

Report to the General Assembly:
Office of Open Records Counsel
and
Advisory Committee on Open Government

A Report to the Governor and 106th Tennessee General Assembly

March 1, 2010

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The Honorable Phil Bredesen, Governor
The Honorable Ron Ramsey, Lieutenant Governor and Speaker of the Senate
The Honorable Kent Williams, Speaker of the House of Representatives
State Capitol
Nashville, Tennessee 37243

Dear Governor Bredesen, Lieutenant Governor Ramsey, and Speaker Williams:

Transmitted herewith is the annual report from the Office of Open Records Counsel and the Advisory Committee on Open Government pursuant to Tennessee Code Annotated Section 8-4-603(b).

Thank you for your consideration of this report, and please do not hesitate to contact our Office if you have any questions.

Sincerely,

Elisha D. Hodge, Esq.
Open Records Counsel

BACKGROUND

The Office of Open Records Ombudsman was funded by the General Assembly for Fiscal Year 2008 and administratively attached to the Office of Comptroller of the Treasury [Item 10, Section 43, Public Chapter 603, Acts of 2007]. In November, 2007, Comptroller John Morgan announced appointments for the Office of Open Records Ombudsman, which is currently referred to as the Office of Open Records Counsel (hereinafter referred to as "OORC"). On July 1, 2008, Public Chapter 1179, Acts of 2008, became law. PC 1179, established the OORC and the Advisory Committee on Open Government (hereinafter referred to as "ACOG"). The Office of OORC is staffed by Elisha D. Hodge.¹

On March 1, 2009, the OORC submitted a report to the Governor and the Speakers of the House and Senate. At that time the OORC had received approximately 600 inquires and issued 16 informal advisory opinions.

ACOG

The ACOG was created to provide guidance and advice for the OORC. The ACOG may review and provide written comments on proposed legislation regarding open meetings and open records laws, with the guidance and assistance of the OORC. Additionally, the ACOG and the OORC are required to provide this annual report to the General Assembly and the Governor by March 1st of each year.

The ACOG consists of thirteen (13) members, ten (10) of whom are appointed by the Comptroller of the Treasury from a list of three nominees submitted by each of the groups listed below. Although members are to serve four (4) year terms, the initial appointments were staggered with four (4) and two (2) year terms. The following appointments have been made to the ACOG:

Dorothy Bowles (Tennessee Coalition for Open Government)
Frank Gibson (Tennessee Press Association)
Chad Jenkins (Tennessee Municipal League)
Jay West (County Officials Association of Tennessee)
Amy Martin (Tennessee School Board Association)
Dick Williams (Common Cause)
Margie Parsley (League of Women Voters)
Joseph Dawson (Tennessee Hospital Association)
Robb S. Harvey (Tennessee Association of Broadcasters)²
Chris Modisher (Tennessee Board of Regents)

¹ Ann Butterworth served as director of the OORC until August 2009, when Comptroller Justin P. Wilson promoted Elisha D. Hodge to Open Records Counsel.

² Mike Cutler served as the representative for the Tennessee Association of Broadcasters until his resignation in late 2009.

The three ex officio members of the ACOG are: the Attorney General and Reporter for the State of Tennessee and the Chairs of the State and Local Government Committees of the Senate and the House. These members are:

- Janet Kleinfelter (designated by Attorney General Bob Cooper)
- Senator Bill Ketron (Chair, Senate State and Local Government Committee)
- Representative Curry Todd (Chair, House State and Local Government Committee)

Attachment A provides further information about the ACOG members, including their appointment terms.

The ACOG has met twelve (12) times, including a joint meeting with the OORC to hold a public hearing. Video archives of seven (7) of the meetings are available on the General Assembly's website. The ACOG has provided advice and comment on all forms, policies, and guidelines developed by the OORC.

PURPOSE

Pursuant to Tenn. Code Ann. Sections 10-7-501 et seq., the OORC serves as the intermediary between citizens and local governmental entities when concerns arise regarding access to local government public records under the Tennessee Public Records Act. The OORC assists Tennessee citizens in obtaining public records from local governments through directing citizens to the correct offices/officials and through working to resolve disputes regarding access to records once a request has been delayed or denied. In accordance with Tenn. Code Ann. Section 8-44-101 et seq., the OORC promotes education and awareness of the Tennessee Public Records Act and the Tennessee Open Meetings Act through direct outreach and coordination with existing organizations. In keeping with the mission statement of the Comptroller's office, the OORC serves as an educational resource and a source of legal guidance in the areas public records and open meetings to citizens, media, and governmental entities in an effort "to improve the quality of life for all Tennesseans by making government work better."

