



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS
James K. Polk State Office Building
505 Deaderick Street, Suite 1700
Nashville, Tennessee 37243-0261

Justin P. Wilson
Comptroller

February 28, 2014

The Honorable Bill Haslam, Governor
The Honorable Ron Ramsey, Lieutenant Governor and Speaker of the Senate
The Honorable Beth Harwell, Speaker of the House of Representatives
State Capitol
Nashville, Tennessee 37243

Dear Governor Haslam, Lieutenant Governor Ramsey, and Speaker Harwell:

Transmitted herewith is the annual report from the Office of Open Records Counsel and the Advisory Committee on Open Government. This office is be required to submit a report of this kind each year by March 1st.

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

Sincerely,

Elisha D. Hodge, Esq.
Open Records Counsel

Report to the General Assembly:

Office of Open Records Counsel

and

Advisory Committee on Open Government

A Report to the Governor and 108th Tennessee General Assembly

February 28, 2014

INQUIRIES AND ACTIVITIES

Total number of inquiries: 1697

Breakdown of inquiries

Citizens: 816

Media: 138

Government: 743

Inquiries concerning

Public records: 1432

Open meetings: 216

Meetings/Records: 37

Complaints filed regarding alleged open meetings violations: 40

Records Inquiries by topic (may be listed in several)

Fees: 387

Retention of records: 150

Inquiries regarding access to law enforcement records: 530

Inquiries regarding the applicability of specific exemptions: 370

Media Interviews: 39

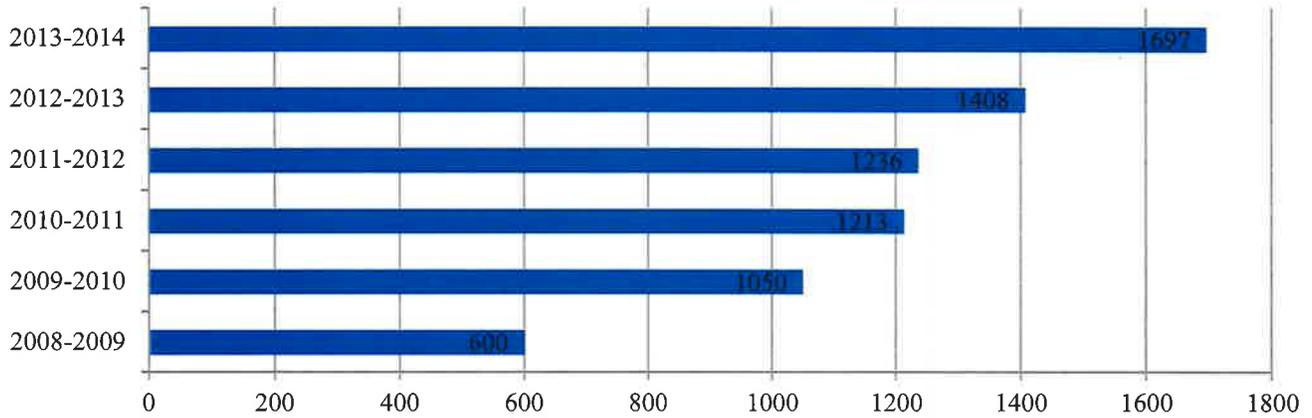
Presentations: 12

Opinions Released: 2

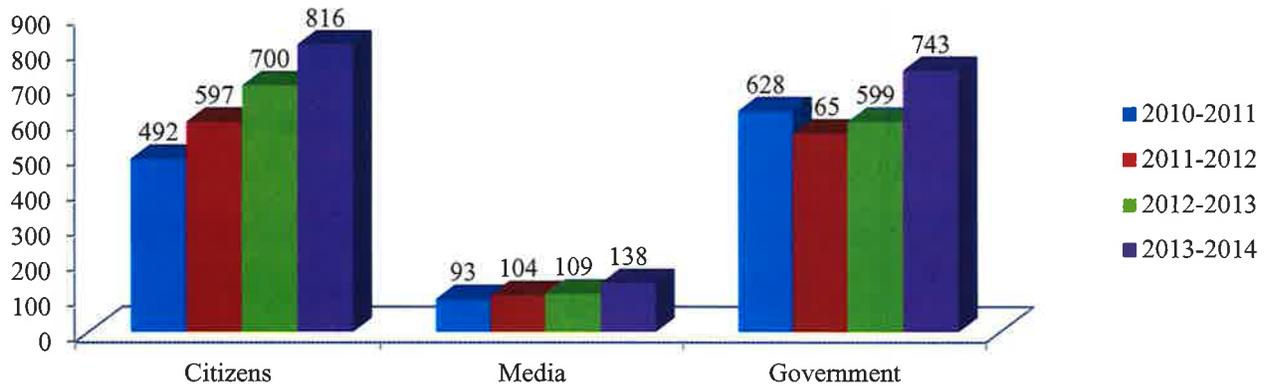
Internet Forums Approved: 0

HISTORICAL DATA ON OFFICE INQUIRIES

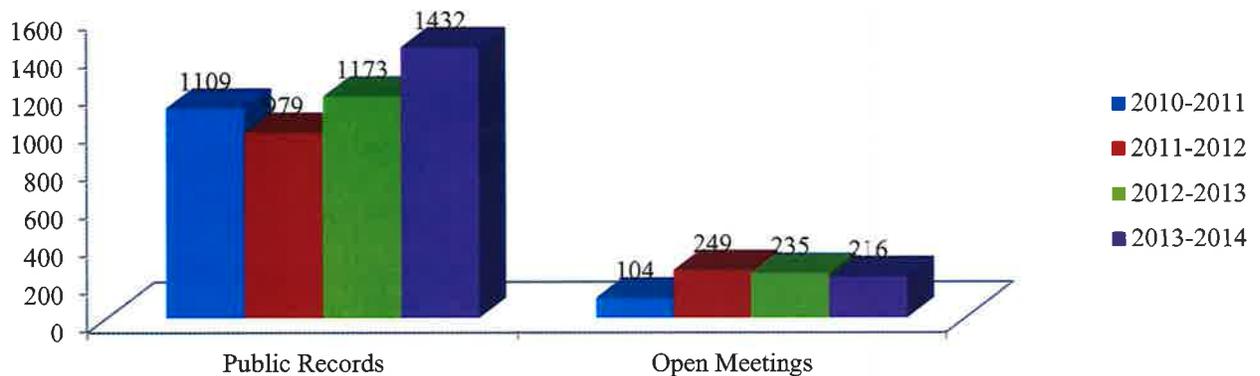
Total Inquiries



Affiliation



Type of Request



OPINIONS RELEASED BY THE OFFICE OF OPEN RECORDS COUNSEL SINCE MARCH 2013

- ✓ 13-01 Ordinance and Fees
- ✓ 13-02 Ordinance and Fees (Amended for Clarification)

PRESENTATIONS

Date	Program	Location
3/4/2013	TML Legislative Conference	Nashville, TN
3/21/2013	American Society for Public Administration	Nashville, TN
5/13/2013	Grainger County Commission	Rutledge, TN
5/4/2013	Tennessee County Attorney's Association	Knoxville, TN
5/16/2013	Nashville Bar Association- Government Attorney's Section	Nashville, TN
8/16/2013	MTAS Staff Training	Franklin, TN
8/23/2013	Nashville Bar Association State CLE	Nashville, TN
8/26/2013	TBI Ties User Group Presentation	Murfreesboro, TN
9/10/2013	Kingsport Bar Association	Kingsport, TN
12/6/2013	TAUD Winter Conference	Nashville, TN
12/9/2013	COGEL Conference	Quebec, Canada
1/13/2014	City of Franklin	Franklin, TN

ADVISORY COMMITTEE ON OPEN GOVERNMENT

Organization	Member	Gender	Race	Grand Division
Chair, Senate State and Local Government Committee	Yager, Senator Ken	M	C	M & E
Chair, House State Government Committee	Haynes, Representative Ryan	M	C	E
Chair, House Local Government Committee	Hill, Representative Matthew	M	C	E
Tennessee Attorney General and Reporter	Kleinfelter, Assist AG Janet	F	C	M
Tennessee Coalition for Open Government	Bowles, Dorothy	F	C	E
Tennessee Press Association	Gibson, Frank	M	C	M
Tennessee Municipal League	Jenkins, Chad	M	C	M
Tennessee County Services Association or County Officials Association of Tennessee	West, Jay	M	C	M
Tennessee School Board Association	Martin, Amy	F	C	E
Common Cause	Williams, Dick	M	C	M
League of Women Voters	Vacant	F	C	M
Tennessee Hospital Association	Gee, Thomas	M	C	W
Tennessee Association of Broadcasters	Harvey, Robb	M	C	M
Tennessee Board of Regents or The University of Tennessee	Scoggins, Matthew	M	C	E
Society of Professional Journalist	Fitzgerald, Sharon	F	C	M
Tennessee Association of Chiefs of Police	Chrisman, Glenn	M	C	M
Tennessee Sheriffs' Association	Ray, Patrick	M	C	M
AARP	Fields, Fred	M	C	E

THE OFFICE OF OPEN RECORDS COUNSEL WEBSITE

Tennessee Comptroller of the Treasury Office of Open Records Counsel



Elisba Hodge,
JD
Open Records
Counsel

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The provisions under the "Law" tab are now current through the 2013 Session

Recent Releases

-  [13-01 Ordinance and Fees](#)
-  [13-02 Ordinance and Fees \(Amended for Clarification\)](#)

What's New

-  [Little v. City of Chattanooga \(2/14/2014\)](#)
-  [Reguli v. Tennessee Board of Professional Responsibility-Request for Work Product and Work Files \(11/7/2013\)](#)
-  [Davidson v. Bredesen — Recognition of the Deliberative Process Privilege \(10/29/2013\)](#)
[New Exceptions to the Public Records Act](#)
-  [McBurney v. Young – The U.S. Supreme Court's Opinion on Virginia's Citizen-Only FOIA Provision \(4/29/2013\)](#)

Videos

[Public Records Video](#)

Question	Issue	Resolution
<p>Could you please advise - First - what is considered adequate public notice and Second - are all meetings subject to the requirement to give adequate public notice? For an organization that is required to operate under the Open Meetings Act, is it mandatory that all meetings (full board meetings, Executive Committee, Development Committee,etc.) use paid advertising in a daily newspaper or does it meet the requirements of the Sunshine law to publish on the organization's website and send a news release to the media? And is it necessary to publish the agenda of the meeting at the same time?</p>		<p>Without knowing more about the non-profit, I will refer you to this AG opinion that sets out the reasons why a non-profit would be subject to the open meetings act. http://www.tn.gov/attorneygeneral/op/2009/op/op68.pdf . Assuming that the non-profit that you reference is subject to the Act, there is a requirement that adequate public notice be provided. However, adequate public notice is not a phrase that is defined. The courts have said, “[w]e think it is impossible to formulate a general rule in regard to what the phrase ‘adequate public notice’ means. However, we agree with the Chancellor that adequate public notice means adequate public notice under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public.” <i>Memphis Publishing Company v. City of Memphis</i>, 513 S.W. 2d 511, 513 (Tenn. 1974). In <i>Souder v. Health Partners, Inc.</i>, 997 S.W. 2d. 140, 150 (Tenn. Ct. App. 1998), the court held that a notice for a regularly scheduled meeting that simply listed the date, time, location, and name of the entity meeting was adequate and the notice did not have to contain all of the items that were going to be considered on the agenda. However, In <i>Long v. City of Coopertown</i>, 801 F. Supp. 2d 674, 684-685 (M.D. Tenn. 2011), the court held that the City of Coopertown did not provide adequate public notice when it failed to place in the notice for a regularly scheduled meeting the fact that one alderman was going to resign and another was going to be appointed (issue of significant importance to the community). Currently, the case law is not consistent when it comes to the type of notice required for regularly scheduled meetings. As for special called meetings, the courts have set out a test that has to be met in order for the notice to be adequate. Because a special called meeting is a meeting “not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law,” there is a heightened notice requirement. In <i>Englewood Citizens for Alternate B v. Town of Englewood</i>, 1999 WL 419710 (Tenn. Ct. App. June 24, 1999), the court held that in order for the notice for a regularly scheduled meeting to be adequate, it has to 1.) be posted in a location where a member of the community could become aware of such notice 2.) the contents of the notice must reasonably describe the purpose of the meeting or the action proposed to be taken; and 3.) the notice must be posted at a time sufficiently in advance of the actual meeting in order to give citizens both an opportunity to become aware of and to attend the meeting. If an entity that is subject to the open meetings act is meeting in order to deliberate towards decisions or make decisions on public business, the entity is required to provide adequate public notice. However, if the entity is meeting with its attorney to discuss threatened or pending litigation, the meeting is not required to be noticed, but the entity cannot deliberate towards or make decisions in the executive session. Additionally, the governing body of an entity could meet for informational purposes and as long as they are receiving information and not deliberating towards or making any decisions. These meetings would not require notice. However, I always caution people about these sorts of gatherings because it is hard not to comment and the discussion could easily lead to a violation. Different entities have different statutory requirements for posting notice in a newspaper. Notice is only required to be placed in a newspaper if the statute requires that it be, but often times, newspaper publication reaches more audiences and is a better means of ensuring that as many interested persons as possible receive the notice. If the statute requires notice be placed in a newspaper, I would advise paying for the notice because otherwise, there is no guarantee that the notice will run. I would also suggest placing the notice on a website, even if you do a paid notice. If the statute does not require newspaper publication, you might want to send the notice to the newspaper(s) and ask that it be run and try to get a guarantee that it will, but also post in public buildings (several with heavy traffic), on the website for the entity that the governing body is a part of, on the City’s public calendar, on the radio, and on the local public access channel, if there is one. If you are going to rely upon the newspaper to run the notice for free, I suggest that the notice be provided at least two weeks prior to the meeting so that you can check to make sure it runs before the week of the meeting.</p>
<p>1 Does the public have the right to speak at a meeting? 2 Does an agenda have to be posted with the notice for a regularly scheduled meeting?</p>		<p>The public does not have the right unless the Commission provides citizens the opportunity to speak and there can be parameters placed upon this opportunity. We discussed the Souder opinion and the Coopertown opinion and how they differ.</p>
<p>3 Is it a violation of the open meetings act to have a meeting off site, in a place different than where the normal meetings are held?</p>		<p>No, but you need to make sure that your notice is clear about the location and I would confirm that the location would accommodate members of the public.</p>
<p>4 How can we determine if we are compliant with the open meetings act and if we are required to comply with the sunshine laws in meeting about our special events and fundraisers etc? We are getting a lot of conflicting information.</p>		<p>Here is the provision that we discussed on the phone. 8-44-104. Minutes recorded and open to public -- Secret votes prohibited. (a) The minutes of a meeting of any such governmental body shall be promptly and fully recorded, shall be open to public inspection, and shall include, but not be limited to, a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of roll call. (b) All votes of any such governmental body shall be by public vote or public ballot or public roll call. No secret votes, or secret ballots, or secret roll calls shall be allowed. As used in this chapter, "public vote" means a vote in which the "aye" faction vocally expresses its will in unison and in which the "nay" faction, subsequently, vocally expresses its will in unison. Also, as far</p>

	as the open meetings act is concerned, there is no requirement that the minutes of the meeting be posted on the Internet, but you all may want to consider doing so because it will likely cut down on the number of public records requests that you receive. Also, because of the fact that the non-profit did not exist until the City decide that it wanted a non-profit to carry out the service of animal control and because of the nexus between the City Council and the existence of McKamey, I do suggest that all of the meetings where Board members are going to deliberate towards public business or make decisions on public business be adequately noticed and open to the public.
5	<p>Can two or more elected county commissioners met with citizens in a private meeting when the citizens want to express their views on issues and ask questions of the commissioners? If yes what are the restrictions or conditions, if any?</p> <p>Multiple county commissioners can meet with a citizen and listen to the concerns expressed and the questions asked by a citizen without the open meetings act being triggered; however, the county commissioners cannot use this meeting to deliberate towards or make decisions on public business.</p>
6	<p>If members of the Fairgrounds Board meet and do not provide notice to the public, is that a violation of the open meetings act?</p> <p>Not necessarily. It is only a violation if the members deliberate towards or make a decision on public business. If they meet and just hear reports or are provided information, it is not a violation. I emailed him a link to the Johnston opinion.</p>
7	<p>Jim is out of town today and I need your assistance. Our March board meeting agenda has shrunk considerably but we still need to meet to act on one application and a couple of the General Counsel report items because they expire May 1 and we are not having an April meeting because there are no applications to review. I am thinking about having members in town attend the meeting if they can and offering those out of town members the ability to participate by phone so they don't have to travel for a meeting that will probably be much less than 2 hours. We have generally tried to stay away from this because CON applications are so complex and it would be really difficult to follow on the phone. I don't know if we could use SKYPE or some other medium. It's been a number of years since I have been involved in one of these so I need to find out if there have been any changes in the Open Meetings Act that would affect how I notice this and just any other concerns. Thanks for any assistance you can give me.</p> <p>I told her that I thought that agency could hold a meeting telephonically, but if a quorum was not going to be present in Nashville, I asked her if she could prove necessity. She indicated that some of the applications expired in May and there is no April meeting, so she thought that she could. I suggest that she contact the members to see if she would have a quorum before she take that route.</p>
8	<p>The Overton County Ethics Committee met on Friday March 8th but the meeting was not posted in either of our two local newspapers until after they had met which I feel is a violation of the Sunshine Law(Open Meeting Policy). How can I attend a meeting if I knew nothing about it? They met and voted to investigate allegations and possible infractions of current bylaws which I would have liked to have attended. I personally fell like Greg Nivens the Chairman of the Ethics Committee circumvented the Sunshine Law(Open Meeting Policy). I also feel that county executive Ron Cyrus who also attended this meeting should know these policies better than the county commissioners.</p> <p>I received your complaint that reads as follows: The Overton County Ethics Committee met on Friday March 8th but the meeting was not posted in either of our two local newspapers until after they had met which I feel is a violation of the Sunshine Law (Open Meeting Policy). How can I attend a meeting if I knew nothing about it? They met and voted to investigate allegations and possible infractions of current bylaws which I would have liked to have attended. I personally fell like Greg Nivens the Chairman of the Ethics Committee circumvented the Sunshine Law(Open Meeting Policy). I also feel that county executive Ron Cyrus who also attended this meeting should know these policies better than the county commissioners. I will be sending a letter to the Commission Chairman today regarding your complaint and I am also scheduled to speak with him later today regarding the manner in which the meeting was noticed.</p>

