  - The only exception is executive sessions.
    - Meeting with General Counsel *and*
    - The Commission is under suit or threatened with a lawsuit
    - Members can question and seek advice from General Counsel
    - The board may NOT deliberate about any specific matter before it or potentially before it in any executive session.



# PUBLIC MEETINGS ACT

- What is **not** a meeting?
  - Does not include any on-site inspection of any project or program
    - See T.C.A. § 8-44-102(b)(2) and Tenn. Op. Atty. Gen. No. 04-070
  - A meeting does not include a chance meeting of two or more members of a public body; however, no such chance meetings or informal assemblages can be used to decide or deliberate public business in circumvention of the spirit or requirements of the Act.
    - See T.C.A. § 8-44-102(c)
    - Chance or planned meetings should not constitute deliberations
  - Lunch breaks, restroom breaks, smoke breaks, recesses between morning and afternoon sessions, adjournments between two days of a multi-day meeting.



# PUBLIC MEETINGS ACT

- Electronic Communications (e.g. emails)
  - Commission members to Chair, where unavoidable, should be informative only and have no considerations of decisions.
  - Communication with General Counsel is protected by Attorney-Client privilege.
    - Where possible, contact the General Counsel prior to an action that could affect the Commission.
  - Communication between members is not a chance meeting and creates an appearance of impropriety
  - State emails preserve the record in the event of litigation
    - Use of personal emails can subject private information to being discoverable



# PUBLIC MEETINGS ACT

- Electronic Attendance
  - Where Members cannot attend in person, virtual appearance is permissible
    - Tennessee Executive Order 71 extends remote meetings through February 27, 2021.
    - T.C.A. § 8-44-102 requires a Statement of Necessity for electronic meetings where there is no in-person quorum possible.
      - Quorum = “majority of the Commission” T.C.A. 49-13-105(h)



# PUBLIC MEETINGS ACT

- Public Right of Attendance
  - Members of the public have the right to attend meetings but there is no requirement that the Commission permit participation.
  - Commission must provide “Adequate Public Notice,” which satisfies a three-prong test:
    - Contents must reasonably describe the purpose of the meeting or proposed action to be taken
    - Notice must be posted sufficiently in advance of the meeting to give citizens the opportunity to become aware *and* attend the meeting
    - Notice must be posted in a location where a member of the community could become aware of such notice
  - The Commission has adopted Policy 1.200 to govern public participation
    - Commission discretion is allowed



# PUBLIC MEETINGS ACT

- Legal Effect:
  - Nullity
- Practical Impact:
  - Substantial costs
  - Assessed against annual operating budget



# CONFLICT OF INTEREST

- Occurs when the personal interests, financial or otherwise, of a member actually or potentially diverge with the person's professional obligations
  - Direct Conflict of Interest are prohibited
  - Indirect Conflicts of Interest shall be publicly acknowledged
- All Commission members shall complete a disclosure form annually
- Any appearance of impropriety should be avoided to the best of the members' ability
  - Questions should be directed to the Executive Director and/or General Counsel for discussion





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