RESPONSIBILITIES

The responsibilities of the OORC include:

- answering questions and providing information to public officials and the public regarding public records [Tenn. Code Ann. Section 8-4-601(a)];
- answering questions and issuing "informal advisory opinions as expeditiously as possible to any person including local government officials, members of the public and the media" [Tenn. Code Ann. Section 8-4-601(b)];
- informally mediating and assisting "with the resolution of issues concerning open records laws codified in Title 10, Chapter 7" [Tenn. Code Ann. Section 8-4-601(c)];
- "collecting data on open meetings law inquiries and problems" [Tenn. Code Ann. Section 8-4-601(a)] (See Attachment B);

- “providing educational outreach on the open records laws codified in Title 10, Chapter 7, and the open meetings laws codified in Title 8, Chapter 44” [Tenn. Code Ann. Section 8-4-601(a)] and “establishing educational programs and materials regarding open meetings laws in Tennessee, to be made available to the public and to public officials” [Tenn. Code Ann. Section 8-44-109(e)];
- providing staffing to the Advisory Committee on Open Government;
- guiding and assisting the Advisory Committee on Open Government in reviewing and commenting on “any proposed legislation regarding the open meetings laws codified in Title 8, Chapter 44, and the open records laws codified in Title 10, Chapter 7” [Tenn. Code Ann. Section 8-4-603(a)];
- reporting with the Advisory Committee on Open Government “to the general assembly and to the governor by March 1 of each year” [Tenn. Code Ann. Section 8-4-603(b)];
- establishing a schedule of reasonable charges for copies of public records, to be reviewed at least annually [Tenn. Code Ann. Section 8-4-604(a)(1)];
- establishing a separate policy related to reasonable charges for frequent and multiple requests for copies of public records [Tenn. Code Ann. Section 8-4-604(a)(2)];
- establishing a safe harbor policy for records custodians adhering to policies and guidelines of the Office [Tenn. Code Ann. Section 8-4-604(a)(2)]; and
- developing records request response forms (request for copies, denial of access/copies, and records production letter) Tenn. Code Ann. Section 10-7-503(a)(2)(B) and (7)(A)].

ORGANIZATION

The Office has two positions: Open Records Counsel and Executive Secretary 2. Although the support staff position was authorized for Fiscal Year 2008-09, no additional funds were appropriated to the Office to fund the position which is currently vacant. The Office relies upon assistance from the Office of the Comptroller of the Treasury for administrative support.

OPERATIONS

The Office is currently located on the 16th Floor of the James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37243. The current contact information for the Office is:

Office of Open Records Counsel
 1600 James K. Polk Building
 Nashville, TN 37243-1402
 (615) 401-7892 Phone
 (866) 831-3750 Toll-free phone
 (615) 741-1551 Fax
open.records@tn.gov

WEBSITE

The enabling legislation requires the OORC to have an internet presence. (See Attachment C). Tenn. Code Ann. Section 8-4-601(b) requires the OORC to post to its website all informal advisory opinions that are issued. Tenn. Code Ann. Section 8-4-604(b) requires the OORC's policies and guidelines to be available on the internet. The home page for the OORC is www.tn.gov/comptroller/openrecords/index.htm. The informal advisory opinions are posted at www.tn.gov/comptroller/openrecords/opinions.htm. The forms, policies, and guidelines are posted at www.tn.gov/comptroller/openrecords/forms.htm.

ACTIVITIES

The OORC has provided advice and guidance orally and in writing to the public, representatives of state and local government, and members of the news media. In December 2009, the OORC facilitated, via teleconference, an informal mediation regarding a dispute between a representative of the media and a local government. All other open records disputes have been addressed through phone calls and e-mail. From March 1, 2009, (the date of the prior report of the Office to the Governor and the Speakers of the House and Senate) through February 26, 2010, the OORC has:

- responded to more than 1050 inquiries;
- issued 13 informal advisory opinions (See Attachment D);
- made 17 presentations to various groups/organizations (See Attachment E);
- provided testimony in three court cases (Hamilton County, Macon County, and Tennessee Board of Professional Responsibility); and
- developed forms and informational material for local governments interested in utilizing internet relay chat in accordance with the provisions of the Tennessee Open Meetings Act (See Attachment F).

RECURRING ISSUES/CONCERNS/QUESTIONS

The Office has responded to more than 1050 inquiries posed by phone, email, mail and in person. Approximately half of the inquiries have come from representatives of governments or records custodians. The remaining inquiries have come predominately from citizens and then the media.