9	I received a complaint that the Ethics Commission met and did not post notice of the meeting. Spoke with the Chairman and he confirmed. He asked that I send him some cases that address violation of the open meetings act and we discussed what I felt like the Commission needed to do in order to cure any violation that occurred.	Per our conversation this morning, please find attached the Open Meetings Letter that we discussed. I have also attached the links to some cases that you may want to read. http://www.lawyer.com/cases/16558852478029586046.html http://tn.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19990624_42967.TN.htm/qx
10	He had an open meetings complaint against the Jefferson County Commission. He indicated that after the public meeting, some of the Commissioners met and made a decision on public business.	The office sent an open meetings letter.
11	He was at a meeting of the Jefferson County IDB and they would not read the minutes out loud. Is this a violation of the open meetings act?	No, the minutes are not required to be read out loud. However, if someone wants to know what they say and what was approved, I suggested that he make a request for the minutes and if they record the meetings, a copy of the recording.
12	One of the Election Commissions has a commissioner that does not show up to the meetings. Is there any provision within the open meetings act that addresses how many meetings a member is required to attend?	No, there is not a provision in the open meetings act.
13	1. The Mayor and the Vice Mayor met and demoted the police chief. Is that a violation of the open meetings act? 2. Multiple Commissioners were seen together talking. Is that a violation?	1. No, given that she says that the Mayor only has power to make personnel decisions involving the police chief. 2. Unless the Commissioners were deliberating towards or making decisions on public business, no. It is not a violation to just sit and talk together.
14	The entity that she represents is having a meeting to discuss the Executive Director's evaluation and pay. The State through the Commission on Aging told the Center that its Board meetings were subject to the open meetings act. Would the meetings where these issues are discussed also be subject to the open meetings act?	Yes, they would be subject to the open meetings act.
15	He called to discuss with me the fact that he was aware that the Mayor had sent me some emails regarding alleged open meetings violations. He wanted to discuss this issue with me and send me some additional emails.	We discussed what I had already sent and I told him that in my opinion the emails are deliberations because when read all together, they show the back and forth discussions of the Commission members trying to decide how to resolve the issue surrounding the language that they would like to have placed on the public buildings.
16	I was in attendance on Monday, April 8 at the Budget Committee meeting held in the courtroom of the Jefferson County Courthouse. I was unable to hear any discussion as the committee members and those speaking were huddled in the jury area of the courthouse. Is this a violation of the open meetings act? This happens every time I attend a committee meeting. The courtroom was packed and there was not opportunity to stand or sit near enough to hear. I have spoken to you before about violations. I have been busy and just now had a chance to	I do not think that this is something that rises to the level of a violation as long as it was not something done to intentionally preclude the public from hearing the deliberation that was occurring. I have not seen in any case law in this state or any other where the court has said that the inability of the public to hear the members deliberations was a violation. I will call the Chairman of the Commission and let him know that the members were inaudible and that it would be helpful for them to use their microphones at future meetings. Please let me know if you have additional questions. I emailed Chairman Mills to let him know and in turn, he emailed me back asking for the name of the complainant. In his email, he indicated that this issue could have been taken care of if the complainant had let someone know. When I emailed him back the name of the complainant, I also let him know that Ms. Finchum indicated that she had let the chair of the Committee know on multiple occasions that there was a problem hearing the meetings and the problem persists.

	email you.	
17	I will forward you the requested information. Could I have the name of the complainant?	Thank you for forwarding the information. If you make a public records request for the name of the complainant, I will be glad to provide it to you.
18	He received the open meetings letter that I sent and wanted to discuss his role and the letter that he sent to all of the commissioners.	We discussed the fact that he sent a letter to all of the commissioners asking them to consider the compromise that he was advancing and as a result of his letter, several other commissioners responded to his email and that constitutes deliberation.
19	Two commissioners went out and looked at a site with a citizen and said that they made a decision to close the issue. Was that a violation?	I told her that I could not say for certain. The fact that they were together did not constitute a violation, but anytime that multiple members deliberate towards or make a decision on public business, that constitutes a meeting and if the deliberation or decision-making does not occur in an adequately noticed public meeting, a violation has occurred (outside of the audit exception).
20	What are the requirements of giving public notice of a special called meeting in Government?	It depends on the type of meeting and the circumstances surrounding the need to meet. However, generally the requirement is that notice be provided far enough in advance of the meeting for interested individuals to have the opportunity to know and attend (anything less than 48 hours notice except in exigent circumstances is not adequate), the notice must be posted in a location where members of the public would become aware that a meeting was scheduled to take place, and the content of the notice must reasonably describe the actions to be taken or issues to be deliberated upon at the meeting. Here is a link to the case that sets out the general parameters. http://tn.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19990624_42967.TN.htm/qx
21	I am making an Open Records Request requesting the name of the person who had difficulty hearing members of the Jefferson County Budget Committee at the April 8, 2013 Budget Committee Meeting held in the main courtroom of the Historic Jefferson County Courthouse. The issue could have been resolved at the time it occurred, if there had been knowledge of it.	Elizabeth Finchum was the individual who made the inquiry as to whether or not this type of conduct constituted a violation. She indicated that the Chair was aware of her concerns and that this happens at every meeting.
22	Question regarding Executive Session (Interview) What can be done in Executive Session. Can the attorney for the entity tell the Board members in Executive Session that an issue regarding a criminal investigation cannot be discussed during the public meeting?	I explained that I cannot say that what happened was a violation because I have no firsthand knowledge of what happened. I then explained what can and cannot occur during executive session and that if anything outside of those parameters occurred, it would be a violation. The parameters are the client providing the attorney facts and the attorney providing the client legal advice. Any deliberation or discussion is required to be done in an adequately noticed public meeting.
23	What are the requirements for a special called meeting?	We discussed the requirements and the fact that an agenda item cannot be "other business" because each item that is to be discussed has to be specifically set out in the agenda.
24	Open meetings complaint regarding the Loudon County Board of Education. The Board discussed several issues during meetings and asked for additional information on the issues before voting on them. The minutes do not reflect that votes were taken on the issues discussed, but the Board acted on the issues discussed.	I sent a letter to Chairman Johnson. See the attached letter.
25	A standing committee of the County Commission is going to hear an employment issue and then make a recommendation to the Mayor for final action. The	Yes, because the County Commission delegated this responsibility to the Committee and there are multiple members of the Commission on the Committee

	<p>Committee consists of multiple County Commissioners. Does the meeting have to be noticed and open to the public?</p>	
26	<p>He wanted to discuss the letter that I sent to the Loudon County Board of Education regarding issues not being voted upon in public meetings, or the minutes not reflecting the votes and also wanted to know if he could send a response.</p>	<p>We discussed the two separate allegations in the letter and he said that since there were Board policies on the issues, the Board did not have to vote on them, but I told him that the Board decided that they were going to vote on the issues after he presented additional information and that never happened. I also told him that he could provide a response if he wanted.</p>
27	<p>The County received an audit finding related to the IDB. He wants to use the audit committee statute to go into executive session to discuss ways to implement managements response. There is also litigation going on related to the finding, but he does not want to discuss the litigation. Can he go into executive session?</p>	<p>No, because the audit is finished and the issue is not going to be the litigation.</p>
28	<p>Regarding the Open Meetings complaints/inquiry which I submitted to the Office of Open Records, I'm requesting to see a copy of the letter that was sent to the Loudon County Board of Education.</p>	<p>Per your request, please see the attached.</p>
29	<p>Can governing bodies go into executive session and discuss pending litigation when they are not actually a party to litigation?</p>	<p>I have attached a link to a case that addresses the question about whether or not a governmental entity has to be a party to a pending or threatened lawsuit in order to go into executive session. The language in the case confirms that the governmental entity has to be a party to a lawsuit in order to go into executive session. Smith County Education Association v. Anderson, 676 S.W. 2d 328, 335 (Tenn. 1984). http://scholar.google.com/scholar_case?case=13075839896385948366&q=smith+county+education+association&hl=en&as_sdt=2,43</p>
30	<p>Can the election commission delegate to her the authority to make certain decisions involving money under a certain amount? What do her minutes need to capture? What do the agendas for the meetings need to include?</p>	<p>I told her that the Commissioners could vote to delegate decisions that need to be made right away to her, but I also told her that she needs to speak with Audit about what the parameters of that authority need to be. She and Greg Cothron discussed the issue. I explained to her what the statute required the minutes to contain. We also talked about the fact that every meeting of the Commission is special called because there is no set schedule and so the notice for each meeting is required to be specific. I told her that there could be no "other business" and even if they vote on a regular meeting schedule, I do not suggest that anything of significant importance be discussed or decided under "other business."</p>
31	<p>An election commission wants to go into executive session with its attorney to discuss what could legally happen now that a lawsuit has been decided upon by the appeals court.</p>	<p>I told Beth that the chair needs to call the attorney to first decide if there is a pending lawsuit at this point. If there is not, they cannot go into executive session. If there is, they can go into executive session without providing public notice but they cannot deliberate or make any decision in the executive session.</p>
32	<p>Should Knox County and is Knox County required to place meeting notices in the newspaper?</p>	<p>We discussed the open meetings act and the fact that it is probably the best practice for a county like Knox to place notices for all meetings in the newspaper if it only costs \$15.00, but I also said that the statute does not require that and if that is not going to be done, the County needs to think about all of the numerous places that notice can be placed in order to get the most notice possible out to the public.</p>
33		

34	<p>What are the requirements for posting notice of a meeting?</p>	<p>The provision that addresses County Commissions and notice for regularly scheduled meetings is Tenn. Code Ann. Section 5-5-104 which reads: (a) Regular meetings of each county legislative body shall be held at the time, day and place set by resolution of each legislative body. (b) There shall be at least four (4) regular meetings of the county legislative body each year. (c) Special meetings of the county legislative body may be called by the county mayor or by petition of a majority of the members of the county legislative body in accordance with § 5-5-105. (d) No business shall be transacted, or any appointment made, or nominations confirmed, except in public session. (e) The provisions of this section shall not apply to any Class 1 county established by § 8-24-101, that has by private act adopted regular meetings of its legislative body and procedures for calling special meetings of such body. The provision that addresses County Commissions and notice for special called meetings is Tenn. Code Ann. Section 5-5-105 which reads: (a) (1) The county mayor has the power to convene the legislative body in special session when, in the county mayor's opinion, the public necessities require it. (2) Upon written application to the chair of the legislative body by the county mayor or by a majority of the members of such body, then in that instance, it shall be mandatory for the chair to call a special session of such body. (3) The convening date of such body shall not be more than fifteen (15) days nor less than forty-eight (48) hours from the time of the filing of such application with the chair. (4) The provisions of this subsection (a) shall not apply to counties of Class 1 as established by § 8-24-101. (b) (1) The county mayor shall be authorized to call a special session of the county legislative body for emergency purposes only by publication in a newspaper published in the county, and by personal notification to the members of the county legislative body at least two (2) days before the time of the convening of the county legislative body, in any county that authorizes its county mayor to act in accordance with the provisions of this subsection (b), by a two-thirds (2/3) vote of the county legislative body. (2) The call or notice shall specify the objects and purposes for which such special session is called, and no other business but that embraced in such call shall be transacted during such special session. (3) The provisions of this subsection (b) shall apply only to any county having a population not less than two hundred eighty-seven thousand seven hundred (287,700) and not greater than two hundred eighty-seven thousand eight hundred (287,800), according to the 1980 federal census or any subsequent census. (c) (1) The call shall be made by publication in some newspaper published in the county, or by personal notices sent by the county clerk, at least five (5) days before the time of the convening of the county legislative body, which call or notice shall specify the objects and purposes for which the special session is called, and no other business but that embraced in the call shall be transacted during the sitting of the special term. (2) In the event no newspaper is published in the county, the notice shall be by personal service upon all the members of the county legislative body, such service to contain the purpose for which the body is convened, and to be at least five (5) days before the time for convening. The link to the Souder opinion is attached. http://scholar.google.com/scholar_case?case=8839799604467472151&q=Souder+v.+Health+Partners&hl=en&as_sdt=2,43 The link to the Long opinion is also attached. http://scholar.google.com/scholar_case?case=7367907366088759849&q=Long+v.+City+of+Coopertown&hl=en&as_sdt=2,43 Please let me know if you have other questions.</p>
35	<p>Was it a violation of the open meetings act for the commission members to continue to make statements after the meeting was adjourned without the statements being recorded?</p>	<p>Based upon the information that she provided, no, it was not a violation. There is no requirement within the statute that meetings be audio or digitally recorded. The only requirement is that minutes of the meeting be recorded. As long as there was no deliberation or decision-making after the meeting was adjourned, then the open meetings act wasn't triggered.</p>
36	<p>I received a complaint regarding notice for a particular meeting held by the Morristown IDB. I contacted the attorney for the entity who then sent me a number of questions regarding the open meetings act and the IDB meetings.</p>	<p>I think that the initial issues has been addressed and taken care of for now. However, I am now concerned about a "committee meeting" that occurred yesterday and at least one other committee meeting that occurred prior to yesterday. I was told that there was a committee meeting that was held yesterday to discuss potential modifications of the TIF approval process. I was also told that this meeting was not noticed. It was explained to me that there are multiple members of the IDB on this committee. I was also given the name of an IDB member to call and talk to about this if I needed more information. I have not made that call and do not plan to do so, but this is another issue that needs to be addressed if it is occurring. I see in the minutes that the chairman did appoint a committee to consider applications. If this committee is meeting and deliberating towards or making decisions on public business, the meetings need to be adequately noticed and open to the public. While it appears based upon our conversations that any potential issues related to the meetings about the Masengill Spring project were potentially cured by the May 8, 2013 public hearing and open meeting, if there was a committee meeting yesterday that was not noticed and open to the public, that provides citizens with a new basis to sue under the open meetings act. I encourage you to follow-up on this issue as well, particularly given the fact that the citizen has brought up filing an open meetings lawsuit and assuming that what she has told me is true, she has been able to obtain information from members of the committee and the IDB related to this matter. If the committee did meet yesterday and deliberate towards or make decision on any public business, I suggest that they schedule another meeting as soon as possible, provide adequate public notice for that meeting, and publically discuss any issues that they may have deliberated on or decided upon</p>

	<p>yesterday. While I was drafting this email, Ms. Carrol called and she did say that staff in the City Administrator's office generally does place the notices for the IDB meeting on a bulletin board in the City Building. She has a call in to the County Mayor's office to check on what staff does there. I encourage you to make sure that if the notice for these meetings are not going to be placed in the newspaper, the notices be placed in multiple public buildings around the City and the County and on the City, County, and Chamber of Commerce websites if possible. Please let me know if you want to discuss.</p>
<p>37 Our Maury County School Board acted under the radar last fall to expel the Gideons from the public schools. The Gideons have for decades been allowed to display Bibles for student access without coercion or manipulation; however this all changed last year. The director of schools under the advice of the school board's attorney decided to make this decision. He consulted the board but, it was behind closed doors. This was never put on an agenda, set forth to allow public comment, brought up for a vote, or documented in any minutes and basically swept under the rug. There was a threat from one family that instigated this. There was no lawsuit just a complaint levied. Please advise if this is a clear violation of the Sunshine Law or the Open Government Law. I scoured through all 2012 minutes and could find no mention of this anywhere. I spoke with Director Eddie Hickman yesterday and he validated there was no record of this. He seems to think that because the Gideons were a private group he did not have to conduct this business in public. Please provide me with feedback.</p>	<p>Based upon your email, it does not appear that the Board did anything that would make me think that there was an open meetings violation. If I am reading your email correctly, the Board did not make any decision. The decision was made by the School Board Director. If the Director met with the School Board and reported to the members what he did or was going to do and they did not deliberate on the issue or make a decision on the issue, there was nothing improper about that meeting. The open meetings act is only triggered when multiple members of a governing body gather and deliberate towards or make decisions on public business. If the board gathered and was provided information only, that would not trigger the open meetings act. If my understanding of what you have presented is correct, it does not appear that the School Board did anything in violation of the open meetings act, but you might want to inquire about who had the authority to make this decision in the first place.</p>
<p>38 Have you had an opportunity to review the actions of the IDB with regard to the Masengill Springs TIF? The City Council is scheduled to vote on this tomorrow but I would like to see the Sunshine violation corrected first. I was hoping you would contact Tony Cox, City Administrator regarding this prior to tomorrow's council meeting. My only other alternative would be to file suit in Chancery Court.</p>	<p>Mr. Foutch followed up on the email that I sent him regarding the committee meeting yesterday. His email states that he was advised that notice for the committee meeting was posted in the Chamber of Commerce Building, City Hall and the courthouse. He indicated that there were members of the public present at the meeting and that someone video recorded the meeting.</p>
<p>39 He attended the Budget Committee in Jefferson County and was not allowed to speak. Is that a violation of the open meetings act?</p>	<p>No, citizens have the right to observe, but not participate. He only has the right to speak if the Committee allows him to. He can always write the members and provide them with the information that way.</p>
<p>40 Are draft versions of minutes accessible to the public?</p>	<p>Yes, if they exist, but I would stamp draft on them somewhere that does not block access to the content of the records so that they cannot be represented as a final version.</p>

The Jefferson County, TN Commission meeting May 21, started at 6:30 PM and the power went out due to severe storms at about 6:49 PM. We meet in the 'historic' Dandridge courthouse courtroom. There were no, zero, none, not a single emergency light in courtroom. Not even any lighted 'exit' signs over courtroom doors. The meeting continued in the dark with commissioners using cell phones and pen lights to try to see. I tried to take a picture with my cell phone but all I got was a black screen with a small ball of light at top (a battery work light that one commissioner happened to have on his work truck.) We, the citizens, could not see or hear much of anything. This was the budget committee meeting and there was a two page 'agenda' that was not followed in any sensible order- so we have no clue as to what REALLY happened. Yes, this was only a working session, but this is the meat and potato of county government- our 2013-2014 budget! After over an hour of trying to follow, in the dark, what the committee was doing, I got so frustrated I left. What should have been done is to adjourn and reschedule when all could see and hear. I heard you were just over the river in Grainger county a few weeks ago? I sure wish had known that ahead of time because I would love to sit down and talk to you. Also rumor has it that you are going to be teaching a class about sunshine law in our county??? PLEASE, make it open to just plain old citizens, too!!! Otherwise you are just teaching the fox how to be a better fox and leaving us chickens to fend for ourselves. Our officials are NOT violating the sunshine law out of ignorance- they are doing it with knowledgeable intent!!! Every time any of us citizens bring up attending your class to commissioners at county court we are marginalized and told pretty much it would be over our heads. Now, not all our commissioners are such close minded boors, but problem is that more than 11 out of the 21 do suffer from feelings that citizen has no place in government. There are about seven who are doing their best to stand up and conduct open government, but are out numbered. Please help us make our county government work the way is supposed to work.

The office sent a letter to Chairman Mills and Chairman Griffith which can be seen as the attached open meetings letter.

Thank you so much for listening to me. Sometimes it can get overwhelming.

Is it a violation of the sunshine law or open records law for an elected official to assist with another elected officials re-election campaign?

The open meetings act is only triggered when multiple members of the same governing body meet and deliberate towards and/or make decisions on public business. The public records act only addresses access to public records.

43	Is it a violation of the open meetings act for the chairman of the commission to speak with a representative of the rescue squad to try to negotiate a budget to take before the County Commission?	No, what she described does not constitute a violation of the open meetings act since the chairman is going alone.
44	What constitutes adequate public notice?	I told him that there was no bright-line rule in Tennessee. It is whatever fairly informs the public. I discussed with him the previous discussions I had about the IDB with the attorney for the IDB and told him that they might want to have a public discussion about where they want to post notice and what they want included in each of their notices. I also suggested that they discuss posting their notices on the websites for the City, County and Chamber, if these entities will agree to post the notice.
45	If the Commission wants to do an evaluation for the City Manager and give him a raise, does that have to be done in a public meeting? What if it is just done by the Mayor and Vice Mayor?	Yes, it does have to be done in an adequately noticed meeting and the same is true if it is done by the Mayor and Vice Mayor since they are both members of the Commission.
46	When a county meeting is recessed and is to be reconvened on another day, what are the notice requirements?	The governing body is required to provide adequate public notice of the new meeting. The governing body also needs to ensure that whatever the issues are that are to be addressed at the meeting, those issues are spelled out in the notice that is posted in as many public places as possible.
47	Knox County wants to look at the way they advertise their meetings. What have I suggested as a best practice? He also had questions about the Rutherford County Planning Commission court of appeals decision.	I told him what I told the others who have called on this issue. There is no requirement in the law that the notice for regularly scheduled meetings be placed in the newspaper, but the point is to reach as many people as possible. I suggested that they either pay the 15 dollars per ad and place the notice in the newspaper and on the county's website. In the alternative, they place notice in as many public places throughout the county and not just the city. Announce the notice in places like the website, the public access channel, and through radio announcements. We also discussed the fact that adequate public notice is based upon the facts and circumstances of each situation and the Rutherford County Planning Commission Court of Appeals' decision has statewide implications while the Chancery Court opinion was specific to Rutherford County and was not binding for any other county.

Ms. Hodge, could you forward me general documentation and information, regarding the aspects of the Open Meetings Act? We are having an informational meeting Monday, and your assistance would be great in this regard.

I have attached a few things for your consideration. I will also let you know as a heads up, I have received another complaint about the Commission, specifically about the Budget Committee. Another letter is forthcoming. I will be happy to discuss if you would like. The first set of slides is all open meetings, the second set is both records and meetings. The second set of slides has some updated information on a couple of the slides. Here are the links to some important cases related to the open meetings act (this list does not include the cases cited in the PowerPoint slides):

Smith County Education Association v. Anderson, 676 S.W. 2d 328 (Tenn. 1984)http://scholar.google.com/scholar_case?case=13075839896385948366&q=smith+county+education+association&hl=en&as_sdt=2,43 (parameters of executive session)

Souder v. Health Partners, Inc., 997 S.W. 2d 140 (Tenn. Ct. App. 1998) http://scholar.google.com/scholar_case?case=8839799604467472151&q=souder+v.+health&hl=en&as_sdt=2,43 (notice)

Long v. City of Coopertown, 801 F. Supp. 2d 674 (M.D. Tenn. 2011)http://scholar.google.com/scholar_case?case=8072945539577871967&q=coopertown&hl=en&as_sdt=2,43 (notice)

Fisher v. Rutherford County Regional Planning Commission, No. M2012-01397-COA-R3-CV (Tenn. Ct. App. May 29, 2013)http://www.tncourts.gov/sites/default/files/fisher_k_opn.pdf (notice)

Johnston v. Metropolitan Government of Nashville and Davidson County, 320 S.W. 3d 299 (Tenn. Ct. App. 2010)<http://www.lawyer.com/cases/16558852478029586046.html> (deliberation)

Littleton v. City of Kingston, 1990 WL 198240 (Tenn. Ct. App. Dec. 10, 1990)http://tn.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19901210_0017.TN.htm/qx (informal assemblages and quorum requirement issue)

Akin v. City of Kingston Springs, 1993 WL 339305 (Tenn. Ct. App. 1993)http://tn.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19930908_0004.TN.htm/qx (informal assemblages and quorum requirement)

Here are the links to some of the opinions of this office related to open meetings issues:
<http://www.comptroller.tn.gov/openrecords/pdf/Special%20Called%20Meetings.pdf> (Special Called Meetings and Adequate Public Notice)

<http://www.comptroller.tn.gov/openrecords/pdf/10-07MeetingsAndMinutes.pdf> (Meetings and the Requirement to Record Minutes)

<http://www.comptroller.tn.gov/openrecords/pdf/12-01AmendingMeetingAgendasduringMeeting.pdf> (Amending Meeting Agendas during Meetings)

Please let me know if you need any additional information.

The pertinent part of Tenn. Code Ann. Section 49-5-5112(a)(2) reads, "The hearing officer is empowered to issue appropriate orders and to regulate the conduct of the proceedings." Additionally, Tenn. Code Ann. Section 49-5-512(a)(8) reads, "On request of either party to the hearing, witnesses may be barred from the hearing except as they are called to testify. The hearing may be private at the request of the teacher or in the discretion of the hearing officer." As long as one of the parties requested that no one be allowed in the hearing, it appears that what occurred complied with the law. Please let me know if you have additional questions.

48

Thank you for speaking with me this morning about the Shelby County Board of Education tenure hearing / dismissal charges that I was not able to attend. I have attached the charging instrument for my client Huda Najjar, who is testifying in a similar hearing today for a different teacher. These hearings are pursuant to T.C.A. 49-5-511, with T.C.A. 49-5-512 as the statute regarding the hearing. The statute lists the procedural requirements

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	but doesn't speak to whether the meeting is open or closed. I know very little about this area of the law, so I appreciate your help!	
50	He received the open meetings letter that I sent to the Jefferson County Budget Committee. He is forwarding it to the chairman of the committee. He is also requesting the name of the complainant.	Please see the attached. I do not have an email address for Mr. Griffith, so if you all would email this to him I would appreciate it. A hard copy is also being sent to all of you through the U.S.P.S. Per your request, the complaint was submitted by Donna Raybon.
51	Is it just attorney-client privileged meetings that don't have to be an open-to-the-public event? I'm trying to find it online so I could find it in black and white but I guess I'm not real picky. I can't find it so if you tell me how I could find it, and if the board can meet, and when they can meet every time they want to have a meeting concerning some legal issues. I don't know if the attorney has to be there or does not have to be there. I think the attorney has to be there but I want clarification.	The board can meet but only with the attorney present. Additionally, the only things that can occur during the executive session is the board members can give the attorney facts about the legal issue and the attorney can give the board members legal advice about the legal issue. Any deliberation or discussions related to the legal advice given has to be done in an adequately noticed public meeting. There is no exception found in the statute. This is a common-law privilege based upon the attorney-client privilege.
52	The open meetings law does not seem to say anything about an executive session to discuss personnel matters. I find that strange. This resulted in a public shaming of a city manager; one councilman, the mayor, and the city attorney said it had to be done in public. I know decisions and votes have to be made in public, however airing dirty laundry and suppositions in public does not seem right. Is it legal to call an executive session for such matters?	The governing body of a city does not have the ability to go into executive session to discuss personnel matters unless the matter is a personnel matter related to threatened or pending litigation.
53	Can a governmental entity hold electronic meetings pursuant to Tenn. Code Ann. Section 8-44-109?	If the entity (one of the ones enumerated in the statute) submits a plan for Internet chat and it is approved, the members can deliberate but not make decisions electronically. However, members of governing bodies cannot participate in an actual meeting electronically outside of Internet chat except pursuant to the requirements in Tenn. Code Ann. Section 8-44-108, unless the entity is an LEA.

Can a meeting be held via phone conference and can the members vote?

As we discussed this morning, because UCHRA and some of the other human resource agencies are set up as non-profits and because human resource agencies are described in Tenn. Code Ann. Section 13-206-105 as "public and governmental bodies acting as agencies and instrumentalities of the creating and participating counties and cities," I am of the opinion that UCHRA cannot meet electronically. Tenn. Code Ann. Section 8-44-108 allows the governing bodies for state agencies, boards, and commission and one municipality in Tennessee to meet electronically. Non-profits are not included in the entities that may meet electronically pursuant to this provision. Tenn. Code Ann. Section 8-44-108 reads:

(a) As used in this section, unless the context otherwise requires:

(1) "Governing body" refers to boards, agencies and commissions of state government, including state debt issuers as defined in this section and municipal governing bodies. For the purpose of this section only, "municipal governing bodies" means only those municipal governing bodies organized under Title 6, Chapter 18, and having a city commission of three (3) members, and having a population of more than two thousand five hundred (2,500), according to the 2000 federal census or any subsequent federal census;

(2) "Meeting" has the same definition as defined in § 8-44-102;

(3) "Necessity" means that the matters to be considered by the governing body at that meeting require timely action by the body, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by electronic or other means of communication is necessary; and

(4) "State debt issuers" means the Tennessee state funding board, Tennessee local development authority, Tennessee housing development agency, and Tennessee state school bond authority, and any of their committees.

(b) (1) A governing body may, but is not required to, allow participation by electronic or other means of communication for the benefit of the public and the governing body in connection with any meeting authorized by law; provided, that a physical quorum is present at the location specified in the notice of the meeting as the location of the meeting.

(2) If a physical quorum is not present at the location of a meeting of a governing body, then in order for a quorum of members to participate by electronic or other means of communication, the governing body must make a determination that a necessity exists. Such determination, and a recitation of the facts and circumstances on which it was based, must be included in the minutes of the meeting.

(3) If a physical quorum is not present at the location of a meeting of a governing body other than a state debt issuer, the governing body other than a state debt issuer must file such determination of necessity, including the recitation of the facts and circumstances on which it was based, with the office of secretary of state no later than two (2) working days after the meeting. The secretary of state shall report, no less than annually, to the general assembly as to the filings of the determinations of necessity. This subdivision (b)(3) shall not apply to the board of regents, to the board of trustees of the University of Tennessee or to the Tennessee higher education commission.

(4) Nothing in this section shall prohibit a governing body from complying with § 8-44-109.

(c)(1) Any meeting held pursuant to the terms of this section shall comply with the requirements of the Open Meetings Law, codified in this part, and shall not circumvent the spirit or requirements of that law.

(2) Notices required by the Open Meetings Law, or any other notice required by law, shall state that the meeting will be conducted permitting participation by electronic or other means of communication.

(3) Each part of a meeting required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting. Any member participating in such fashion shall identify the persons present in the location from which the member is participating.

(4) Any member of a governing body not physically present at a meeting shall be provided, before the meeting, with any documents that will be discussed at the meeting, with substantially the same content as those documents actually presented.

(5) All votes taken during a meeting held pursuant to the terms of this section shall be by roll call vote.

(6) A member participating in a meeting by this means is deemed to be present in person at the meeting for purposes of voting, but not for purposes of determining per diem eligibility. However, a member may be reimbursed expenses of such electronic communication or other means of participation.

Please let me know if you have other questions.

55	<p>Recently the town of Erwin Board of Mayor and Alderman traveled to Pigeon Forge (~120 miles from their office location in Erwin) for a "strategic planning retreat" for its members only. During the retreat, they had a meeting during which they decided to stop funding our animal shelter, which affects the entire population of Unicoi County. I could not find anything in the Tennessee Open Meetings Act or state government opinions that stipulates limitations on where meetings can be held. However, I did find a specific Florida ruling on page 41 of their Sunshine Law Manual (copy attached hereto). A great many of us in Unicoi County are of the opinion that having a meeting outside the governing body's jurisdiction does not give our citizens, particularly those with low incomes, tight work schedules, etc., a reasonable opportunity to attend. If there are no location restrictions, what would prevent governing bodies from having meetings in places like San Diego, CA or, for that matter, Shanghai, China? Please offer us some guidance on this issue. Thank you for your assistance.</p>	<p>There are no restrictions on the locations where governing bodies can hold meetings in the Tennessee Code or in Tennessee specific case law. In <i>Neese v. Paris Special School District</i>, 813 S.W. 2d 432 (Tenn. Ct. App. 1990), the court examined whether a meeting that was held at an out of state retreat violated the open meetings act. The court analyzed this meeting using the same standard that it had used for all other open meetings cases. The court looked specifically at whether or not the governing body provided adequate public notice of the meeting that occurred at the retreat. I have attached a link to the case for your review. http://scholar.google.com/scholar_case?case=2640067197608283838&q=neese+v.+paris+special+school+district&hl=en&as_sdt=2,43</p> <p>Please let me know if you have other questions.</p>
56	<p>I have two questions regarding open meetings:</p> <p>1) Does distance apply to open meetings? Smyrna, Tennessee government has a 'retreat' to Gatlinburg to set down and establish their budget. This is 240 plus miles from our town and out of reach for many to drive to. Does this restriction create a violation of the open meetings act? It is not recorded or video taped for later viewing.</p> <p>2) Does a retreat, however informal, still require minutes to be taken for the public record? This meeting does include the entire town council and Mayor plus all administrative department heads.</p>	<p>There is no restriction on the distance that a governing body can go to hold a meeting. Having a retreat in a location other than where the governing body traditionally meets is not a violation of the open meetings act as long as the meeting is open to the public and the public receives adequate notice that the meeting is going to take place. Additionally, regardless of how informal a gathering is or what it is called, if multiple members of a governing body are making decisions or deliberating towards decisions on public business, minutes are required to be recorded and made available for public inspection. Please let me know if you have additional questions.</p>
57	<p>Also, do you get involved with open meetings issues? Some boards are discussing SROs and placements and other strategies, and they don't really want the public to know all of this information. If that is outside of your office, just let me know.</p>	<p>Yes, I looked at the school security issue during session and there is no exception currently that would allow a school board to go into executive session to discuss school security and crisis management plans.</p>

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The Jefferson County Commission now has a rule that requires a citizen to fill out a form to speak at a meeting at least 5 days before the meeting. They have probably already run it by their lawyers and it's ok, but I am going to protest that this change in rules disenfranchises those who can't read/write. Up until this meeting, all you had to do was show up at county court, fill out a paper with your name, etc., and turn it in to the chair before the meeting was called to order. Now you have to notify in writing via USPS at least five days in advance of the meeting in order to speak. Is that allowed? Also, I am seeking information from the Chamber of Commerce and the County on some positions at the Chamber that are partially funded through the County. The Chamber has taken the position that it is not subject to the public records or open meetings act. What are your thoughts on that?

Yes. The County Commission does not have to allow the public to speak at all at meetings (different from public hearings), and there is nothing illegal about having a procedure in place that applies to those who want to speak at the meeting. However, I sent the County Attorney an email regarding the notice. When I hear back from him, I will let you know. To the extent that any county funds are being used to pay for the salaries, you should be able to see and/or obtain an accounting of those funds. However, I do not believe that the Chamber of Commerce is subject to the public records or open meetings act, especially if it is functioning as a traditional Chamber of Commerce. I have attached a link to a bill that was introduced a couple of years ago that would have made Chambers subject to both Acts. As you will see from the bill history, the bill failed.

<http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB3852&ga=106>

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I received an email from a citizen that contained the attached <http://jeffersoncountypost.com/?p=10736> link. I want to make sure that the information in the notice is correct. If it is, I am concerned that the requirements set out for citizens to speak at the public hearing on the budget are more stringent than what is required in Tenn. Code Ann. Section 5-12-108(a)(2) which reads, "The publication shall also contain a notice of a public hearing to be conducted by the budget committee at which any citizen of the county shall have the right to appear and state such citizen's views on the budget." I am also concerned because the notice appears to be saying that a citizen has to make a request to speak. I looked through the provisions that deal with the budget and could not find any provision that required citizens to make a request to speak or to provide 5 days written notice of their intent to speak. If you will let me know what the intent of this notice is and what it is based upon, I would appreciate it so that I can respond to the citizen who sent the email.

If the requirement is to have someone fill out a card on the day of the meeting, I think that is fine for the reasons that you have stated. My concern is with the 5 day notice and with the request language in the notice. "Request" seems to indicate that you will either be allowed or not allowed to speak and the statute contemplates all citizens being able to comment on the draft budget.

I have a quick open meetings question. T.C.A. § 49-6-3401 governs the student disciplinary process. Basically, if a student appeals a disciplinary suspension enough times, he eventually winds up before the Board of Education. The Board has two options: (1) to review the suspension "on the record" by reviewing a transcript of the student's hearing before what's called the "disciplinary hearing authority," or (2) to hold an actual new hearing on the facts of the case, and make its own determination regarding whether the student should be suspended, and if so, for how long. The statute is quite clear that if option (2) above is taken, then the hearing is closed to the public: "notwithstanding any provision of the open meetings laws compiled in title 8, chapter 44, or other law to the contrary, the hearing shall be closed to the public" My question, which does not appear to be addressed in the chapter, is how the review on the record is to be handled. Our Board's practice is to allow the student's attorney/other representative to appear and address the Board regarding the decision and to allow Board members to ask questions—essentially treating this as an appellate court proceeding. It seems to me that even if we managed not to use the student's name in the hearing, we'd still be violating the student's privacy by discussing anything fact-specific in this proceeding. Therefore, I don't see any alternative but to treat our review on the record the same way we do an actual hearing, and close that to the public, as well. What are your thoughts? By the way, not to put any pressure on you, but the proceeding in question is tomorrow night, so if you can give me your thoughts tomorrow, that would be great.

60

As I reviewed TCA Sec. 8-44-102, I note the requirement for a "public body" includes a quorum requirement in order to make decisions. Since this body does not have a quorum requirement and since they do not make official decisions (just deliberate and make recommendations), are they subject to the open meetings act?

61

I have been reviewing Tenn. Code Ann. Section 49-6-3401 and cases in other states for the better part of the day. It is clear to me from the language of the statute, that the appeal before the disciplinary hearing authority is not closed to the public, at least pursuant to state statute. In looking at the cases from other states, FERPA has not come into play because the states where these cases come from have statutory provisions that close the proceedings. There is a recent Tennessee Supreme Court opinion that I am sure you have reviewed, *Heyne v. Metropolitan Nashville Board of Public Education*, 380 S.W. 3d 715 (Tenn. 2012)<http://caselaw.findlaw.com/tn-supreme-court/1612695.html>, that examines a school disciplinary proceeding and while the focus of the opinion is not the proceedings being open or closed, I did find it interesting that the policy of Davidson County Schools at the time of the case and now is that only the deliberations of the hearing authority are conducted in executive session<http://www.mnps.org/AssetFactory.aspx?did=61645>. I am not sure what that is based upon, but I have a call in with Metro Legal to discuss the matter. Neither the court nor the parent found this part of the process to be problematic. I also ordered the legislative history on this provision this morning. At this juncture, I am not comfortable providing an opinion. I need to study this issue further.

The issue was subsequently worked out between the parties.

Yes, I still think that the body is subject to the open meetings act. There are a couple of unreported opinions, *State ex rel. Matthews v. Shelby County Board of Commissioners*, 1990 WL 29276 (Tenn. Ct. App. March 21, 1990) and *Littleton v. City of Kingston*, 1990 WL 198240 (Tenn. Ct. App. Dec. 10, 1990), that address the issue of quorum requirements. Essentially the courts in these cases held that a governing body cannot bypass the requirements of the open meetings act by asserting that because there is no quorum requirement, the governing body is not subject to the open meetings act.