Listed below are some of the issues/concerns/questions frequently directed to the OORC:

- Since there is not one place within the law that contains a list of all of the exceptions to the TPRA, governmental entities request assistance in determining whether or not there is a provision within the law that provides the basis for denying a request and citizens request assistance in determining whether or not

records are public before a request is made. Citizens also frequently request assistance in determining whether or not the basis cited for a denial is appropriate.

- The appropriate records custodian to whom a request should be directed.
- The inability of a records custodian to access a requestor a fee when the requestor only wants to inspect records, despite the fact that a considerable amount of time might be expended preparing the records for inspection.
- The TPRA does not limit the number, frequency, or size of requests that a citizen may make. If a records custodian provides a records production letter indicating that access or denial cannot be achieved within the seven business day time frame, the Act does not impose a time frame on the custodian's obligation to satisfy the request.
- The TPRA does not exempt most drafts or work-in-progress.
- The TPRA does not prohibit the use of the Act to obtain records in lieu of discovery when the requestor is engaged in (civil or in some situations criminal) litigation with the government.
- Some states have provisions within their public records acts that deal with abusing the process of making requests and making requests for the purpose of harassment, does the TPRA have any such provision?
- Most law enforcement agencies across the state charge flat fees for accident and incident reports. These fees are not calculated in accordance with the guidance established in the Schedule of Reasonable Charges.
- Should a governmental entity be able to post records on the entity's website and in doing so, satisfy the requirements of the TPRA as it relates to making those particular records available to the public?
- Does a citizen have the right to bring in his/her own copying equipment to make copies of public records?
- What constitutes "adequate notice" for special called meetings and for regularly scheduled meetings?

ATTACHMENT A

ADVISORY COMMITTEE ON OPEN GOVERNMENT

<u>Organization</u>	<u>Member</u>	<u>Term End June 30</u>	<u>Gender</u>	<u>Race</u>	<u>Grand Division</u>
Senate State and Local Government Committee Chairman	Ketron, Senator Bill	Ex Officio	M	C	M
House State and Local Government Committee Chairman	Todd, Representative Curry	Ex Officio	M	C	W
Tennessee Attorney General and Reporter	Kleinfelter, AAG Janet	Ex Officio	F	C	M
Tennessee Coalition for Open Government	Bowles, Dorothy	2012	F	C	E
Tennessee Press Association	Gibson, Frank	2012	M	C	M
Tennessee Municipal League	Jenkins, Chad	2012	M	C	M
County Officials Association of Tennessee	West, Jay	2012	M	C	M
Tennessee School Board Association	Martin, Amy	2012	F	C	E
Common Cause	Williams, Dick	2010	M	C	M
League of Women Voters	Parsley, Margie	2010	F	C	M
Tennessee Hospital Association	Dawson, Joseph	2010	M	C	E
Tennessee Association of Broadcasters	Harvey, Robb S.	2010	M	C	M
Tennessee Board of Regents	Modisher, Chris	2010	F	C	M

ATTACHMENT B

Questions

Answers

<p>Are public utilities subject to the Open Meetings Act?</p>	<p>Emailed a copy of the power point presentation that was presented by this Office to the TAUD; discussed generally the requirements of the Act.</p>
<p>Is it appropriate to have an audio tape as the official minutes of the meeting when the draft minutes as presented are inaccurate?</p>	<p>If the governing body is going to reject the minutes as presented, the governing body needs to specify the differences between the draft written minutes and actual actions taken. Approval of the audio tape is not sufficient. There has to be written minutes presented at meeting and kept on file.</p>
<p>Is a volunteer fire department subject to the Open Meetings Act?</p>	<p>No legal authority on this issue in Tennessee. In other states, the functional equivalency test has been used and the courts have found that volunteer fire departments are required to have public meetings.</p>
<p>Is it a violation of the Open Meetings Act for members of a governing body to meet as a group with a state official without posting notice of the meeting?</p>	<p>The Open Meetings Act prohibits multiple members of a governing body from convening to deliberate or make a decision on an issue that the entire body is required to deliberate or make a decision on, so depending on what the nature of the conversation is, it could be a violation.</p>
<p>What constitutes adequate public notice for a special called meeting of a county commission? For a city council?</p>	<p>Tenn. Code Ann. Section 5-5-105 provides the time frame in which notice has to be provided for a county commission. Most cities are subject to Tenn. Code Ann. Section 8-44-103.</p>
<p>Are non-profits subject to the Open Meetings Act? Are they required to keep minutes of meetings?</p>	<p>They are subject to the act if they meet the requirements of Tenn. Code Ann. Section 8-44-102. If they meet the criteria set out in the statute, then yes, they are required to maintain minutes.</p>
<p>Is it acceptable for the notice of a special called meeting to be posted on Friday when the meeting is scheduled for Monday? Is it a violation for the commissioners to meet on Saturday and decide to fire the entire police force at the meeting on Monday?</p>	<p>The courts have not said what constitutes adequate public notice as far as a time frame. The courts look at totality of the circumstances and whether the notice that was posted would have let interested citizens know that the meeting on Monday was scheduled. If the Commissioners</p>