62	<p>There will be a fairly high profile civil mediation case (actually four cases combined) starting this Monday. Randall York, the District Attorney General, invited the Crossville City Council to attend and participate (Crossville is not a party in the lawsuits) without securing permission from any of the parties to the lawsuits. This is all based on a proposed solution by the Crossville Mayor. It has not even been voted on by the city council. The Crossville City Council made this a work session that I maintain, like many others including my County Commissioner, Joe Koester, that Crossville's participation opened up the mediation to the public or at least the part that the city council is party to. Can you please share some guidance?</p>	<p>The fact that multiple members of the City Council will likely be at the mediation, does not trigger the open meetings act. The open meetings act would only be triggered if multiple members deliberated towards a decision or made a decision on City business at the mediation. If the members are there to simply observe, or if they are there to provide information only, the open meetings act is not triggered.</p>
63	<p>Are charter study committee meetings, regional planning meetings, and zoning board meetings subject to the open meetings act; and do they have to be posted prior to the meetings?</p>	<p>Yes, they are no different than any other meeting.</p>
64	<p>I have two questions regarding open meetings that I hope you won't mind addressing.</p> <ol style="list-style-type: none"> 1. If MTAS conducts a training session for members of the Brentwood Planning Commission in accordance with TCA 13-4-101(c), should the session be considered an open meeting, with adequate public notice required? 2. A City Commissioner, who also serves on the Planning Commission, has announced that he will conduct monthly roundtable meetings to discuss pending developments in the City. The meetings are to be open to the general public. If another City Commissioner or Planning Commissioner wants to attend, should a notice of the meeting be published? Would it make any difference if the City Commissioner or Planning Commissioner who attends does not actively participate but only observes? 	<ol style="list-style-type: none"> 1. I do not think that the Planning Commission is required to notice the training and have it open to the public as long as the Commissioners do not deliberate towards or make any decisions during the training. I think that they will need to be careful that they do not ask questions like, "...but what if I (we) want to do x or vote a certain way on an issue" and then build on those questions based upon the answers provided. I have seen those situations quickly turn into deliberation. I always stress to individuals the boundaries of what can and cannot occur during a training session if the session is not going to be noticed and open to the public. If there is any question about whether or not these boundaries can be adhered to, it may not be a good idea. Just out of an abundance of caution, you might consider noticing the meeting and making it open to the public. 2. If the roundtables are for informational purposes only, I do not think that the roundtables have to be noticed because another Commissioner is in attendance. However, I also do not think that it is appropriate for the Commissioner to announce at the roundtable how he/she plans to vote on a particular issue or to discuss his/her views on an issue that is currently, or likely to come, before the Commission for consideration, if other Commissioners are present. If the roundtables are not going to be noticed, I think that the other Commissioners in attendance have to know that they are there only as observers and not for purposes of adding anything to the conversation unless it is information only (and not information about how they feel about an issue or how they plan to vote on an issue). If other Commissioners plan to attend, I think that this is another situation where they really have to be cognizant of what the boundaries of their participation are. I am sure that you have mentioned to them the Johnston v. Metropolitan Government of Nashville and Davidson County, 320 S.W. 3d 299 opinion at the attached link, but you might recommend that they read the opinion again. I think that the opinion is an excellent guide for members of governing bodies who are trying to get a grasp on what "deliberation" looks like. <p>http://scholar.google.com/scholar_case?case=16558852478029586046&q=johnston+v.+metro+nashville+daavidson+county&hl=en&as_sdt=2,43</p>
65	<p>Do you know whether a Grievance Committee meeting in Tennessee should be open to the public? I have heard both things and have found nothing in our bylaws regarding this.</p>	<p>Without knowing more about what the role and authority of the Grievance Committee is, I will say that if the purpose of the meeting is to deliberate towards or make a decision on what, if any, action should be taken against an employee or elected/appointed official or to deliberate or take action on what, if any, action should be recommended to the Commission to take, then I think that the open meetings act is triggered and the meeting would need to be noticed and open to the public. If you get some more specific information about the role and authority of the Committee please let me know.</p>
66	<p>Can a County Commission have the budget committee meeting with the public hearing on the same day as they presentation to the county commission?</p>	<p>Yes, but I would not do it back to back so that any changes that might come up as the result of the public comments can be folded into the budget that will be presented to the county commission</p>
67	<p>Property Tax Levy failed and a special meeting has been called. Do you have to have another public hearing to let</p>	<p>Her deadline passed by the time that I got into the office, but we did discuss the issues and I told her that the statute really does not address whether or not the County is required to hold another public hearing before taking up the issue and trying to come to an agreement for the</p>

	them address this again before they can have a special meeting?	second time.
68	I received a call from a media representative about the City Council interviewing for the City Attorney position and not having any minutes to document what occurred. When I called him he wanted to discuss what the Council should have done.	I sent him the AG opinion on interviews conducted by governing bodies and the requirement that these meetings be open to the public and adequately noticed.
69	<p>1. Can State Boards and Commissions establish Internet Forums like the ones described in Tenn. Code Ann. Section 8-44-109?</p> <p>2. Can they participate in meetings electronically?</p>	<p>1. No, that provision is limited to local governments and school boards.</p> <p>2. Yes, pursuant to Tenn. Code Ann. Section 8-44-108.</p>
70	<p>I am requesting your assistance regarding an Open Meetings matter and related public notice by the Loudon County Board of Education (LCBOE). The location of the school board called meeting was changed to the new Ft. Loudon Middle School. LCBOE workshops are now held at the County Office Bldg., and Board meetings are normally held at the Annex. A public notice (see attachment) was published in the July 24-25, 2013 News Herald, which states in part, "LCBOE Board Workshop July 30, 2013, 6:00pm at the new Fort Loudon Middle School Special Called Board Meeting Immediately Following." The newspaper notice did not describe or specify the reason for the called meeting or the action to be taken by the school board; does this notice comply with all requirements of the open meetings act? What about the actions to be taken by the school board at the Special Call meeting? In closing, I regularly attend workshop and board meetings and as such I receive agendas (see attachment) by e-mail. As a regular attendee, I cannot say what action, if any, is contemplated by the school board under Board agenda item VI, "Any Other Business Deemed Necessary by the Board or Director." What about Workshop agenda item "III. Consideration of the new FLMS and move in dates," is the board going to take action; who knows? The public is left uninformed and in the dark (guessing game), which is contrary to Open Government and transparency in government</p>	<p>Below is an analysis of what is required for special called meetings:</p> <p>The Tennessee Court of Appeals in Englewood Citizens for Alternate B v. The Town of Englewood set out a three-prong test related to the adequacy of notice for special called meeting. The court said that in order for notice to be adequate for a special called meeting, the notice has to be posted in a location where members of the community would see the notice, the notice must reasonably describe the purpose of the meeting or the proposed actions to be taken, and the notice must be posted in enough time that members of the community would have the opportunity to both become aware of the meeting and attend. Englewood Citizens for Alternate B v. The Town of Englewood, 1999 WL 419710 at * 2 (Tenn. Ct. App. June 24, 1999); See also Neese v. Paris Special School District, 813 S.W. 2d 432, 435-36 (Tenn. Ct. App. 1990). With regard to the first prong of the test, the Court held, "for purposes of this prong of the adequate notice inquiry, the town can provide adequate notice simply by choosing reasonable public locations and posting notices at those public locations on a consistent basis.[1]" Id. at *3. With regard to the second prong of the test related to the content of the notice, the Court held, "the general public must be made aware of the issues to be deliberated at the special meeting through notice designed to inform the public about those issues." Id. at * 4. Based upon the statutory provision set out above and the language in Englewood, it is the opinion of this office that a governing body can only deliberate towards or make decisions on public business at special called meetings when the content of the notice reasonably describes the issues to be addressed at the meeting and the notice is posted far enough in advance of a meeting and in locations that would fairly inform the public that a meeting was scheduled to occur. As you know from previous communications, this analysis only applies to special called meetings. If the workshops are regularly scheduled, the case law in Tennessee has generally held that there is no requirement that the agenda for that meeting be posted or provided to the public prior to the meeting. Recently there has been a case in federal court in Tennessee that found a violation when a governing body took up an issue of "significant" public concern that was not included on the agenda for a regularly scheduled meeting. I went to the Loudon County School's website and there is an agenda for both meetings posted. Were the agendas that are online ever posted in the newspaper? As indicated above, during a special called meeting, only those items that are included in the notice should be brought up at the meeting, so there should not be any public business taken up under "any other business deemed necessary by the Board or Director." Given the fact that the meeting is scheduled for this evening, I called the attorney for the School Board and made him aware of the possible issues with the notice for the meetings scheduled for tonight. An open meetings letter will follow.</p>
71	He is conducting a training session on the open meetings act and he has a number of questions related to the act.	We discussed his questions which ranged from general questions like is it a violation for multiple members to eat together to more specific questions related to email communications and notice requirements. I provided him some citations to some cases and some AG opinions.

72	<p>The City of Gallatin is in the midst of hiring a new HR Director. All candidates have been interviewed. The Council, in a committee of the whole meeting, decided to have each council member rank the remaining six candidates to reflect each member's personal evaluation of the candidates. The sheets would then be compiled to give each candidate a composite score. The composite score would then be distributed at the next committee meeting. It's not a vote per se, but I think the process of ranking the individuals would be "deliberation" as contemplated by TCA Sec. 8-44-102. As such, I think each member should sign their name to the ranking sheet. I don't necessarily see a problem with the elected official completing the sheet outside of the meeting, as long as it has the official's name on it when it's turned in. Is my reasoning sound on this?</p>	<p>I think that if the decision about who is ultimately hired as the new HR Director is based upon the evaluations and who gets the highest score on the evaluations, each member does need to place his/her name on the evaluations because someone could very well equate those evaluations to the ballots that are referenced in Tenn. Code Ann. Section 8-44-104. I think that it would be good to have the evaluations passed out and taken up during the course of the same public meeting so that there is not that time in between where members could inadvertently discuss the evaluations with one another or the public perceive that the lag time was so that they could. I see the evaluations more akin to the ballots than to deliberation since my assumption is that the Council members are not going to be discussing how they evaluated the candidates with one another before completing the evaluations. Also, I think that it is a good idea for the Council members to be reminded that those evaluations will be open for public inspection once they are completed. Please let me know if you want to discuss.</p>
73	<p>If the Board is going to have a retreat, are they required to provide notice to the public?</p>	<p>Yes, the notice for the retreat needs to be the same as any other notice, if the members will be deliberating or making decisions during the retreat.</p>
74	<p>Without reference to anything particular that may have been discussed, or deliberated on and voted upon at a later advertised meeting, is it your opinion that a Director of Schools and a 5 member Board of Education that meets for a two-day retreat must advertise this meeting? I am familiar with the Neese v. Paris Special School District case, 813 S.W. 2d 432, in which the Court finds that an out of state retreat attended by the Superintendent and 4 of 7 Board Members was a "meeting" for the purpose of the Public Meetings Act. The Court found the notice inadequate, but held that the violation was essentially corrected at a later meeting. Should notice of a Board Retreat be given? Does it make any difference if the retreat is held in the same county that the Board represents, as opposed to another county, or out of state?</p>	<p>It is the opinion of this office that a governing body must provide adequate notice to the public and allow the public to attend any "meeting" that is held by the governing body. So, if a School Board deliberates towards or makes decisions on public business during the course of a retreat, the retreat needs to be adequately noticed and open to the public, regardless of the location. Please let me know if you want to discuss.</p>
75	<p>The County Commission has not passed the budget yet. Last night, the Health and Welfare Committee met and during the meeting, several of the County Commissioners decided to discuss various issues related to the budget. Additionally a form was passed out for the members of the Committee as well as the other Commissioners attending the meeting to fill out related to what they wanted to see funded or not funded in the budget. This issue was not on the agenda.</p>	<p>An open meetings letter was sent to the Chair of the Health and Welfare Committee as well as the chair of the County Commission regarding discussing issues at a special called meeting that are not on the agenda.</p>

76	<p>He had some general questions about the open meetings act and what kind of electronic communication was appropriate for a governing body to have. He also wanted to discuss the penalties for violating the open meetings act.</p>	<p>There is a commissioner where he lives that has missed all of the meetings except one, but the commissioner told him that he keeps informed and voices his opinion through email.</p>	<p>I discussed with him the provisions of the open meetings act and then told him that the members of a governing body could not deliberate or make decisions outside of an adequately noticed meeting.</p>
77	<p>Can the Rutherford County Planning Commission meet with citizens about a project outside of a noticed meeting?</p>		<p>It is my understanding after speaking with Lori Bernard that you had some constituents call and question whether or not the Rutherford County Planning Commission would be precluded by the Open Meetings Act from meeting with them about a development proposal that is to be discussed and possibly voted upon at the Rutherford County Planning Commission meeting on Monday night. The answer to that is that it depends on what your constituents are wanting to occur at the meeting. If the individuals who have concerns about this proposed development only want to meet and inform the Commissioners of their concerns without the Commissioners responding to them, that would not trigger the open meetings act. However, if what they are looking to do is meet with the Commissioners, voice their concerns, and get some feedback from the Commissioners about how they will be addressing, or are planning to address, the concerns voiced, that would trigger the open meetings act and could only be done in an adequately noticed public meeting. See Tenn. Code Ann. Section 8-44-101 et seq. With regard to the first scenario outlined above, I often suggest that governing bodies not engage in these types of meetings. I am aware of a number of governing bodies that have gone into meetings intending only to listen, but during the course of listening, have deliberated on the issues that were presented to them. If the Commissioners began to deliberate, they would be in violation of the open meetings act, which then creates a number of other issues. Here are a few things that your constituents might want to think about doing as an alternative to meeting with the entire Commission at one time (none of these suggestions run afoul of the open meetings act):</p> <ol style="list-style-type: none"> 1. Each person can send an email/letter to his/her Commissioner or the entire Commission expressing his/her concerns. 2. Each person can try to schedule a meeting with his/her Commissioner or a meeting with each Commissioner separately before Monday's meeting. 3. This is the agenda for the meeting Monday night. http://www.rutherfordcountyttn.gov/planning/documents/08122013pc.pdf. Some of the individuals concerned about this project might want to contact the Director of the Planning Department and ask that the public be allowed to comment on the proposal at the meeting. The Commission is not required to allow public comment, but the request can still be made. <p>Please let me know if you have other questions or would like to discuss further.</p>
78		<p>I have filed an official complaint on the Comptroller's website, and this attachment is a part of that complaint. Please let me know if you need any additional information. I had really hoped this behavior would change at THDA with change of Executive Director at the end of last year. The board chair wasn't forced out with the old E.D. and that seems to have been a mistake, as the behavior of the board continues.</p>	<p>After reading the complaint that you submitted, it does not appear to me, based solely off of the facts that you presented, that anything happened that violated the open meetings act. My understanding of what occurred, based upon what you outlined in your email, is that members of THDA and staff for THDA met with members of the National Housing and Rehabilitation Association's Tennessee Developers Council. During this meeting, a presentation was given by members of the National Housing and Rehabilitation Association's Tennessee Developers Council. There is nothing in your email that indicates that members of THDA deliberated towards a decision or made a decision on public business during the course of this meeting. Deliberation or decision making is what triggers the open meetings act. I have attached two links to two cases for your review. The court held in both of these cases that the dissemination and/or presentation of information by or to multiple members of a governing body does not constitute a violation of the open meetings act.</p> <p>http://www.tncourts.gov/sites/default/files/benefitsconsultingalliance_opn.pdf http://www.lawyer.com/cases/16558852478029586046.html</p> <p>Please let me know if you have questions.</p>
79	<p>In order for members of a board to participate in a meeting electronically, what will need to be shown as far as necessity?</p>		<p>I explained that the finding of necessity was only required when a quorum was not physically present at the location of the meeting. I also explained that those need to be emergency type situations and not action items that can wait until the next meeting or another time when a physical quorum can come together.</p>
80		<p>She filed an open meetings complaint against Knox County. Notes are attached from the phone call.</p>	<p>An open meetings letter was sent to the Knox County Audit Committee about the lack of public notice and minutes of the lunch meetings that are held by the members where deliberation takes place on agenda and other business issues. The letter also addressed the fact that under an agenda item that indicated that the board would be "discussing" the structure and future organization of the internal auditor function, the Audit Committee voted to recommend to the County Commission that the current internal auditor be fired. Additionally, the letter addressed the fact that the chairman of the Audit Committee admitted in a public meeting that he only had lunch with certain members of the</p>

Committee for the purpose of counting votes.

He received my open meetings letter and wanted to discuss some general questions he had about the open meetings act and he also wanted to know if he could meet with the Commissioners outside of a public meeting and discuss how they needed to be more aware of and adhere to the requirements of the open meetings act.

We discussed the requirements of the Act and then I told him no, any discussion that he wanted to have needed to be in an adequately noticed public meeting, if there was any possibility that the conversation would turn from providing educational information to deliberating or making decisions.

81

Per our phone conversation today, I would appreciate you sending me all the public information relating to a complaint filed against a Maury County Commissioner, Mr. John Goodloe. I wasn't present for this meeting but intend to investigate it as I consider any complaint filed as being serious.

Per your request, attached are all of the records that I maintain related to the letter that was sent last week. We also discussed the various issues set out in the letter and what the law says about the issues.

82

In accordance with Knox County Law Director Bud Armstrong's own Memorandum on the Tennessee Open Meetings Act, dated August 5, 2013 and addressed to the Knox County Commission and the Knox County School Board of Education, would you agree that by the members of the Knox County Audit Committee meeting at the public noticed lunches of July 3, 2013 (Commissioner Amy Broyles, Commissioner Ed Shouse, and Audit Committee Chair Joe Carcello) and July 5, 2013 (Commissioner Dave Wright and Knox County Audit Committee Chair Joe Carcello) and discussing items that were on an upcoming agenda (i.e. the role and function of the Knox County Internal Audit Department) that this was in direct violation of Chancellor Fansler's permanent injunction placed on Knox County Commission in 2007? What follows is a link to the complete memorandum and I have included and highlighted pertinent points from the same.

<http://s3.documentcloud.org/documents/748691/memorandum-on-tennessees-open-meetings-act.txt>

This is an opinion from Law Director Armstrong dated August 5, 2013 opining on the Open Meetings Act with respect to the Joint Education Committee consisting of Knox County Commissioners and Knox County Board of Education members. Pertinent points from the text: Under Summary of Opinion Discussion: 3. Knox County Commission is under a permanent injunction issued by the Knox County Chancery Court enjoining any meetings in circumvention of the broad policies of the Sunshine Law. That case sets out that violations of the injunction may be punished by criminal contempt. The act requires that all meetings of governing bodies are declared public meetings: 8-44-102. Open meetings -- "Governing body" defined "Meeting" defined. 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. The act then defines a governing body: 53-44-102. Open meetings "Governing body" defined "Meeting" defined. (1) "Governing body" means: (A) 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 and also means a community action agency which administers community action programs under the provisions of 42 U.S.C. 2790 [repealed]. Any governing body so defined by this section

As I indicated in the letter that I sent to the Audit Committee Chairman, because I have no firsthand knowledge of all of the facts and circumstances surrounded these meetings, I am not willing to say whether or not a violation actually occurred. However, to the extent that these lunches are not scheduled by resolution or ordinance, they are special called meetings. As such, it is the opinion of this office that in order for the notice for a special called meeting to be adequate, the content of the notice must make the public "aware of the issues to be deliberated at the special called meeting through notice designed to inform the public about those issues." Englewood Citizens for Alternate B v. Town of Englewood, 1999 WL 419710 (Tenn. Ct. App. June 24, 1999) and see also Neese v. Paris Special School District, 813 S.W. 2d 432, 435 (Tenn. Ct. App. 1990).

shall remain so defined, notwithstanding the fact that such governing body may have designated itself as a negotiation committee for collective bargaining purposes, and strategy sessions of a governing body under such circumstances shall be open to the public at all times; The Tennessee Supreme Court has issued opinions interpreting this statute. The analysis of the court commences with the underlying policy of the statute which is that formation of public policy and public decisions shall not be conducted in secret. The Knox County Injunction Chancellor Fansler set forth a very detailed analysis of the law, which now binds the County. Below are cogent quotes from Chancellor Fansler's opinion. These are important as they are instructive as to how the Knox County Courts will analyze the issues if brought before them. It has been said that "members of a public body may freely discuss their grandchildren, the price of a cruise, the weather, events occurring in the former Soviet Union, books and movies, their vacations and a host of other topics of interest to their personal lives or their professional lives". Schwing, supra, at 6.24. They may not discuss, however, the items set on the next agenda for the public body on which they serve, nor subjects within the jurisdiction or scope of responsibility of the public body. Items that can properly appear on an agenda of the public body and subjects on which it is empowered to act or advise are similarly forbidden for non-complying discussion by the members of the public body. When the topics for discussion and decision are such as would appropriately be addressed at a meeting of the public body, then the Open Meetings Act is applicable to the subject matter of the discussion. Id. at 6.24.

Therefore, based upon the law and the permanent injunction, this office cannot advise members of the committee that they can meet privately and discuss matters, among themselves which may be brought before either the BOB or the Knox County Commission. This office advises that such an action by any commissioner would violate the injunction.