	deliberated towards or made a decision that they were going to have to make in a public meeting outside of public view, then yes, a violation occurred.
Is the Commission on Indian Affairs subject to the Open Meetings Act?	Yes, and the Commission has specific statutory provisions regarding its meetings in Tenn. Code Ann. Section 4-34-105.
Is it a violation of the Open Meeting Act for an election commission to meet outside of a public meeting and make the decision to fire the administrator of elections?	The election commission is subject to the Act and as such any deliberation has to be done in a public meeting and decisions have to be made in a public meeting. If the commissioners deliberate or make a decision on an issue that they are required to vote on at a public meeting, then a violation has occurred.
What constitutes a "meeting" for purposes of the open meetings act?	Members of a public body convening to deliberate towards or make a decision on an issue involving policy or administration. See Tenn. Code Ann. Section 8-44-101.
Are county Board of Equalization meetings subject to the open meeting act?	Yes.
Are economic development councils subject to the Open Meetings Act?	Yes; See Tenn. Op. Atty. Gen. No. 03-091.
Can video cameras be prohibited from public meetings?	It depends on the circumstances. Discussed Tenn. Op. Atty. Gen. No. 95-126.
How far in advance of a meeting must notice be posted? Where must notice be posted?	Discussed the <i>Englewood</i> decision for what constitutes adequate public notice.
Can an election commission take a vote by secret ballot?	No; See Tenn. Code Ann. Section 8-44-104(b).
Can an election commission take up business outside of that which has been placed on its notice?	No; the commission can only take up that which the public has been given notice is going to be considered.
If issues come up during the course of a meeting or right before a meeting that are not directly related to an agenda item, can they be discussed at the meeting?	No, because the public would have no knowledge that that particular issue was going to be discussed from the notice.
What constitutes adequate public notice?	Discussed the <i>Englewood</i> opinion
Does the public have a right to the agenda of an election commission prior to the meeting?	No, the Open Meetings Act only requires that the public be provided notice of the meeting and the issues to be addressed at the meeting. The notice should be specific enough for the public to know what is going to be discussed.
If a utility board also serves as a civil service board is its meetings open to the	Yes; See the <i>Lakeway Publishers</i> opinion

public when dealing with personnel issues?	
What entities are subject to the Open Meetings Act?	Emailed a copy of power point created by this Office for educational outreach.
Can a non-profit that is subject to the Open Meetings Act meet in private to discuss a personnel issue?	It depends. See Tenn. Code Ann. Section 8-44-102.
What do the courts require petitioners to prove in open meeting violation cases?	Emailed several open meeting violation cases.
Are charter schools subject to the Open Meetings Act?	Yes; See Tenn. Code Ann. Section 49-13-111.
Are utility commissioners subject to the open meetings act? Can items not on the notice or agenda be discussed?	Yes; No, the public has to know through the notice of what is going to be discussed at a meeting.
Is there a separate provision that governs the meetings of the Commission on Indian Affairs?	Yes; discussed Tenn. Code Ann. Section 4-34-101 et seq.
Is there a specific provision within the open meetings act that governs how far in advance a member of a governing body is to receive an agenda?	No; however the notice should be specific enough that the members know from the notice the items to be discussed at the meeting.
Can the mayor, who is a member of the city commission meet with a representative from another agency with the rest of the commission in the room, but not participating in the conversation, without the meeting being noticed?	Might not be a technical violation but I do not suggest that this meeting occur without notice because of the conversations that might occur before the meeting or after the meeting that go directly to the issue that might come before the entire commission.
Can an entire city commission attend an informational session without it being a violation of the open meetings act?	Yes, as long as there is no discussion that occurs between the commissioners. They can go and receive information only.
Are executive sessions required to be noticed?	Yes.
Was the notice provided by the Board of Education adequate?	It depends on whether the notice would have placed interested citizens on notice that a particular issue was going to be discussed. If the notice was vague, then probably not according to the court in <i>Englewood</i> .
Are public meetings required to be audio recorded? If they are, do the tapes have to be maintained?	The Open Meetings Act only requires that minutes be recorded and available for inspection. It does not require that the meetings be audio recorded. However, audio or video recordings are probably the best way to ensure accurate minutes are drafted. Directed to MTAS for retention periods.
Does a city have to give five days notice	No definite time frame in Open Meetings