84	<p>I have some questions about the open meetings law. What is "deliberations"? When can a governing body go into executive session and what can the members do in executive session? Does an executive session have to be noticed?</p>	<p>We discussed the issues that she presented and I emailed her the links to some cases on the issues for her to review.</p> <p>http://www.lawyer.com/cases/16558852478029586046.html (deliberation)</p> <p>http://scholar.google.com/scholar_case?case=13075839896385948366&q=smith+county+education+association+v.+anderson&hl=en&as_sdt=2,43 (executive session)</p> <p>http://scholar.google.com/scholar_case?case=5550479837237382486&q=putnam+county+education+association+v.+putnam+county+commission&hl=en&as_sdt=2,43 (executive session)</p>
85	<p>The City Council is failing to comply with the open meetings law regarding a charter change in the City of Columbia.</p>	<p>We discussed the fact that any meeting where decisions were being made by the Charter Commission or the members were deliberating towards decisions was required to be publically noticed and open to the public. If the Commission was not meeting for either of these purposes, but instead to obtain information, the meetings were not required to be open to the public and noticed.</p>
86	<p>I'm working on some updated policies for the board, among which are the timing of meeting notices and agendas. Would the following be sufficient? The board will strive to publish meeting notices on its website and distribute them to county election commissions at least ten (10) days prior to the meeting date. Agendas will be posted and distributed seven (7) days prior to a scheduled meeting. Candidates should submit their affidavits and other evidence not later than seven (7) days prior to the meeting at which they wish to be heard. Candidates submitting materials less than seven (7) days prior to a scheduled meeting will be placed on the next available agenda. Additionally, the board allows other individuals to challenge a candidate's qualifications prior to certification. (This process is not in the statute but is part of the board's policies).</p> <p>I don't want this to become a trap where someone shows up the day of the meeting with a list of allegations that the candidate and board have not seen, so I'd also like to propose the following:</p> <p>Any challenge must be filed at least three (3) days prior to the meeting at which a candidate's qualifications are to be reviewed. If a challenge is filed less than three (3) days prior to the meeting at which a candidate's qualifications are to be reviewed, the candidate and challenge shall be moved to the next available agenda.</p> <p>Challenges filed against candidates on the Board's final agenda prior to the qualifying deadline must be filed at least one (1) day prior the meeting at which the candidate's qualifications are to be reviewed.</p> <p>I think/hope I'm operating within the confines of the open meetings law, but wanted to double check.</p>	<p>I reviewed the statute dealing with these meetings with Andrew and we discussed whether or not the three day time frame would conflict with any of the other time frames in the statute. He said, "no," and I told him that the policy looks good to me, but I would always add, as an action item for the meetings, that members will consider the candidates and hear any appeals. They need to have that on the agenda even if there are no appeals because there will not be enough time to amend the agenda once they know that someone is going to challenge a candidate.</p>

87	<p>He is the chair of the Douglas Henry State Museum Commission and one of the subcommittees wants to meet; but in order for them to have a quorum, one of the members would need to participate electronically. Can they do that?</p>	<p>I told him that I did not suggest that they meet electronically because the language in Tenn. Code Ann. 8-44-108 speaks about Boards, Commissions, etc. and not the subcommittees.</p>
88	<p>(1) Does a local county board have any obligation to make audio recordings of their open meetings? (2) Is there any obligation to maintain audio recordings for a certain amount of time? (3) Even if there is not an obligation to record the open meeting, if the board does record the meeting, do they then have an affirmative duty to maintain the recordings for a certain amount of time?</p>	<p>1. No, the board is not obligated pursuant to the Public Records Act. 2. If the recordings are not the official minutes, then I would advise that they at least be maintained until such time as the minutes are approved, but after that, I do not think that there is a required retention period for the recordings. If it is a controversial issue or an issue that is related to a matter where litigation is threatened or pending, the tapes may need to be maintained longer. I have attached the link to the CTAS Retention schedule for your review.http://ctas-eli.ctas.tennessee.edu/printpdf/book/export/html/2068. 3. I do not think that they have an affirmative duty based upon the retention schedule that I have provided the link to above, but I do not suggest that the recording be destroyed before the minutes are approved; and, if they have them and a request is made for them, they have to be provided.</p>
89	<p>The Board of Zoning Appeals is meeting for the first time in several years next week and staff with the Planning Office want to meet with the members today to tell them what to expect. No notice has been provided to the public of this meeting. Is it legal?</p>	<p>As long as the members do not deliberate towards or make any decisions on public business, the open meetings act is not triggered, but they need to be very careful about what they do and they might want to consider posting notice today for a special called meeting on Friday to review these issues.</p>

I am a homeowner of a townhouse complex in Nashville known as the Burlington Homeowners' Association. Does the open meetings law apply to the monthly Board of Director's meeting of our HOA?

No, the open meetings act only applies to governmental entities and private entities that are operating as the functional equivalent of a governmental entity. However, I looked the Association up on the Secretary of State's website and it appears to be an active and registered non-profit. <https://tnbear.tn.gov/Ecommerce/FilingDetail.aspx?CN=247149167235092065096238137173032052011146189144>.

As such, the provisions of Tenn. Code Ann. Section 48-57-101 et seq. apply. I have copied and pasted some of the provision that are applicable to your question. You may want to contact a private attorney if you have additional questions.

48-57-101. Annual meeting.

- (a) At a time stated in or fixed in accordance with the bylaws, a corporation with members shall hold annually a meeting of its members.
- (b) Annual membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.
- (c) At the annual meeting:
 - (1) The president and chief financial officer shall report on the activities and financial condition of the corporation; and
 - (2) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of § 48-57-105.
- (d) The failure to hold an annual meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

48-57-102. Special meeting.

- (a) A corporation with members shall hold a special meeting of members:
 - (1) On call of its board of directors or the person or persons authorized to do so by the charter or bylaws; or
 - (2) Unless the charter otherwise provides, if the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held.
- (b) If not otherwise fixed under § 48-57-103 or § 48-57-107, the record date for determining the members entitled to demand a special meeting is the date the first member signs the demand.
- (c) If a notice for a special meeting demanded under subdivision (a)(2) is not given pursuant to § 48-57-105 within one (1) month after the effective date of the written demand or demands under § 48-51-202, regardless of the requirements of subsection (d), any person or persons signing the demand or demands may set the time and place of the meeting and give notice pursuant to § 48-57-105.
- (d) Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.
- (e) Only business within the purpose or purposes described in the meeting notice required by § 48-57-105 may be conducted at a special meeting of members.

48-57-104. Action by written consent.

- (a) Action required or permitted by chapters 51-68 of this title to be taken at a meeting of members may be taken without a meeting if all members entitled to vote on the action consent in writing to taking such action without a meeting. If all members entitled to vote on the action consent in writing to taking such action without a meeting, the affirmative vote of the number of votes that would be necessary to authorize or take such action at a meeting shall be the act of the members. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each member entitled to vote on the action in one (1) or more counterparts, indicating each signing member's vote or abstention on the action and delivered to the corporation for inclusion in the minutes or filing with the corporate records.
- (b) If not otherwise determined under § 48-57-103 or § 48-57-107, the record date for determining members entitled to take such action without a meeting is the date the first member signs the consent under subsection (a).
- (c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

48-57-105. Notice of meeting.

(a) A corporation shall give notice consistent with its charter or bylaws of meetings of members in a fair and reasonable manner.

(b) Any notice which conforms to the requirements of subsection(c) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered.

(c) Notice is fair and reasonable if:

(1) The corporation notifies its members of the place, date and time of each annual and special meeting of members no fewer than ten (10) days nor more than two (2) months before the meeting date;

(2) Notice of an annual meeting includes a description of any matter or matters which must be approved by the members under § 48-58-302, § 48-58-507, § 48-60-103, § 48-60-202, § 48-61-103, § 48-62-102 or § 48-64-102; and

(3) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual or special meeting of members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under § 48-57-107, however, notice of the adjourned meeting must be given under this section to the members of record of the new record date.

(e) When giving notice of an annual or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:

(1) Requested in writing to do so by a person entitled to call a special meeting; and

(2) The request is received by the secretary or president of the corporation at least ten (10) days before the corporation gives notice of the meeting.

(f) A certificate of the secretary or other person giving the notice that the notice required by this section has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

The South Pittsburg Mayor stated in the public City meeting last week that she wanted to know who at the newspaper had reported that the City was doing something illegal regarding the taxes being raised. I have no problem with them knowing I emailed you to ask if what they were doing was legal. I assume your office is completely professional and did not approach them the way the Mayor stated, but I did want to hear from you guys before I respond to the Mayor. Also, when you and Elisha called me back the other day, regarding what she found out about the taxes, she stated that she was told the city had not raised taxes. The Mayor was on Channel 3 and in the Chattanooga Free Press this week discussing the fact that the City raised taxes. The article states that the City voted unanimously last month to raise the taxes.

I explained to her what my conversation was with the Mayor and I also told her that we did not say that there was not an increase because at the time of the interview, the Comptroller's Office had received the information on the increase. What I said was that the increase did not go into affect on July 1, 2013.

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The Oak Ridge IDB is considering public participation in the redevelopment of of a mall property in the center of our city. The overall project will surely entail more than \$10 million. The proposed TIF will very likely entail millions of public dollars. On 9/10 the IDB gave public notice of a public hearing on the project to be held on 9/26. They also gave public notice of a special called meeting of the IDB, following the public hearing, to consider the TIF resolution. They published the agenda for the 9/26 meeting on 9/18. Yesterday I made an Open Records Act request for a copy of the TIF Resolution to be considered on 9/26. As you can see from the dialogue included in my email, my request was denied today. I believe that that document exists and that it is an important public document. I am a citizen of Oak Ridge and I believe my request was properly framed. Since time will be of the essence for the public to be able to understand what is undoubtedly a complicated document, I request that you make an informal investigation into what appears to possibly be an improper denial of my open records act document request.

I spoke with Ms. Sexton this morning and was told that the meeting scheduled for September 26, 2013 has been canceled. She did not indicate that a resolution did not exist, just that she did not have a copy of it. She said that she was expecting it to come to her either over the weekend or early next week after more work was done on it. Since you have made the request to Ms. Sexton and she doesn't have a copy of it, it appears her response was appropriate. If you know who the individuals are that are working on the resolution, you may want to make a request directly to those individuals for any draft versions of the resolution that currently exists (assuming that it has not been finalized). You may also want to make a request to the Chair of the IDB and the City Attorney to make the finalized version of the resolution publically available as soon as possible so that the public will be more informed about what they are commenting on at the public hearing.

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The Morristown City Council held a retreat/workshop in Kingsport on Friday and Saturday (9/13/13 and 9/14/13). On 9/17/13, the three council members who make up the Finance Committee of the City of Morristown met. These members of the Finance Committee voted 3-0 to recommend to the full council a budget amendment that would give the City Administrator an additional \$7,000 in deferred compensation. Below is a link to a 1 minute video of the Finance Committee (9/17/13) where the vote to recommend the increase to the deferred compensation package was taken without discussion or deliberation but with a reference by Chairman Gary Chesney to the fact that this was an item discussed and agreed upon at the Kingsport workshop/retreat held the previous weekend (9/13/13 and 9/13/14). Six members of the seven-members City Council were present at the Kingsport workshop/retreat. The Mayor was there briefly on 9/13/13 but apparently left shortly after he arrived and did not return on Saturday.
http://www.youtube.com/edit?video_id=fqiLL1VdQn8&ns=1&o=U

Attached is the Public Notice from the 09/06/13 newspaper with an "agenda" for the workshop/retreat. Also attached is a "draft agenda." Neither "agenda" makes reference to discussion of or deliberation on an increase to Administrator Cox's comp package. I was present and taped most of the meeting on Saturday (9/14/13) from about 9:45 to the conclusion of the meeting. Based upon Mr. Chesney's comments and the complete lack of discussion or deliberation on the budget amendment at the Finance Committee, it appears that the six council members had already discussed, deliberated, and reached a decision at the Kingsport workshop to come back to Morristown and vote to increase the Administrator's compensation package.

1. In light of the agenda(s) for the special called workshop meeting and the video of the introduction and vote on the budget amendment at the Finance Committee meeting, I would like your opinion as to whether council members at the Kingsport workshop appear to have violated the open meetings act in discussing and apparently agreeing, according to Chairman Chesney, on additional deferred compensation for the Administrator at the workshop.

2. If there appears to have been a violation of the open

Without knowing whether or not a final agenda was distributed that included the deferred compensation item, I can only say that it appears that the retreat was a special called meeting and as such, it is the opinion of this office that as a special called meeting, both the notice and agenda should have included consideration of the deferred compensation increase in order for the meeting to have complied with the open meetings act. If the notice and agenda did not include this issue, and the members deliberated towards or made a decision on the issue during the retreat, it is possible that an open meetings violation occurred. The courts in Tennessee have held that in order for any governmental entity to cure a violation, the entity that considered the matter in violation of the open meetings act is required to give new and substantial reconsideration to the issue at an adequately noticed public meeting.

meetings act at the Kingsport workshop with regard to deliberations and/or an agreed decision on additional deferred compensation for the administrator, please provide your opinion on whether the actions of the Finance Committee cured that violation or whether the violation continues until such time as the full council takes up this matter in a properly noticed meeting. Of course, any additional information or comments that you might provide would be appreciated. Upon the recommendation of the Finance Committee, the \$7000 increase is to be placed on the Oct 1, 2013 council agenda for a vote by the full council.

I have asked the City of Algood, Tennessee's City Administrator, Keith Morrison, for a copy of the 2013-2014 budget. He said the only way I can get a copy is to fill out an open records request. Will they charge me a fee for this? Is this the only way that I can get a copy to file an open records request? Usually when I ask for records the City charges me for them. See the attached resolution.

I have attached a copy of the City's ordinance related to fees for copies of public records. Per this ordinance, the City is permitted to charge you a per page fee for a copy of the budget as well as any labor in excess of one (1) hour for making the requested copies. Additionally, per the ordinance and per Tenn. Code Ann. Section 10-7-503(a)(7), you can be required to make your request in writing since you are requesting copies. Please let me know if you have other questions.

95	<p>As a citizen of the city of Jellico, I'm asking for your opinion on how city business is being conducted, whether wrong or right. The council voted for the first reading to raise our property tax from 1.15 to 2.15 per hundred of value on Thursday, September 19th. The Mayor set a special called meeting for Monday, September 23 for the second reading but they did not set a public hearing meeting before the special called to give the citizens a chance for their voice to be heard. This is a violation of our charter! Is this official oppression, by the Mayor, not to handle this in the proper manner? He has a history of not adhering to the charter or the code of ethics ordinance that is on file with the State. I would like your opinion on this matter so it can be taken care of before the end of the month. The tax bill is to be mailed out on October 1st!</p>	<p>I referred her to the City Attorney because the issue is not an open meetings issue. The issue is related to the reading of the ordinance and the time in between the readings. I also contacted Ron and let him know that it does not appear that the charter provisions were followed.</p>
96	<p>Does your office also answer questions regarding open meetings? I have a question for a charter school that I'm on the board for. We're trying to do voting by email, but I'm not sure if the statute allows for it. If you do answer questions, would you have a minute to talk?</p>	<p>Tenn. Code Ann. Section 49-13-111 requires the meetings of the governing body of a charter school to be held in compliance with the open meetings act (Tenn. Code Ann. Section 8-44-101 et seq.). There is no entity that is subject to the open meetings act that is allowed to vote by email. Tenn. Code Ann. Section 8-44-108 allows state level agencies and the City of Belle Meade to hold meetings through electronic means, but based upon the language in Tenn. Code Ann. Section 8-44-108(c)(3), it appears that the electronic means contemplated is via audible transmission.</p>
97	<p>Can you point me to an opinion or case law regarding whether negotiating teams representing governing bodies are subject to the open meetings act? In this case, a team of administrative personnel is tasked to negotiate with teachers on behalf of the Board of Education.</p>	<p>Please take a look at Tenn. Att'y. Gen. Op. 78-253 (June 20, 1978). This is the only opinion I found that appears to be somewhat applicable.</p>

Am I wrong to believe this way? Should I quit going to public meetings as they are not public? What kind of action can someone take on a matter such as this. Please give me some feed back as there is another special call meeting for 4:00 pm Friday Sept. 4th. It is so frustrating when you can't get your questions answered by a mayor who is suppose to have an open door to the public and he stays locked behind closed doors at city hall. There are no words written in our city charter to the effect of not being able to speak at any meeting open to the public. Our freedoms are taken away by Mayor Stiers.

I am a citizen of Jellico, Tn...and have been going to council meetings for 14 years. Mayor Stiers is the only mayor in all these years that has elected to not let the citizen speak (except) at a regular monthly meeting on the agenda (at the beginning of a meeting where it calls for grievances) after that, no citizen is allowed to speak, not even to make a comment on a debate going on at the council table. He has many special called meetings each month in which no one is allowed to speak except those at the table. In my opinion, this is official oppression. I myself was at a special call on Sept. 15th and just started to ask a question about what he had been talking about and didn't even get my question asked, only spoke four words and he had two cops escort me out of the building. It's not the first time he's done this, he's done it to others many times. I believe it's wrong that we (a citizen) don't have a voice or can't be heard on any issue including our taxes being raised almost 100%. If you like, you can call any council member on that board and they will tell you what I say here is true.

I told Ms. Leech that the City Council was only required to allow her to speak at public hearings, not public meetings because the courts in Tennessee have held that citizens have the right to observe the process, but not participate in it. However, if they want to allow citizens to speak, they can; and they can establish procedures around citizens speaking. I told her to contact her elected official about this issue and maybe it can be discussed publicly at a meeting.

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Can the City Council refuse to allow individuals to speak during a public meeting? Can citizens get together and discuss issues related to government business?

Yes; the case law in Tennessee says that citizens have the right to observe the process, but not participate in it. Yes, citizens can get together, but the City is not required to sponsor the meeting.

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I have been trying to learn more about the open meetings act and how it affects "personnel matters". I have gotten some conflicting information and hope you can clear it up for me. In the state of Tennessee, when a board wishes to discuss a personnel issue can that be done privately by the board and/or the executive committee of the board? By personnel matter I am referring to discussing performance reviews, compensation packages, and misconduct by a board member. Must these type of meetings also be open to the public in Tennessee?

Tenn. Code Ann. Section 8-44-102 sets out the types of entities that are subject to the open meetings act. Additionally, I have attached the link to an Attorney General's opinion that further describes the types of entities that are subject to the open meetings act. <http://www.tn.gov/attorneygeneral/op/2009/op/op68.pdf>. To specifically address your question, Tenn. Code Ann. Section 8-44-102(b)(1)(B) is the only provision in the open meetings act that allows certain types of Board of Directors for non-profit entities to meet in executive session to discuss personnel issues. This provision reads:
The board of directors of any nonprofit corporation which contracts with a state agency to receive community grant funds in consideration for rendering specified services to the public; provided, that community grant funds comprise at least thirty percent (30%) of the total annual income of such corporation. Except such meetings of the board of directors of such nonprofit corporation that are called solely to discuss matters involving confidential doctor-patient relationships, personnel matters or matters required to be kept confidential by federal or state law or by federal or state regulation shall not be covered under the provisions of this chapter, and no other matter shall be discussed at such meetings.
Based upon the information that I found on the website for McKamey, it does not appear that the entity receives State funding, which is a requirement for the above-cited provision to be applicable. However, I suggest that you speak with the attorney for the Board who can provide more information about that issue. Outside of this exception and the exception for audit committees, I am unaware of any other provision that allows an entity that is subject to the open meetings act to meet in executive session to discuss personnel issues that are not related to threatened or pending litigation. (The ability to meet in executive session is generally tied to a governing body meeting with its attorney to give the attorney facts about threatened or pending litigation and the attorney giving the governing body legal advice related to the threatened or pending litigation. Even in this type of executive session, entities are not allowed to deliberate or make decisions. All

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deliberation and/or decision making has to be done in an adequately noticed public meeting). Please let me know if you have additional questions.