prior to having a regularly called meeting?	Act. Look to what is customarily done.
Are electrical cooperatives subject to the open meetings act?	No. Emailed bill that was introduced last year that was not passed.
Was the notice provided by the planning commission adequate?	If it did not identify the areas that were going to be rezoned such that an interested citizen would have been able to identify the areas, then probably not.
Does a county have to give five days notice before a regularly called meeting? (Three other citizens called and asked the same question regarding the same entity.)	No definite time frame in Open Meetings Act. Look at what is customarily done for totality of the circumstances analysis.
Was adequate public notice provided regarding the appointment of a commissioner? The decision to make the appointment was made during the meeting without any prior notice to the public.	No; the public has to have notice that an issue is going to be addressed at a meeting prior to the convening of the meeting.
Does the open meetings act apply to municipal boards, commissions, and agencies?	Yes; See Tenn. Code Ann. Section 8-44-101 et seq.
Is a development council subject to the open meetings act?	If the council is the functional equivalent of a governmental entity. Discussed the test in detail and emailed cases on the functional equivalency test.
What are the notice requirements for public hearings when urban growth boundaries are being considered?	Discussed the notice requirements under Tenn. Code Ann. Section 6-58-106(a)(3).
Can a special called meeting be called within a 24 hour period by an election commission?	Depends on the issue and the adequacy of the notice provided. Discussed <i>Englewood</i> and <i>Souder</i> .
Are industrial development boards subject to the open meetings act? And if so, can they go into executive session?	Yes to both. See Tenn. Op. Atty. Gen. No. 03-091. If the Board is set up pursuant to Tenn. Code Ann. Section 6-58-114 then yes it is subject. Executive Sessions are allowed for purposes of receiving advice from legal counsel.
Does a meeting between a city council and a state representative have to be noticed?	It depends on what is going to be discussed during the meeting and if that which is going to be discussed is something that the council is going to have to take a public vote on because it is public business.
If a county commission holds a special called meeting, can items other than those noticed be discussed?	No; See Tenn. Code Ann. Section 5-5-105.
What is the recourse for citizens who feel like they have been aggrieved by a violation of the Open Meetings Act?	Discussed Tenn. Code Ann. Section 8-44-106.

<p>Is it a violation for three out of five members of a board of mayor and alderman to convene outside of a public meeting and decide to fire the city attorney? (Four other citizens called and asked the same question regarding the same entity.)</p>	<p>If that is a matter the entire BOMA is required to vote on in a public meeting, then yes, it is a violation.</p>
<p>Does the meeting of an advisory committee to a state office have to be noticed?</p>	<p>If the sole role of the committee is advising and they do not have the ability to make recommendations to or decisions for a public body, then no.</p>
<p>Is it a violation of the Open Meeting Act for multiple board members to be in a room interviewing a candidate at the same time?</p>	<p>Yes; See Tenn. Op. Atty. Gen. No. 81-513.</p>
<p>What remedy does a citizen have when a commission public announces that a decision was made at a meeting, but the minutes do not reflect the action that the commission asserted it took?</p>	<p>Discussed Tenn. Code Ann. Section 8-44-106 and we discussed the fact that if a audio or video recording exists of the meeting, that recording could be requested pursuant to the Tennessee Public Records Act. It could be a situation where the action was voted on, but the minutes are incorrect.</p>

Tennessee Comptroller of the Treasury
Office of Open Records Counsel



Office of Open Records Counsel



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Recent Release

The Release of Law Enforcement Records Pursuant to Tenn. Code Ann. Section 37-1-154

What's New

Blount County Commission Internet Forum Approved

Last revised: 1/27/10

OPINIONS OF OFFICE OF OPEN RECORDS COUNSEL

www.tn.gov/comptroller/openrecords/opinions.htm

- 09-03 Confidentiality of Driver Identification Numbers
- 09-04 Interplay between the Federal Copyright Law and the Tennessee Public Records Act
- 09-05 Computation of 7 Business Days
- 09-06 Records Relevant to a Contemplated or Pending Criminal Action
- 09-07 Private Entities and the Functional Equivalency Test.
- 09-08 Applicability of the Open Meetings Act and the Tennessee Public Records Act to a Home Rule City Charter Commission
- 09-09 Exceptions to the Tennessee Public Records Act: the Attorney Work Product Doctrine and Tenn. R. Crim. P. 16(a)(2)
- 09-10 The Duty of Court Clerks to Redact Confidential Information in Files and Exhibits
- 09-11 Duties of a Records Custodian and the Release of Local Law Enforcement Records
- 09-12 Special Called Meetings and Adequate Public Notice
- 09-13 Access to Law Enforcement Dash Cam Videos
- 09-14 The Release of Drivers License Numbers to Insurance Companies
- 10-01 The Release of Law Enforcement Records Pursuant to Tenn. Code Ann. Section 37-1-154