I have emailed and also talked with several from the Comptrollers Office including Ron Queen, Elisha Hodge and Iris Haby on this one important subject of my city of Jellico, Tennessee about Mayor Les Stiers. To begin I will give you a heads up that began three years ago when he was elected. His church has since denounced him, the citizens have denounced him and the five of 6 new councilpersons are about to do the same. These new councilperson had never even been to a meeting much less knew what the charter said. There were only six people running for council so therefore they were all elected and five of the six was new to the political realm and didn't even know what a charter was. So Mr. Stiers, retired railroader who was going to make some big changes in our town and has certainly kept true to his word. His manipulation started the day they took the oath of office. (1) They abolished the power board and placed themselves (mayor & council) in that capacity. (2) He fired General Manager Betherum of the utilities. He gave that position to a friend that he could manipulate along with the new council... (3) He bought an old church building for 196,000.00 and now the loan on it stands at 250,000.00 because the first payment has yet to be made on it and it's been over two years. (4) He forced the Tourism Director Jake Bennett to resign in June 2012! (5) He forced Ms. Douglas, city recorder, to resign on Dec 4, 2012! (5) The IRS had not been paid for six quarters or 150,000.00, although he cosigned the check! (6) All the city insurance hadn't been paid and it was cancelled by Jan 1, 2013 and wasn't brought to council until April 1013 when the state called and had him park all city vehicles for lack of insurance. (7) Knowing there was no insurance he fired the City Fire Chief Gary Troxell because of an injury he sustained on the job and the council wasn't aware of this until the state made them aware because of no insurance. Then came the lawsuit by Troxell against the city with no insurance.... (8) When the mayor was in trouble he and the city lawyer Terry Basista advised the council to vote to pay a lawyer to defend Mayor Stiers against the Troxells suit, that they weren't aware of the firing for as least two months! They

Because this is also not an open meetings issue, I emailed the City Attorney about the complaint as I indicated that I would and requested that he confer with his client about the allegations being made.

did vote for the city (us taxpayers) to foot the bill for Mr. Stiers lawyer. (9) Last but not least he was told by the state to cut payroll 25%. He, without the council's approval yesterday cut our Public Library hours by 50%. Which means the Director of the Library Mark Tidwell will have his hours cut to 20 therefore he will be part time and lose his insurance. He also cut the assistant down to 20. Our city councilmen have finally wised up to Mr. Stiers shenanigans and have learned the hard way but I think it may be too late for our city. I am thankful that the state stepped in and put stipulations on his spending without the procedures brought forth in our charter. Also the firing of an individual with council approval....now this act of the Library without the council knowing it and they are all livid. I'm sure you know about it or will be hearing about it in the coming days. There's also an ouster suit that was filed Sept. 2012 that is on the docket to be heard next week in chancery court at Jacksboro on the 16th. Our city didn't have much money in the bank when Stiers was elected but it sure didn't stop him from spending and it wasn't on the bills. Because the important ones were not paid...like the taxes and insurance. Sorry to take up your time but I feel this town deserves an answer at least the council should be made aware of his decisions or if it can be done only by him. I'm one that believes in honesty and transparency but it has been lost. The council nor the citizens are aware of anything until it's over with~~~ Could you respond to me on this complaint? I need some kind of assurance that I trying anyway I know how to right the wrong that's been done to MY town!! I think the city lawyer has some accountability for agreeing with the mayor and being dishonest with the council!!

On Monday Oct. 7 the Mayor took it on his own to reduce the work hours for the 2 people at our public library. They only work 2 days each. This is very unacceptable, because our library is very important to this town. It was told to the mayor by myself that if the library is messed with, with hours etc. that the state would pull it's funding. Then he goes and does this. We, as the council, have been putting up with his unilateral decisions for a very long time. This right here is the breaking point. We are in a situation where we have no one that will help us from the attorney on up to the State. Because what is always told what the council votes on, the mayor should carry it out. That is not the case with this mayor when we vote on things; and if he doesn't like how we vote he goes behind closed doors and does what he wants. Then the council finds out later from citizens what he has done. Hence this reduction hours at the library (by the way I am the chairman for human resource and he did not informed me of any of this). Then not only did he do that we all agreed up on reducing hours across the board to 32hrs for the employees. I found out yesterday that he moved all the street department men to the sanitation department, that it is only one person on the street department now and that is the supervisor. Well if he has done that, I feel like that gentleman pay needs to be cut because he has no one under him it is only him so why should he get pay for that position when there is no one there. Also yesterday we had a meeting on the utility board, we are over that also. The Mayor unlocked the door to the chambers and for the citizens and I to get in and turn the light on and then he left (this was 5 mins before the meeting started when he did this). He did not show up for the meeting and did not let anyone know, we almost did not have the meeting because of a lack of people but the other council member showed up. That right there showed a lack of respect that he has for the council members, and yet he wants us to respect him. I feel like the reason he did not show is because he did not want to answer our questions after the meeting in regards to the library and the street department. All this council is asking for is help, with the situation with the

Thank you for the information. This office specifically addresses open meetings and public records issues. Since it does not appear from your email that you have concerns about public records or open meetings, this office has no authority to act on your complaint. However, based upon some conversations that I was a part of yesterday related to the issues you mention in your email, I did send an email to the City Attorney asking him to inquire into the issues that had been presented to both this office and State and Local Finance. I received a response from the City Attorney which indicated that he would be looking into these issues.

mayor. Because if he isn't getting approval from the state on his spending and doing what he wants (since we got an email he didn't get something approve before spending) then he isn't going to do what the council say and will do what he wants.

The Cheatham County School Board Meeting was Monday evening, the 7th. The following is a matter the board and central office have decided to put into place. This is a direct quote from The Ashland City Times story yesterday on this matter:

Public Records Policy

The board approved a revision on first reading to the open records policy. Several paragraphs are being added to the policy. In part, the following is being added: "Emailed requests will not be accepted as valid open records requests. The records custodian or other authorized representative of the Cheatham County school system shall respond to the request within seven business days to advise the requestor of the status of their request in accordance with state law." In addition, the following is being added: "The requestor may be required to pay the cost of copies and/or the cost of labor required to fulfill their request, among other responsible charges that may be incurred." (It was asked what these other responsible charges were - no answer) It also states, "If the director of schools desires to destroy the original permanent record, these records may be reproduced by microfilming or some other permanent, un-amendable reproduction method." (It was asked what the other permanent, un-amendable reproduction method source would be - no answer).

It was noted that the district is required to keep certain records for a specific period of time and then they can be destroyed, but nothing would be destroyed to keep the public from reviewing records. Thoughts? Were you expecting a response back from Mr. Woods today? Who is the enforcer of the open meeting laws?

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The Utility Board is sitting as the entity making a decision on a case to which they are not a party. Can the Board go into executive session to deliberate towards a decision and make findings of fact and conclusions of law?

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The School Board does not have to accept requests via email. The case law in Tennessee only requires requests to be accepted in person and via mail. However, if the policy does not say that faxed requests will not be accepted, that is another method of delivery that could be used. We receive faxed requests frequently. I am hoping that the language about advising a requestor within seven business days (7) about the status of a request does not mean that records will not be provided within the initial seven (7) business day time frame. The other fees that could be charged are things like postage and the cost of mediums other than paper (cd, dvd, etc.). I am interested in seeing the entire policy so that I can better put some of these statements into context. Do you have a copy of the amended policy?

No, they have to deliberate and make the decisions in the public portion of the meeting.

I do have another question regarding the open meetings act. I understand how it applies to a Board of Directors and the regular board meetings, however, I would like clarification of how the act applies to board committee meetings (such as the Executive Committee, Events Committee, Nominating Committee, etc.). I understand there is a 14 day (?) public notice requirement for a regular Board Meeting, but does this provision apply to committees of the board as well? I'm most concerned about the Executive Committee that, at times, must meet immediately to address an urgent and compelling situation between board meetings; in this case it would not be practical (or at times even possible) to give a 14 day public notice of this meeting. I would also like to clarify whether or not giving "public notice" can be done via our public website and does not need to be done via a local newspaper ad.

I am not certain where the fourteen (14) day time frame that you referenced came from, but it is not in the open meetings act. If the City has a fourteen (14) day notice rule, it needs to be followed. However, I always suggest that notice for special called and regularly scheduled meetings (entire Boards or committees) be sent out five (5) to seven (7) business days before the meeting. If there are exigent circumstances where you have to meet in a shorter time frame, I do not think that is precluded, but you need to be prepared to explain why you were required to meet with shorter notice. I encourage you to always involve the attorney for the entity when decisions are being made about the time frame for sending out notice.

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I am requesting your guidance regarding what I believe may be violations of the Open Meetings Laws for an upcoming regularly scheduled County Commission meeting this Monday, October 21, 2013 at 9:30 am. I am attaching some of the documents in question. My questions regard: 1. Commissioner Myron Iwanski circulated a call for some type of commission intervention in regards to a salary suit filed against me by Sheriff Paul White. Specifically, Commissioner Iwanski asked that Commission approve a resolution to allow the housing of federal prisoners and that Commission go on record authorizing the hiring of 36 new jail staff.

ATTACHMENT 1 Commissioner Iwanski wrote his fellow commissioners, and then the email found its way to the press where it was discussed in both The Oak Ridger newspaper and the Courier News. 2. A Commissioner was concerned about email traffic taking place outside of public view between Commissioners and delivered to me some of the emails that include what I believe to be deliberation and plans for action in the form of an amendment. **note: in Commissioner Creasey's remarks in the email dated Sept. 23, 2013 9:45 pm, he makes reference to a suggestion by Commissioner Hitchcock for an amendment, indicating other dialogue taking place.

ATTACHMENT 2 3. The email traffic shows Law Director Jay Yeager a participant in the dialogue.
ATTACHMENT 2 4. Commissioner Iwanski placed his call for federal prisoners and going on record for 36 jailers on the Operations Agenda for October 14, 2013 at 6 pm under the title, "Sheriff Salary Suit: Possible solutions to the lawsuit between Sheriff and Mayor."

ATTACHMENT 3 5. At the Operations Meeting, Commissioner Iwanski stepped forward to verbally recommend holding off until Monday (the full Commission meeting) to discuss under Executive Session with the Law Director. No motion was made, seconded or voted on. However, meeting minutes have placed the item on the full agenda though it lacked a motion, second, or a full committee vote. Meeting minutes confirm no motion occurred.

ATTACHMENT 4 6. It is my interpretation that meeting in Executive Session on the issue of the salary suit is not an exemption allowed under our Open Meetings Laws as

1. While I do not think that it is a good practice for Commissioners to send out this kind of communication because this type of communication often leads to deliberation, I do not think that this email itself creates a violation of the open meetings act. See Johnston v. Metropolitan Government of Nashville and Davidson County, 320 S.W. 3d 299 (Tenn. Ct. App. 2009). <http://www.leagle.com/decision/In%20TNCO%2020091211565>.
2. I looked at this email, but without knowing when the conversation about the amendment took place, or how it was suggested, I cannot say that there was an open meetings violation.
- 3.
4. While what he suggested might not be specifically set out on the agenda, I think that the language would be enough for anyone interested in hearing the proposal to know that a proposal was going to be discussed.
5. This issue does not appear to be an open meetings issue. If the Committee members were required to vote on whether or not to send the issue to the full Commission, what occurred might create a procedural issue, but it does not create an open meetings issue.
6. I left a message for Mr. Yeager to discuss this issue. He is out and will not be back in until Monday. If the County has been threatened with legal action related to this matter, then I think that the Commission could go into executive session to get legal advice about any threatened litigation. However, the Commission would have to deliberate, or make any decisions related to the legal advice received, in a public meeting. See Van Hooser v. Warren County Board of Education, 807 S.W. 2d 230 (Tenn. 1991).
7. See the answer to question 6.
8. It appears from the caption of the case that the County is a party to this proceeding.
9. I am not certain what you mean by "relocation" but if Mr. Yeager is providing legal advice on any issue related to this lawsuit, the Commission can meet with him in executive session. I will however, speak with him about this matter as well.
10. This too might be a procedural issue (if the County has procedures in place about where it will post its notice), but it is not an open meetings issue. There is nothing in the open meetings act that requires notice to be sent to the media (except for newspapers for special called meetings) or placed online. If the County has historically placed notice online, I think that needs to be consistently done and I checked today and the notice is on the Commission's website.
11. While I do not know exactly what is going to be reported, I think that there is sufficient detail in the part of the agenda related to the law director items to let the public know what issues are being reported on and/or what issues the County Attorney intends to meet with his clients about in executive session. The court in Englewood Citizens for Alternate B v. Town of Englewood discusses the content of a notice and whether or not a person of "reasonable intelligence" could determine what issue was to be discussed from what was included in the notice. Englewood Citizens for Alternate B v. Town of Englewood, 1999 WL 419170 at *3 (Tenn. Ct. of App. June 24, 1999).

Again, while I do not know the specifics, if I were interested in any of these cases or construction at the jail, I would know that those issues were going to be discussed at the meeting on Monday. I will follow up with Mr. Yeager on Monday and email you after I have an opportunity to speak with him.

County Commission, is not a party to the lawsuit, nor is Law Director Yeager the attorney of record for either party in the lawsuit.

ATTACHMENT 5 AND ATTACHMENT 7 7. The Law Director's Report calls for Executive Session on the case of Carl Clifford Smith. However, County Commission is not a party to the lawsuit and therefore it is my interpretation that it is not an exemption allowed under our Open Meetings Laws.

ATTACHMENT 6 AND ATTACHMENT 7 8. The Law Director's Report calls for an Executive Session on Coal Creek v. Anderson County. The case is not available and not found in the Clerk's office where lawsuits are housed. A request for a copy of the lawsuit from the Law Director's office remains unanswered at this time.

ATTACHMENT 7 9. The Law Director's Report calls for an Executive Session on Glen Alpine Relocation Update. While Anderson County as an entity is listed as a party to the suit, I am seeking guidance whether "relocation" is a legislative topic as opposed to a legal one to be discussed in Executive Session.

ATTACHMENT 7 AND ATTACHMENT 8 10. The Anderson County Commission Agenda for its October 21 meeting was listed as a single front and back document and was posted on the door of the County Commission Secretary's office. I am unsure of the posting date; however, no agenda was posted online or distributed to media. A citizen came into my office the morning of October 17th to ask why the agenda was not online. I took him to the door of the Commissioners' office where he obtained a single page agenda; however, I told him that there seemed to be no supporting documentation that outlined the specific topics for departments. I asked my assistant to inquire as to the status of the agenda. She was told that the agenda was not completed because of delay by the Law Director. (Deadline for the agenda was noon on October 16).

ATTACHMENT 9 11. On Thursday, October 17th at 1:52 pm, the full agenda was emailed to members of the media and officeholders and departments and was posted online. The citizen has questioned me whether this meets the public notice qualifications because the meeting is a

morning meeting. The citizen has also questioned whether some of the topics on the agenda meet the standard of a "reasonable explanation" of the topic to be discussed. I am unable to answer his questions with certainty and am seeking your guidance. If you prefer to answer his questions directly, I will be happy to forward you his name, email and phone contact information. He has already contacted the Knoxville News Sentinel in regards to his concerns regarding why the agenda wasn't online.

ATTACHMENT 10 AND ATTACHMENT 11 While I feel notice was adequate, I am concerned regarding the citizen question regarding reasonable description of purpose as the potential agreement to house federal prisoners as well as commit Anderson County to the hiring of 36 jailers at a potential million dollars plus in appropriation would seem to me to rise to a level requiring more description. I most assuredly need your guidance.

The Mayor would like to be advised on TCA 8-44-102. See the attached fax.

The language that you requested is below. I did speak with a citizen on October 2, 2013 after I received an email about citizens not being allowed to speak at meetings. I explained to the citizen that the charter only mentions citizens participating in public hearings, which is not the same thing as a public meeting. I also said that the case law in Tennessee says that citizens have the right to observe meetings, but not participate in them. However, I also said that there are a number of governing bodies that allow citizens to speak on issues either at the beginning or end of a meeting, subject to certain time and subject matter restrictions. I suggested that the citizen speak with his/her elected representative about the possibility of including as an agenda item at an upcoming meeting, discussion about citizens having the right or opportunity to speak at meetings. I also stated that speaking at a meeting was not the only manner in which the BOMA could obtain information. I encouraged the citizen to write the Alderman or set up appointments to speak with each of them individually about matters of concern. Please let me know if you have any additional questions.

8-44-102. Open meetings -- "Governing body" defined -- "Meeting" defined.

(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.

(b) (1) "Governing body" means:

(A) 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 and also means a community action agency which administers community action programs under the provisions of 42 U.S.C. § 2790 [repealed]. Any governing body so defined by this section shall remain so defined, notwithstanding the fact that such governing body may have designated itself as a negotiation committee for collective bargaining purposes, and strategy sessions of a governing body under such circumstances shall be open to the public at all times;

(B) The board of directors of any nonprofit corporation which contracts with a state agency to receive community grant funds in consideration for rendering specified services to the public; provided, that community grant funds comprise at least thirty percent (30%) of the total annual income of such corporation. Except such meetings of the board of directors of such nonprofit corporation that are called solely to discuss matters involving confidential doctor-patient relationships, personnel matters or matters required to be kept confidential by federal or state law or by federal or state regulation shall not be covered under the provisions of this chapter, and no other matter shall be discussed at such meetings;

(C) The board of directors of any not-for-profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more counties, cities, towns and local governments pursuant to the provisions of title 7, chapter 54 or 58. The provisions of this subdivision (b)(1)(C) shall not apply to any county with a metropolitan form of government and having a population of four hundred thousand (400,000) or more, according to the 1980 federal census or any subsequent federal census;

(D) The board of directors of any nonprofit corporation which through contract or otherwise provides a metropolitan form of government having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census, with heat, steam or incineration of refuse;

(E) (i) The board of directors of any association or nonprofit corporation authorized by the laws of Tennessee that:

(a) Was established for the benefit of local government officials or counties, cities, towns or other local governments or as a municipal bond financing pool;

(b) Receives dues, service fees or any other income from local government officials or such local governments that constitute at least thirty percent (30%) of its total annual income; and

(c) Was authorized as of January 1, 1998, under state law to obtain coverage for its employees in the Tennessee consolidated retirement system.

(ii) The provisions of this subdivision (b)(1)(E) shall not be construed to require the disclosure of a trade secret or proprietary information held or used by an association or nonprofit corporation to which this chapter applies. In the event a trade secret or proprietary information is required to be discussed in an open meeting, the association or nonprofit corporation may conduct an executive session to discuss such trade secret or proprietary information; provided, that a notice of the executive session is included in the agenda for such meeting.

(iii) As used in this subdivision (b)(1)(E):

(a) "Proprietary information" means rating information, plans, or proposals; actuarial information; specifications for specific services provided; and any other similar commercial or financial information used in making or deliberating toward a decision by employees, agents or the board of directors of such association or corporation; and which if known to a person or entity outside the association or corporation would give

such person or entity an advantage or an opportunity to gain an advantage over the association or corporation when providing or bidding to provide the same or similar services to local governments; and

(b) "Trade secret" means the whole or any portion or phrase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and of value. The trier of fact may infer a trade secret to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(2) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program.

(c) Nothing in this section shall be construed as to require a chance meeting of two (2) or more members of a public body to be considered a public meeting. No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part.

I just wanted to check with you to see if you had the opportunity to talk with Mr. Roger Woolsey and Mr. Chuck Cagle (counsel for the Greene County Board of Education and the Director) about the law, and your professional opinion concerning keeping official minutes of meetings of the Board. This topic came up again at our monthly Policy Committee meeting. The Director and some Board members still want to exclude taking minutes at workshops; they consider our upcoming Board Retreat this Tuesday a workshop. We will be there all day, and there are no plans to keep official minutes. There have been decisions and recommendations made at previous workshops, but no minutes to validate that. I would appreciate it if you could get some information to us as soon as possible. I think you said you could make the

I sent both Mr. Woolsey and Mr. Cagle an email that addressed each of your concerns on September 30, 2013 and asked that they discuss each of the issues presented with the school board. If you would like a copy of the email that I sent, please make a request and I will forward it to you. Per your request, please see the attached.

Board aware of the liability of not having documentation if decisions or recommendations were made at any official meeting (budget issues etc.) and those decisions or recommendations were challenged by the public.

10 9	The City of Jamestown, TN had their monthly City Council Meeting. They recessed and he wants to know if a notice has to be put out for a reconvening?	Yes, there has to be a new notice posted and the public needs to be given adequate notice of the reconvened meeting. I suggested that they post today and have the meeting on Monday which is 5 days from today.
11 0	Tansi is meeting with UMRB staff. Can he have his board members there?	Yes, as long as the only thing that they do is listen. They cannot deliberate towards or make a decision and they do not need to ask questions that are deliberative either. I also spoke with Joyce about what the Commissioners should and should not be doing during the meeting.
11 1	<p>It, sure is nice to know that the SUNSHINE LAW doesn't apply to the City of Hendersonville. Did anybody else see the Mayor's Aldermen go behind closed doors during the break secession and how planned out the amendments were after their close secession with the Mayor ? I wonder how a polygraph test would read if asked the question "did you participate in Discussion of the records policy with the Mayor or any other elected official " in the room behind the door outside the meeting room prior to the vote of the ordinance of the New Record policy. I bet the hand on the Meter would break ? Are you up for adventure ? I will set in the chair of a polygraph and let the Mayor or any Alderman of Hendersonville ask me any questions they would like, provided I could choose the Aldermen of my choice to sit in that same chair and let me ask the questions of them. So not to be a burden on the Tax payers of Hendersonville, let me pay the full expense of the test. Have we any takers of the challenge ?</p> <p>What government agency or department handles open violation of Sunshine Law committed in front of large citizen group just minutes before passing a final vote on an ordinance?</p>	<p>There is no governmental agency that "handles" open meetings violations. You can make a report of a violation to this office and I will document it and include your allegation in a report to the General Assembly. I will also make the governmental entity aware of the fact that a complaint has been made.</p>

The Loudon County Solid Waste Disposal Commission voted to hire consultants (\$5,000) and hold a solid waste workshop meeting for the three governing bodies of Lenoir City, Loudon City and Loudon County Commission. The workshop date was later set to October 22, 2013 but no specifics were given. LCSWDC Chairman Steve Field and LCSWDC attorney Kevin Stevens would work on details and get back to LCSWDC commissioners. I regularly attend LCSWDC meetings but I was uncertain about the time and location. I looked on the LCSWDC and no agenda was posted so I contacted Chairman Field on Oct. 18th to request an agenda and related workshop packet. He sent me to Ms. Brenda Bright for an agenda and skirted my records request. I emailed Ms. Bright but I received no reply. On Monday, Oct. 21st I attended the budget meeting and while at the County Office Building, I dropped by to ask Ms. Bright about my email to see the agenda and all related information. She said that she did not have an agenda and she tried calling Chairman Steve Field but his phone was busy. I inquired about the LCSWDC workshop time and location. Her reply, the Annex was reserved for Steve Field at 6:00 p.m. The next day (Oct. 22nd), I went to the News Herald and asked to see the public notice. Newspaper personnel searched but no public notice was found. The Interlocal agreement, which created the LCSWDC states in part, "Notice to the public of all meetings shall be given by a written notice delivered to the News Herald" (Attachment page 4). Moreover, on Dec. 11, 2011 (Minutes- Attachment) LCSWDC voted to notice all meetings in the News Herald, twice before the meetings are held; and that was not done for the workshop meeting. 1. Does State law require that a public notice be placed in the newspaper for a meeting (workshop) when two or more commission members are present? (Oct. 22, 2013 Workshop attendance list: All seven LCSWDC Commissioners and LCSWDC attorney Kevin Stevens. Loudon County government -seven County Commissioners, County Mayor Estelle Herron and County attorney Bob Bowman. Lenoir City government- Mayor Tony Aikens and four council members, administrator Hurst. Loudon City government- four council members). Additional Information: LCSWDC website <http://www.loudoncounty-tn.gov/government/SolidWasteDisposalCommission.php> LCSWDC meeting agendas /minutes link: [This is a follow-up to my earlier inquiry on 10-23-2013, LCSWDC Open Meeting Concern. The Loudon County Solid Waste Disposal Commission \(Attachment -Part 1\) discussed pending matters with the two cities and county government:

1. Lenoir City, Loudon City and Loudon County were asked by the LCSWDC to consider the creation of a solid waste director and shared funding. \(Attachments 5\)
2. An update to the re-negotiations of the LCSWDC-Santek 2007 Contract was presented. LCSWDC Chairman Field and LCSWDC attorney Steven were to meet on Friday, Oct. 25 with Santek. Any changes to the 2007 Contract would require LCSWDC discussion and vote to amend the contract. \(Attachment Part 3\) The LCSWDC handout consisted of 25 pages including a 2004 survey and Major Modification Permit, which is pending before TDEC and LCSWDC. This information is available but could not be sent as one document because of email limitations. Please let me know if you would like to see, and I'll scan and send.](http://www.loudoncounty-tn.gov/government/SolidWasteDisposalCommission_tab-</p></div><div data-bbox=)

I was just researching this issue when I received your follow-up email. No, I cannot find any requirement in the open meetings act or in the statutes relative to solid waste disposal that requires public notice to be provided just because multiple members of a Commission meet. However, if multiple members of the Commission deliberate towards or make a decision on public business, a "meeting" as defined in the open meetings act has occurred and notice is required pursuant to the open meetings act. The Act is not triggered unless or until multiple members deliberate towards or make a decision on public business. As a best practice, I suggest that the Commission always notice meetings (even if the meeting is not a statutorily defined "meeting", unless the meeting is attorney-client privileged) where reports and presentations are given so that there is no question about the transparency of the entity. However, as mentioned above, if the Commission is not deliberating towards or making decisions on public business, the open meetings act is not triggered. Please let me know if you have other questions.

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meetingDocuments.php Other Documents:

http://www.loudoncounty-tn.gov/government/SolidWasteDisposalCommission_tab-meetingDocuments.php

LCSWDC Commissioners Manual 2012 – important information – interlocal agreement, bylaws, etc. Background Information August 13, 2013 – Solid waste commissioners (LCSWDC) made plans to hold a workshop meeting with the legislative bodies of the City of Lenoir City, the City of Loudon City, and Loudon County Commission. The schedule date was changed to Sept.-Oct. 2013 with no specific date. Commissioner Robert Harrison specifically requested clarification as to who would be responsible for the public notice. LCSWDC Attorney Kevin Stevens replied that he would take care of it. (Video recording available) October 8, 2013 LCSWDC meeting – Solid waste commissioners spoke about holding the workshop with the governing bodies on October 22, 2013 but no other details were given. Chairman Field and attorney Stevens would work together and get back to the LCSWDC commissioners. (Video recording available) October 22, 2013, a workshop was held. Chairman Field made a Power Point presentation (paper) and then a question and answer period took place by the three governing bodies.

11 3	<p>You might recall that we have traded messages about the Oak Ridge IDB's handling of the proposed TIF for mall redevelopment. I wanted to ask you about this latest round. This is the revised agenda for tomorrow's special called meeting of the IDB following a public hearing on the project. The original notice for the meeting on this date went out on 10/15 with a different agenda. It is my understanding that special called meetings are allowed on 1 day's notice. The pertinent change in the revised agenda (attached) is the addition of: "II. TIF Resolution for Recommendation to Oak Ridge City Council and Anderson County Commission" As you can see, there is no attachment of the TIF Resolution document on the notice of the agenda for the meeting. My latest understanding is that there is a requirement of public notice of the contents of this resolution on the agenda, not just a notice of the topic to be dealt with in the meeting. If my understanding is correct, and such publication is required, could you please undertake an informal investigation. This afternoon, after I received the revised agenda, I did make an Open Records request of David Wilson, IDB Chair, for the document referenced in that item. I have not received a reply yet.</p>	<p>Without more specifics, I cannot say that the content of the notice is inadequate. I have attached the link to the case that established the three prong test for adequate public notice and special called meetings. Based upon the language in the case, I think that a reasonable person would know generally that the IDB is going to discuss recommending a TIF Resolution to the two entities mentioned, even if the specifics related to the resolution were not contained in the notice (please note that the case does not require a lot of detail in the notice or on the agenda. Here is a link to the Englewood opinion: http://www.tncourts.gov/sites/default/files/OPINIONS/TCA/PDF/992/englewc.pdf. Please note that the issue in this case was that the governing body voted on a course of action to take when the notice only referenced a letter to the State. The public had no way of knowing that the governing body was going to vote on any particular issue. In the situation that you have presented, it seems clear that the IDB is going to consider a specific course of action related to a TIF Resolution. As a best practice, I think that the IDB could include more content, but I cannot say, based solely upon what you sent, that there is an open meetings violation because there is not more content.</p>
11 4	<p>He has a complaint regarding the Crockett County Emergency Communications District special called meeting.</p>	<p>The office sent a letter to the 911 District regarding the alleged open meetings violation.</p>
11 5	<p>On Tuesday Oct. 22 the Loudon County Solid Waste Disposal Commission held a public meeting for citizens, members of county commission and leaders of local governments that are a part of the waste commission stakeholders. The meeting was not advertised in the local paper beforehand. An attorney for the waste commission said that because there were no deliberations, there is no requirement to provide public notice. Can you provide any guidance as to whether or not public notice is required for such a meeting?</p>	<p>If you intend to include in a story whatever response I provide, please contact Blake Fontenay, Communications Director for the Comptroller's office at (615) 253-2668 or Blake.Fontenay@tn.gov. If this inquiry is for background purposes only, please let me know.</p>

At the regularly scheduled meeting of the Jellico City council on October 17, 2012, Mayor Stiers said that he had transferred four (4) street department workers to the sanitation department because the sanitation department had more funds. He also stated that the librarian and assistant had both been placed on a 20 hour workweek. He said he had been told by the Comptroller that the work force had to be cut 25 percent. Both workers at the library and one employee of the sanitation department had been reduced to a 32 hour week before this change. The change in employee hours and the transfer of the street department workers was done without city council approval and no vote was taken after the change had been announced. After the transfer of the street department workers, the only worker in the street department is the supervisor. Since we have no snow removal equipment, I feel that we don't need the employees who were transferred to the sanitation, since the sanitation department has worked for several months with the supervisor and one worker who works 32 hour each week. In 1992, an ordinance was passed, stating that sanitation funds were to be used for sanitation only, Each household within the city limits pays \$15.00 each month for sanitation service. Three (\$3.00) of each household's monthly payment is to be placed in a special fund for new sanitation truck, etc. Library funds are from three (3) separate sources, state, county and city funds. At this meeting, the mayor asked, the motion was made, and passed to ask the comptroller for permission to buy a new sanitation truck. Why should we taxpayers be put further in debt when the resources we have are be spent unwise. With my background in business administration, I feel that the use of sanitation funds to avert laying off employees, and the reduction in hours for the library workers is a misappropriation of funds.

I forwarded the email to Sandi Thompson, Ron Queen and Steve Osborne.

11 7	She was told by staff at the local utility that the Commissioners decided that she had to pay a fee in order to have utilities hooked up to her home. If the Board made this decision, would it have to be made in a public meeting? Should the decision be in the minutes?	Yes, the decision should have been made at an adequately noticed public meeting and the vote should be reflected in the minutes
11 8	I was in the Senate Judiciary Committee and they went into executive session about a TBI investigation into District Attorney Steve Bebb. It's my understanding of the Sunshine Law that governing bodies can't call ES unless there is pending litigation and there is a lawyer present who is giving legal advice (at least that's for smaller legislative bodies). Can you clarify what state law says about the General Assembly?	Are you asking this question for background purposes or for print? If you are asking because you intend to use what I say in a story, please contact Blake Fontenay, Communications Director, at 253-2668 so that he can coordinate that manner in which I respond. The courts in Tennessee have determined that the GA is not subject to the open meetings act.
11 9	What do I look at when trying to determine whether the McKamey Animal Shelter is subject to the open meetings and public records acts?	You should look at minutes online from Council meetings, the contracts that the shelter is opertaing under, and pursuant to our conversation, please see the attached. AG opinions: http://www.tn.gov/attorneygeneral/op/2009/op/op68.pdf (open meetings) http://www.tn.gov/attorneygeneral/op/2007/op/op170.pdf (public records and functional equivalent) http://www.tn.gov/attorneygeneral/op/2003/op/op42.pdf Cases: Allen v. Day, 213 S.W. 3d 244 (Tenn. Ct. App. 2006) http://scholar.google.com/scholar_case?case=3666894040412661091&q=Allen+v.+Day&hl=en&as_sdt=6,43 Friedmann v. Corrections Corporation of America, 310 S.W. 3d 366(Tenn. Ct. App. 2009) http://scholar.google.com/scholar_case?case=1216780554779663627&hl=en&as_sdt=6&as_vis=1&oi=scholarr Gautreaux v. Internal Medicine Education Foundation, Inc., 336 S.W. 3d 526 (Tenn. 2011) http://scholar.google.com/scholar_case?case=10513415590761807955&q=Gautreaux+v.+Internal+Medicine&hl=en&as_sdt=6,43 Please let me know if you need anything else.
12 0	He received the open meetings letter and wants to know what the Board can and cannot do during a meeting and what the notice has to say.	We discussed what could and could not happen during the course of, and outside of, a meeting. We also discussed the fact that the meetings need to begin at the time noticed and not before and that the notice for special called meetings needs to specifically describe what is going to be discussed or decided upon. I told him that if the issue is not in the notice, it does not need to be addressed. I encouraged him to speak with the attorney for the Board.
12 1	I have been told that the effective date of an Ordinance is not until the Board approves the minutes of the passage of the Ordinance. Is this correct ?	No, that is not correct. Tenn. Code Ann. Section 6-2-101 reads, "Each ordinance, or the caption of each ordinance, shall be published after its final passage in a newspaper of general circulation in the municipality. No ordinance shall take effect until the ordinance or its caption is published." I have attached the final version of the ordinance and a copy of the publication of the caption in the Hendersonville Star News on October 23, 2013.

Again I have run into another issue and would like to know what my position is as far as open requests. It seems like this city council does not like open public forums. Two of the documents I found during my open record search through banking statements on the below matter proved that property had been purchased by the city from a current alderman. To my knowledge, city council meetings are open to the public and this is a time where citizens are allowed to ask questions of their council members that represent them, as taxpayers, so all this would be open for other taxpayers to access whether by being there or viewing videos or minutes. During the October council meeting I asked if I could bring up the subject of these two checks and ask if all council members were aware of this transaction, because all transactions were public record, and to verify the signatures. I thought all this was considered open record. They were very hostile with me and I was told by the city attorney that they were not going to answer any questions or look at the documents I found and if I wanted to know anything else I would have to sue the city. I was completely caught off guard. I have been a business and property owner in the city for 23 years. If all transactions for the city are open record and this council has done nothing inappropriate, why would I be refused this request? That seems awful bold. Why would an average taxpayer have to sue their own city when they start asking questions using hard earned money they have worked for? These were legitimate documents on file with the bank and city hall. This may not be anything you could advise me on but if there are any TN codes that I can use to help me without using drastic measures, please advise. I have talked to 3 of my council members individually that would agree; one did not have knowledge of the transaction until after it was completed; one knew and advised against it and one (the alderman that sold property) said everyone knew and that he actually did not sign one of the checks that clearly had his signature. Why would elected officials be acting this way over open documents? There is another meeting tonight and I would like to be more educated on my rights beyond now concerning these documents, if any.

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Are you asking whether or not you have the right to ask questions at the City Council meeting? If that is your question, under the Tennessee Open Meetings Act, the answer is no. The courts in Tennessee have said that citizens have the right to observe the process, but not participate in it. However, if the City Council meetings includes a public comment section of the meeting, you may want to find out what you need to do to address the Council during that part of the meeting. If there is not a public comment section of the meeting, you may want to try meeting with each Council member separately or writing a letter to each member. Additionally, if you feel that there has been fraud, waste, or abuse committed, you can find information on where to report that information at <http://www.comptroller.tn.gov/la/LGSfraudReporting.asp>. Please let me know if you have additional questions.

12 3	<p>Please see the attached. When we discussed this on Friday, I didn't realize the significance of the highlighted language, which our auditor advises is applicable to Metro and causes our Metro Audit Committee to be deemed to fall within the purview of 9-3-405 after all, and advised the Comptroller would be knowledgeable about that. I hope it helps you with your analysis.</p>	<p>From an open meetings perspective, I cannot find any case law that makes it illegal for the Audit Committee to serve as the Evaluation Committee and meet outside of a publically noticed meeting since the Evaluation Committee makes recommendations directly to the purchasing officer. However, I am extremely concerned about this scenario because the Audit Committee voted on the fact that they wanted the purchasing officer to appoint each of them as the Evaluation Committee. I am concerned that a court could say that the Committee did an end run around the requirements of the open meetings act by having themselves appointed as a committee that is not subject to the open meetings act. Tenn. Code Ann. Section 8-44-102(c) speaks about circumventing the "spirit" of the act, and my concern is that a court could say that is what was done based upon the facts of this situation. As we discussed before, if the Audit Committee has the authority to evaluate the proposals and make a recommendation to the purchasing officer, that is what I suggest happen. Because the Audit Committee can go into executive session to discuss information that is confidential pursuant to Tenn. Code Ann. Section 9-3-405, if the procurement code allows, the Committee could go into executive session, evaluate the proposals and assign them a letter or number designation, come out of executive session and vote to recommend a proposal, by letter or number, to the purchasing agent for consideration. I also asked Jim Arnette, Director of Local Government Audit, for his opinion on this issue from the audit perspective. This is what he said: The Metro audit committee has been established in compliance with 9-3-405... However, I would say that an audit committee serving as an evaluation committee for procurements is typically outside the scope of what we would consider to be their duties and responsibilities...We believe audit committees should focus on audit matters identified in the annual financial audit reports, internal audit reports, performance audit reports, or investigative reports and ensure that management has action plans in place to address those audit issues...However, if the procurement relates to obtaining a firm that will be responsible for performing a performance audit or some other kind of agreed upon procedures engagement with Metro Schools, I would say it would be very appropriate for the audit committee to assist with the preparation of bid specifications, evaluate proposals, and select the audit firm... Here is some language extracted from a GFOA best practice publication regarding audit committees: The audit committee should be formally established by charter, enabling resolution, or other appropriate legal means and made directly responsible⁵ for the appointment, compensation, retention, and oversight of the work of any independent accountants engaged for the purpose of preparing or issuing an independent audit report or performing other independent audit, review, or attest services. Likewise, the audit committee should be established in such a manner that all accountants thus engaged report directly to the audit committee. The written documentation establishing the audit committee should prescribe the scope of the committee's responsibilities, as well as its structure, processes, and membership requirements. Based on these best practice recommendations from GFOA, I think you can make the argument that the audit committee should select the firm to perform the performance audit in the school department and that the firm should report directly to the audit committee during the engagement... Additionally, I asked Greg Cothron, who is an attorney in this office that works with the audit divisions, about this issue. Greg indicated that he is concerned about what might happen if the Audit Committee, sitting either as the Audit Committee or the Evaluation Committee, is asked to look at an issue regarding a problem or potential problem with the vendor after the award is made. He is concerned about the ability of the Committee to be objective and look critically at the issues related to a vendor that the Committee chose.</p>
12 4	<p>In the by-laws for McKamey Animal Shelter, there is a provision that reads that action can be taken on items and then the Board can approve the action taken at a later time by signing a form. Is that permissible under the open meetings act? Also, can a Board member participate in a meeting via telephone?</p>	<p>No, any action taken by a Board subject to the open meetings act is required to be taken in an adequately noticed public meeting. Only members of state governing bodies, school boards, and the City of Bell Meade have the ability to participate in meetings through electronic means.</p>
12 5	<p>Do county commissions provide a public comment section?</p>	<p>Yes, I have seen comment sections with limitations such as a topic and time limit.</p>
12 6	<p>We are trying to set up the emergency hearing for Thursday, November 7 at 10 A.M., CST. Jim is out and I wanted to read through the public notice statute before the notice is printed tomorrow. Can you remind me what the citation is?</p>	<p>Tenn. Code Ann. Section 8-44-108 is the provision that addresses telephonic participation in a meeting. I suggest that you call Janet Kleinfelter in the AG's office in the morning and have her look over the notice with you and discuss any questions you might have before the notice is printed. Her number is 741-7403.</p>

12 7	Is a political party executive committee required to follow the Sunshine Law? One of my local partys' executive committee had a meeting October 15 to vote on asking us to hold a County Primary in May, 2014. They did not notify the radio or newspaper of the meeting.	I have been unable to find any provision in the statutes related to county executive committees that make the meetings subject to the open meetings act. The only language that I found that mentions the open meetings act is relative to the State Executive Committee. However, in speaking with Beth Henry Robertson, I learned that meetings of each respective party are governed by by-laws established by each party's State Executive Committee. There could be a provision in the by-laws that requires the meetings to be open to the public and noticed, but I did not find anything in the statutes relative to the committees that requires such.
12 8	Are the members of the Board of Directors for the Human Resource Agency allowed to participate in meetings electronically? The entity is a local government entity. If not, what has to be done to change that?	No, only state level entities, the City of Belle Meade and school boards have the ability to participate in meetings electronically. In order for the agency to be able to conduct meetings electronically, the law would have to be changed. I encouraged her to speak with the Director about contacting the senators and representatives in the area.
12 9	If the Commission goes into executive session, do they have to provide public notice that they are going into executive session?	No, they do not have to provide notice as long as what they are doing falls within the parameters that the court set out in the Smith County Education Assocaition v. Anderson case. I referred her to the case. However, if it is the Commission meeting with the Audit Committee, there are notice requirements to go into executive session.
13 0	Can an executive session be called by Council without having a public meeting? The City of East Ridge has posted a special called meeting to discuss legal issues for tonight, Monday Nov. 11. The post says "public is invited". I spoke with a couple of councilmembers about it and they said it was an executive session, but they were advised by the city recorder that they could only go into executive session from a public meeting. Is this correct?	No, that is not correct. If the Council is meeting with its attorney related to pending or threatened litigation to which the Council is a party, the Council is not required to notice the meeting. During the course of the meeting, the Council may only provide facts to the attorney about the litigation and the attorney can only provide his/her client legal advice. Any deliberations or decision making has to be done during an adequately noticed public meeting. Here is the link to a case that discusses this issue: http://scholar.google.com/scholar_case?case=13075839896385948366&q=smith+county+education+assocaition+v.+anderson%27&hl=en&as_sdt=6,43 . If the audit committee was calling an executive session and the entire Council was meeting with the audit committee, the executive session would have to be noticed pursuant to Tenn. Code Ann. Section 9-3-405. Please let me know if you have other questions.
13 1	The District has a nnew commissioner and as the chairman, he would like to meet with the commissioner and discuss with him how the district operates, how the meetings run, etc. Do they have to do that in an publically noticed meeting?	If the meeting is strictly informational, then no they do not. However, I told him that he needs to contact the attorney for the District and discuss this with him/her so that he is very clear about what the parameters are for this type of meeting.