ATTACHMENT E**PRESENTATIONS**

Date	Program	Location
4/20/2009	City of Portland-Legislative Committee	Portland, Tennessee
4/22/2009	County Audit	Montgomery Bell State Park
4/24/2009	County Audit	Knoxville, Tennessee
5/6/2009	Tennessee Association of Municipal Clerks and Records	Nashville, Tennessee
5/13/2009	Clerks of Court	Nashville, Tennessee
6/4/2009	Register of Deeds Annual Meeting	Hendersonville, Tennessee
6/11/2009	Administrative Law Class-NSL	Nashville, Tennessee
6/16/2009	Clerks of Court Conference	Memphis, Tennessee
10/6/2009	Records Management Annual Conference	Nashville, Tennessee
10/8/2009	TGFOA Annual Conference	Nashville, Tennessee
10/12/2009	Bradley County Commission	Cleveland, Tennessee
11/11/2009	Upper Cumberland 911 Dispatcher Fall Symposium	Crossville, Tennessee
12/2/2009	Tennessee Association of County Election Officials	Murfreesboro, Tennessee
12/3/2009	Tennessee Sheriff's Association Annual Meeting	Nashville, Tennessee
12/10/2009	Franklin City Government and Board Members	Franklin, Tennessee
12/15/2009	Administrative Law Class-NSL	Nashville, Tennessee
1/26/2010	Senate State and Local Government Committee	Nashville, Tennessee

§ 8-44-109. Electronic communication; Internet forums

(a) A governing body may, but is not required to, allow electronic communication between members by means of a forum over the Internet only if the governing body:

Comment: The members of the governing body need to discuss the possible use of the forum at a public meeting and decide at a public meeting that the body (1) wants to allow its members to use an Internet forum to communicate; (2) understands what the law requires regarding implementation and use of such a forum; and (3) approves of submitting a plan to the Office of Open Records Counsel (hereinafter "OORC") as required by Tenn. Code Ann. Section 8-44-109(c). The plan submitted to the OORC should include an adopted resolution, ordinance, or the minutes from the meeting where the above mentioned was discussed.

(1) Insures that the forum through which the electronic communications are conducted is available to the public at all times other than that necessary for technical maintenance or unforeseen technical limitations;

Comment:

The plan submitted to the OORC should address the following:

1. Has the server that the forum will be housed on been identified?
2. Describe the server.
3. What is the performance history of the server that the forum will be housed on?
4. Who will monitor the accessibility of the forum to the public and how will the monitoring be done?
5. What will be the exact role (job duties) of the individuals monitoring the forum?
6. Who will be responsible for the technical maintenance of the forum?
7. Will there be information on the governing body's main webpage informing the public of whom to contact if there is a problem accessing the forum?

(2) Provides adequate public notice of the governing body's intended use of such electronic communication forum;

Comment:

The plan submitted to the OORC should address the following:

1. Will the format of the notice be consistent with and located in the same place(s) as the other notices published by the governing body?
2. Will the adequate public notice be placed in a newspaper of general circulation?
3. Does the governing body intend to have a public hearing where the public has an opportunity to comment on the governing body's intended use of an internet forum?
4. The OORC suggest that the governing body's IT department or whomever is in charge of monitoring and maintenance of the forum dedicate the initial posting on the forum to explaining its purpose and intended use. It is also suggested that this initial posting remain on the forum for as long as the forum is in operation.

(3) Controls who may communicate through the forum;

Comment:

The ORRC suggest that a Terms of Use Agreement be developed and implemented so that the governing body has better control over who communicates on the forum. A

template Terms of Use Agreement is available on the OORC website. The following issues should be addressed in the plan submitted to the OORC in some manner:

1. Has a Terms of Use Agreement been developed? If the answer is no, why?
2. Does the Terms of Use Agreement specify that only the members of the governing body are allowed to post to the forum and no one else?
3. Will the ability to post to the forum require that a password be used? If not, what measures will be in place to ensure that only members of the governing body are allowed to post comments?
4. Will a password be provided to each member of the governing body or will the member be allowed to choose his/her own password?
5. Will the password be required to contain complex characters so that it cannot be easily compromised?
6. Will the passwords be changed or reset on a regular cycle? If the answer is yes, will members of a governing body be notified prior to the expiration of their current password?
7. Will a member of a governing body be locked out of his/her account after a certain number of incorrect password attempts?
8. The OORC also suggests that until such time as a member of a governing body signs a Terms of Use Agreement and receives a copy of the governing body's plan in its entirety and a copy of PC 175, Acts of 2009, the member not be allowed to post on the forum.

(4) Controls the archiving of the electronic communications to ensure that the electronic communications are publicly available for at least one (1) year after the date of the communication; provided, that access to the archived electronic communications is user-friendly for the public; and

Comment:

The plan submitted to the OORC should address the following:

1. Who will be responsible for ensuring that the postings are accessible for at least one (1) year?
2. How will the responsible party ensure that the records are available for at least one (1) year and that the postings are not deleted or edited during that time frame?
3. Will postings be deleted after they have been on the forum for one (1) year?
4. If postings are deleted after one (1) year, how will this be done? Will there be an automatic deletion of all postings once they have been on the forum for a year, or will there be a manual deletion of the postings over one (1) year old?
5. If a posting is part of a discussion thread where some of the postings are over one (1) year old and some are not, will the older postings be deleted or will they remain as part of the thread until all related postings are over a year old?
6. After postings are deleted, will they still be accessible to the public in some format?
7. In order to make the forum more user-friendly, the OORC suggest that a search engine be incorporated so that the public can search by keywords.

(5) Provides reasonable access for members of the public to view the forum at the local public library, the building where the governing body meets, or other public building.

Comment:

1. What public building has been identified as the location where public access will be provided?
2. During what hours will computer(s) be available for the public to access/view the forum?
3. How many computers will be available in the public building for the purpose of accessing the forum? Is there at least one computer in the public building that will be dedicated solely to accessing the forum?

4. If a library is determined to be the location where access is provided, do patrons of the library have to have a library card to use the library's computers? If the answer is yes, has the governing body worked out an arrangement where those without a library card can still access the forum?
5. Is there a written agreement in place between the governing body and the entity responsible for the building where public access is going to be provided regarding free access to the forum by the public?

(b) Electronic communications posted to a forum shall not substitute for decision making by the governing body in a meeting held in accordance with this part. Communications between members of a governing body posted to a forum complying with this section shall be deemed to be in compliance with the open meetings laws compiled in this part.

Comment: The OORC suggests that each governing body include a similar statement in its Terms of Use Agreement.

(c) Prior to a governing body initially utilizing a forum to allow electronic communications by its members which meets the requirements of this section, including the public notice required in subsection (a), the governing body shall file a plan with the office of open records counsel. The plan shall describe how the governing body will ensure compliance with subsection (a). Within thirty (30) days of receipt of the plan, the office of open records counsel shall acknowledge receipt of the plan and shall report whether or not the plan and the proposed actions comply with subsection (a). If the office determines that compliance with subsection (a) has not been met, the office shall provide written comments regarding the plan to the governing body. Until such time as the governing body complies with the written comments provided by the office and the office issues a report of compliance, the governing body shall not be allowed to establish or utilize such forum. This subsection shall not apply to any governing body which had established a forum pursuant to this section prior to the effective date of this act.

Comment: The OORC will accept plans submitted electronically via email and plans submitted through written correspondence via the postal service. Any written comment made by the OORC will be delivered to the governing body either via email or written correspondence. The only governing body exempt from the requirements of this subsection is the Knox County Commission.

(d) No member participating in an electronic communication pursuant to this section is deemed to be eligible for per diem for such participation.

Comment: The OORC suggests that each governing body include a similar statement in its Terms of Use Agreement.

(e) As used in this section, "governing body" means the elected governing body of a county, city, metropolitan form of government, or school board.

Comment: Only the "elected governing body" of a county, city, metropolitan form of government, or a school board is authorized to utilize an Internet forum. Boards and commissions established or appointed by an "elected governing body" are not authorized to utilize an Internet forum.

Terms of Use Agreement for the _____ [insert the name of the
Governing Body] Forum

1. This forum is for the exchange of ideas and/or questions. It is not to be used for personal attacks or to promote commercial or private ventures. This forum is to be used to discuss _____ [insert the name of the Governing Body] matters only.
2. The only users allowed to post are members of the _____ [insert the name of the Governing Body] (hereinafter "members"), but the content is available to the public.
3. No one other than a member may post to the forum, and a member may not allow anyone else access to his/her account.
4. The use of objectionable or inflammatory remarks shall be avoided.
5. Once posted, the communication will remain available over the internet for at least one year. Comments posted in error cannot be deleted and will not be edited.
6. The forum will be password protected. Each member shall notify _____ [insert the appropriate contact] if his/her password is compromised.
7. Each member shall protect his/her password so that no one else may post in the member's name. _____ [insert the name of the Local Government] will assume that items posted from a member's user account came from the member.
8. If a member has his/her computer remember passwords, the member must protect access to his/her computer.
9. The forum will be available at all times except for technical maintenance or unforeseen technical limitations.
10. The views expressed on the forum are those of the posting member. It should not be assumed that the views expressed represent the official views of _____ [insert the name of the Local Government].
11. Communication over the forum is not a substitute for decision making in an open meeting held in accordance with the Tennessee Open Meetings Law. The _____ [insert the name of the Governing Body] meeting is where official votes are taken.
12. Participation in the forum is not eligible for any per diem reimbursement.

I, _____, acknowledge that I have read and agree to these terms of use for the _____ [insert the name of the Governing Body] Forum. Signature on this "Terms of Use Agreement" acknowledges receipt of a copy of Public Chapter 175, Acts of 2009.

Signature: _____
[Insert the title of the members of the Governing Body]

Date: _____

A (RESOLUTION or ORDINANCE) TO ADOPT A PLAN FOR A _____ [insert the name of the Governing Body] INTERNET FORUM

BE IT RESOLVED, by the _____ [insert the name of the Governing Body], of _____, Tennessee [insert the name of the city, county, or metropolitan form of government, hereinafter referred to as "Local Government"] in session assembled this ___th day of _____, 20__:

WHEREAS, the Tennessee General Assembly has enacted legislation allowing local governments to establish a legislative forum to enable electronic communications (Public Chapter 175, Acts of 2009; Tennessee Code Annotated Section 8-44-109), and

WHEREAS, the _____ [insert the name of the Governing Body] wishes to establish an internet forum, and

NOW, THEREFORE, BE IT RESOLVED, BY THE _____ [insert the name of the Governing Body] to adopt the following:

1. That the _____ [insert the name of the Governing Body] will host the forum on an internal server. This server will be available at all times other than that necessary for technical maintenance or unforeseen technical limitations. It is estimated that the server will be available over ___ % of the time based on the _____ [insert the name of the Local Government] experience with its present web server. Said server will be replaced on at least a _____ year cycle.
2. The _____ [insert the name of the Local Government] Information Technology (IT) Department shall maintain and monitor the forum to ensure that it functions properly, but will not delete or edit any comment posted.
3. A link to the forum will be published on the _____ [insert the name of the Governing Body] web page with a contact email address and phone number to report problems.
4. Every _____ and _____, passwords will be changed by the IT department. All passwords will require at least six letters and 2 numbers. The IT department will inform the members of the _____ [insert the name of the Governing Body] by phone of the new passwords before the password is changed.
5. All communication will remain on the active page for at least one year. Every _____, the IT department will archive and remove postings that have been on the forum for over one year.
6. Only members of the _____ [insert the name of the Governing Body] can post to the forum.
7. Members of the _____ [insert the name of the Governing Body] are prohibited from using the forum until they accept the "Terms of Use Agreement" of the forum.
8. Free public access to the forum will be available at the _____ [insert the name of the Local Government] Public Library. The Library will provide at least one computer that anyone can use to access the forum without showing a library card.
9. The _____ [insert the name of the Governing Body] acknowledges that the forum cannot be used until the Office of Open Records Counsel issues a Report of Compliance.
10. Prior to commencing use of the forum, the _____ [insert the name of the Governing Body] shall conduct a public hearing relative to its intent to utilize the forum. A copy of the public comments shall be kept on record for public inspection.
11. Public notice of the _____ [insert the name of the Governing Body] intention to use the electronic forum and the link to the forum will be placed in the same paper used to notify the public of its public meetings. As long as the _____ [insert the name of the Governing Body] chooses to utilize an internet forum, it will fulfill its statutorily set responsibilities regarding that use. Failure by the _____ [insert the name of the Governing Body] to fulfill its ongoing responsibilities will render the Report of Compliance void. If the _____ [insert the name of the Governing Body] determines that it is no longer going to utilize the forum, notification will be given to both the public and the Office of Office of Open Records Counsel.

BE IT FURTHER RESOLVED THAT THIS (RESOLUTION or ORDINANCE) SHALL BE IN