On November 12, 2013, I attended an E-911 (LCECD) Board meeting. The public meeting lasted under 30 minutes. The chairman called the meeting to order and, with a quorum present, the planned agenda was adopted and unanimously approved. Afterward, the attorney for the E-911 board requested an Executive Session, which was not on the planned agenda. The chairman requested an amendment to the agenda and the Executive Session was added to the end of agenda, which was unanimously approved. The attorney did not specify the reason for the Executive Session. At the end of new business everyone left the room with the exception of the board and attorney. Nothing was said as to whether the meeting would be reconvened after holding the Executive Session. Before leaving the room I asked about the Executive Session; the attorney's reply "Contemplating litigation." I am requesting assistance from the Office of Open Records concerning Executive Sessions and the Tennessee Open Meetings Law:

1. Does the Office of Open Records have any guidelines or best practice rules with regards to holding an Executive Session?
2. If an Executive Session is going to be held should it appear on the planned agenda?
3. Does the attorney have to specify a general reason without going into details for calling an Executive Session?
4. If the attorney discusses information with the E-911 board "Contemplating Litigation", does the board vote in public or private to make a decision on a pending legal matter, or whether to file or defend a potential lawsuit?
5. If an Executive Session is called, after the closed session is held, is the board meeting called back to order and resumed before the adjournment of the board meeting?
6. Attachment – Nov 12 Agenda & Oct 8, 2013 Minutes. Please see back page LCEDA went into "recess" and the chairman called the regular meeting back into session. No explanation was given at the Nov. board meeting and I do not normally attend these meetings.

1. No, because the limitations on executive sessions are very specific. However, this is an issue that I will likely address with a video on the website within the next couple of weeks.
2. It is not required to unless the meeting is an executive session that is being called by the Audit Committee. Here is the link to a case that addresses executive sessions:http://scholar.google.com/scholar_case?case=13075839896385948366&q=smith+county+education+association+v.+anderson.+&hl=en&as_sdt=6,43. Also, here is the language in the audit committee statute that I referenced:
Tenn. Code Ann. Section 9-3-405(c)-(i)
 - (c) Except as provided in subsection (d), all meetings of an audit committee created pursuant to this chapter shall abide by the notice requirements adhered to by the local government to which the audit committee is attached.
 - (d) All meetings of an audit committee created pursuant to this chapter shall be subject to the open meetings provisions of title 8, chapter 44, except, upon a majority vote of those members in attendance for the public portion of the meeting, the audit committee may hold confidential, nonpublic executive sessions to discuss the following items:
 - (1) Items deemed not subject to public inspection under §§ 10-7-503 and 10-7-504, and all other matters designated as confidential or privileged under this code;
 - (2) Current or pending litigation and pending legal controversies;
 - (3) Pending or ongoing audits or audit related investigations;
 - (4) Information protected by federal law; and
 - (5) Matters involving information under § 9-3-406 where the informant has requested anonymity.
 - (e) The presiding officer shall announce during the public portion of the audit committee meeting that no business, other than that described under subdivisions (d)(1)-(5), shall be considered during the confidential, nonpublic executive session by the audit committee.
 - (f) For purposes of providing notice of a confidential, nonpublic executive session, the agenda must disclose the general nature of the item or items to be discussed as described under subdivisions (d)(1)-(5).
 - (g) A meeting at which both subject matter open to the public and confidential subject matter will be discussed shall be conducted as follows:
 - (1) All business relating to subject matter that is public in nature shall be conducted first; and
 - (2) At the conclusion of the meeting relating to subject matter that is public in nature and upon a successful majority vote to enter into executive session, the chair shall announce to the members and the public assembled that the public portion of the meeting is adjourned and that the remainder of the meeting will concern matters that are confidential under subdivisions (d)(1)-(5). When everyone at the meeting who is not authorized to attend the confidential portion of the meeting has departed, the confidential portion of the meeting shall commence.
 - (h) Only individuals whose presence is reasonably necessary in order for the audit committee to carry out its executive session responsibilities may attend the portion of the executive session relevant to that person's presence; however, nothing contained in this section shall prohibit the comptroller of the treasury or the comptroller's designee from attending or being present during an executive session.
 - (i) This chapter is not intended to prevent the full governing body of the local government from going into confidential, nonpublic executive session with the audit committee at a regularly or specially scheduled meeting of the full governing body for the purpose of further discussing only those matters as described under subdivisions (d)(1)-(5). All portions of meetings of the full governing body of the local government, where matters described under subdivisions (d)(1)-(5) will be discussed, shall be exempt from title 8, chapter 44; provided, that the full governing body of the local government shall abide by the same executive session notice requirements imposed upon the audit committee by this section, and shall not make a decision or deliberate toward a decision on any matter.
3. The attorney does not have to specify unless the executive session is being called by the audit committee.
4. Any deliberation or voting related to the litigation is required to be done in an adequately noticed public meeting. The only things that can be done in executive session is the Board can give the attorney facts and the attorney can give the client legal advice.
5. If the Board decided to hold the executive session during the meeting, then the meeting would have to be called back to order and adjourned. A best practice would be for the executive session (non-audit committee) to be held before the public meeting so that the public is not sitting and waiting.
6. Unless the Board went into executive session as part of the Audit Committee, there was no legal requirement to give an explanation about what was discussed during the executive session. However, as a best practice, the Board could have said, at a minimal, that they were going into executive session to discuss threatened or pending litigation.

<p>13 3</p>	<p>In the office's opinion, is the Maury County Republican Party Executive Committee subject to the open meetings act?</p>	<p>Tenn. Code Ann. Section 8-44-102 reads: (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. (b) (1) "Governing body" means: (A) 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 and also means a community action agency which administers community action programs under the provisions of 42 U.S.C. § 2790 [repealed]. Any governing body so defined by this section shall remain so defined, notwithstanding the fact that such governing body may have designated itself as a negotiation committee for collective bargaining purposes, and strategy sessions of a governing body under such circumstances shall be open to the public at all times. After taking some additional time to research this issue, I still do not believe that the Maury County Republican Party Executive Committee meetings are subject to the open meetings act. I am basing this opinion on the following: 1. I do not believe that the Maury County Republican Party Executive Committee is a "governing body" as defined in Tenn. Code Ann. Section 8-44-102(b). In my opinion, the discussion of the legislative history of Tenn. Code Ann. Section 8-44-102 in <i>Mid-South Pub. Co. v. Tennessee State University & Community College System Bd. of Regents</i>, 1990 WL 207410 (Tenn. Ct. App. Dec. 19, 1990) supports this belief. 2. The language in <i>Dorrier v. Dark</i> that reads, "[i]t is clear that for the purpose of this Act, the Legislature intended to include any board, commission, committee, agency, authority or any other body, by whatever name, whose origin and authority may be traced to State, City or County legislative action and whose members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector." While the county executive committee is mentioned in the statute and certain statutes give the county executive committee the authority to do certain things, the origin of the county executive committee does not appear to come from any state, county or municipal legislative action and aside from very specific authority on certain things, it is my understanding that State Executive Committee by-laws generally govern what a county executive committee can and cannot do. See <i>Dorrier v. Dark</i>, 537 S.W. 2d 888 (Tenn. 1976). 3. The discussion by the court in <i>Kurita v. State Primary Board of the Tennessee Democratic Party</i>, 2008 WL 4601574 (M.D. Tenn. Oct. 14, 2008) also leads me to believe that the county executive committee serves a political function and not a governmental function, and as such, the entity is not subject to the open meetings act. The District Court's opinion was subsequently affirmed by the 6th Circuit Court of Appeals in 2012.</p>
<p>13 4</p>	<p>Are the meetings of the TSSAA open to the public and required to be noticed?</p>	<p>The answer to your question is that the law does not appear to make the meetings open to the public, but there could be facts about TSSAA that I am not aware of that could cause a court to say that the meetings are subject to the open meetings act. Here is an AG opinion that addresses the different situations that make non-profit organizations subject to the open meetings act: http://www.tn.gov/attorneygeneral/op/2009/op/op68.pdf. Based upon the information that I found online about the TSSAA, the entity does not appear to fit into any of the categories of non-profits that are discussed in the opinion. The TSSAA does not appear to have been created by legislative means, no public entity has delegated its responsibility to the TSSAA, and the TSSAA does not appear to be the type of non-profit described in Tenn. Code Ann. Section 8-44-102(b)(1)(B)-(E). However, I have also attached the transcript from a recent Davidson County Chancery Court opinion that held that records of the TSSAA are subject to the open records act. The criteria that makes an entity subject to the two acts is different, but I still wanted you to be aware of this case. Also, please be aware that the Chancery Court opinion is currently on appeal with the Tennessee Court of Appeals. Please let me know if you have other questions.</p>
<p>13 5</p>	<p>Wade Hinton wanted me to contact you regarding the following situation: City Council delegated a blue ribbon panel and the task fell upon City Attorney Wade Hinton. The City Attorney's office called 2 Animal Board members and a local vet and another citizen. They will be talking about ordinances regarding animal permits and will be using a draft ordinance that's been before Council (1 of the attorneys worked with on the Animal Board -a City board appointed by the City Council). The issue is whether these group meetings need to be advertised?</p>	<p>I am not sure that I understand what happened. Did the City Council establish a blue ribbon panel and then leave the appointments up to the City Attorney? What will the panel actually be doing? Will they make a decision for the City Council or a recommendation to the City Council at the end of their meetings?</p>

13 6	PC 464, Acts of 2013 created a task force on human trafficking. The first meeting will be on December 12, 2013. How does the meeting need to be noticed?		I went through with him where the notice needs to be posted (in the Plaza and on the open government page) and the fact that it needs to go up as soon as possible and that it needs to outline specifically what issues will be discussed and voted upon. I also gave him Janet's contact information for further questions.
13 7	Does the Task Force committee that will be looking at the animal permit issue need to meet in public and post notice?		In my opinion, yes; the Task Force seems to have been created by the City Council, even though there was no vote and the Councilman who announced the creation of the Task Force said specifically what the Task Force would be doing. Additionally, the Task Force is going to make recommendations to the City Council.
13 8	He had questions regarding how and where notice is required to be published by the election commission. 1. Are we required by T.C.A. codes to notify the public that we will be conducting an Election Commission meeting? 2. If we are required to notify the public of a regular scheduled meetings can we post the entire years schedule in the local news media outlets and meet the required T.C.A. codes? 3. Are we required by T.C.A. codes to notify the public of the agenda for any regular meeting held by the Election Commission? 4. Do we have to publish the meeting notices for our regular scheduled meetings in the local newspaper or can we post it on our website and place it on the board for public viewing in the Election Commission office and meet all T.C.A. code requirements for notifying the public of an impending meeting?		1. If the Commission is going to deliberate towards or make a decision on public business, the meeting is required to be noticed. 2. In my opinion, no you are not, unless you are going to pay the media outlet (or the outlet volunteers) to publish the notice that includes the time, place, and purpose of each of the regularly scheduled meetings. I think that it would be impossible to predict what the purpose of each meeting is going to be that far in advance of the meeting. 3. Tenn. Code Ann. Section 2-1-113(a)(3) requires that the purpose of each meeting be included in the notice. If you look at similar language in other provisions related to notice, there is not a requirement that an agenda be published, but there is a requirement that each issue that you intend to address at the meeting be included in the notice. This language is very similar to the language for special called meetings. The provision reads: With respect to meetings regularly scheduled by county election commissions or county primary boards, the public notice requirement of this section may be met by permanently posting in the commission office a conspicuous meeting notice. All notices shall state the time, place and purpose for which the meeting is called. 4. Based upon Tenn. Code Ann. Section 2-1-113(a)(3), I think that you can post on the website and in the office. However, just remember that if you are going to change the manner in which you have historically posted, you need to let the public know about the change in as many ways as possible. Also, I encourage you all to think about whether only posting in the office and on the website will limit the notice getting to individuals interested in attending the meetings.
13 9	Can they allow members to call in as well as have members at the physical meeting location?		Yes, but the members calling in can only listen; they cannot participate and they cannot be included in the number necessary for the quorum.
14 0		We discussed additional alleged violations being committed by the Knox County Audit Committee. She said that she would send me additional information about alleged open meetings violations.	I received the additional information from Ms. Davis, and I sent an open meetings letter to the Knox County Audit Committee.
14 1	1. Has the Office issued any opinion regarding what constitutes secret ballot under OMA, 8-44-104(b)? 2. Does Tennessee law define "public ballot"? 3. Can members vote without knowing how others voted before a tally is taken?		Members may submit to a single person, a ballot marked with their vote and the voter's name, to be orally confirmed (that it is his/her vote) when ballots are read.
14 2		He has been contacted by someone who says that she filed an open meetings complaint with the office and he wants to do an interview about the complaint.	I set up an interview with him and Blake.
14 3		She reported a possible open meetings violation in Bradley County.	The office sent a letter to the chair of the committee.
14 4	1. Are there penalties for violation of the open meetings act? 2. What does the governing body have to do?		1. There is no penalty in Tennessee. 2. The courts in Tennessee have determined that a governing body can cure a violation by having "new and substantial reconsideration" of

		the issue discussed and voted upon at the meeting were the possible violation occurred.
14 5	He requested a copy of the open meetings letter sent to Bradley County.	I sent the letter to Blake to distribute to him.
14 6	<p>Audit Committee Executive Sessions:</p> <p>1. Is an audit committee allowed to vote on an issue related to an ongoing audit during an executive session?</p> <p>2. Can an audit committee go back into public session after it has been in executive session in order to vote on an issue discussed in an executive session?</p> <p>3. How should the following situation be handled: The audit committee wants to hear a report from external IT auditors in an executive session about the preliminary results of the auditors' work related to the various IT risks within the City before the committee decides where it wants the auditors to perform additional IT audit work. Funds have already been approved for additional work. The decision regarding where the work will be concentrated needs to be made.</p>	<p>1. In order for an audit committee to be covered by the provisions in Tenn. Code Ann. Section 9-3-405, the committee has to be set up in accordance with Tenn. Code Ann. Section 9-3-405(b).</p> <p>2. If the audit committee is set up in accordance with the above-cited provision, the language in Tenn. Code Ann. Section 9-3-405(c)-(h) is applicable.</p> <p>3. Based upon the language above (specifically the language in (d)), I do not think that a vote can be taken during an executive session. I think that the Committee can either go back into the public meeting after the executive session or the committee can schedule a future meeting to take a vote on the issue. In the situation that you have described, I think that the committee can go into executive session and discuss the ongoing audit and then come back into a public meeting that day or schedule a public meeting for another day and vote on where the auditor needs to concentrate. Please let me know if you have other questions.</p>
14 7	The Board met last night and did not have a quorum. Is that an issue?	It is only an issue if there are by-laws that say that a quorum has to be present in order to transact business. It is not an open meetings issue. Tenn. Code Ann. Section 6-58-114 does not mention a quorum requirement.
14 8	Has any information been provided to me that makes me change my opinion on whether or not the Bradley County Animal Control ad hoc committee violated the open meetings act?	No.
14 9	We discussed the standards for notice and agendas when we met this morning and I referenced some cases during our meeting.	I emailed the links to the cases that I referenced during our meeting.
15 0	Is there a standard or definition for what constitutes adequate public notice?	There is only a definition in the special called meeting context. I emailed him the citation for the Englewood opinion.
15 1	The notice for the regularly scheduled meetings for the year was not run as a public notice, but was included in a story in the local newspaper. What do I think about the sufficiency of the notice? Should it be run again?	I would run it again just as a precaution and I would also put the schedule on the City's website and post a specific notice around the city prior to every meeting.

He requested that I send him all the information that I think is relevant to a discussion about the open meetings act. His City Council wants to discuss the issue at the meeting tonight.

As we discussed this morning, anytime two or more members of a governing body deliberate towards or make a decision on public business, the open meetings act is triggered and the meeting is required to be open to the public and adequately noticed.

The Tenn. Code does not define what constitutes "adequate public notice" nor is there a time frame for how far in advance notice must be posted. I always suggest that notice for a regularly scheduled meeting be posted at least 5 to 7 days before a meeting (preferably business days). The case law is split right now about the need to include an agenda with the notice for a regularly scheduled meeting, but if it is possible to do so, I suggest that it be done. However, I do not suggest that an agenda be amended during the course of a meeting to include any item of significant public interest. I looked at Tenn. Code Ann. Section 6-21-101 et seq. and there is nothing in those provisions that contain specific notice requirements for your client's meetings.

The Englewood Citizens for Alternate B. v City of Englewood opinion sets out the test for adequate public notice in the context of a special called meeting. The key is that the notice be available to the public at a location accessible to the public in enough time for the public to have the opportunity to attend the meeting. Additionally, the notice must include a substantive description of the issues to be discussed at the meeting. <http://www.tncourts.gov/sites/default/files/OPINIONS/TCA/PDF/992/englewc.pdf>

Also, when the governing body wants to go into executive session, that can only be done when you (the attorney) are present. These meetings do not have to be noticed and are not open to the public. However, the only thing that can occur at these meetings is the client providing you facts about the pending or threatened litigation and you providing the client legal advice. Once the time comes for deliberation or decision making, the governing body has to return to the public meeting. There are no minutes required for executive sessions. See Smith County Education Association v.

Anderson,

http://scholar.google.com/scholar_case?case=13075839896385948366&q=smith+county+education+association+v.+anderson&hl=en&as_sdt=4,43

*However; also see Tenn. Code Ann. Section 9-3-405 relative to audit committees and executive session.

Full and accurate minutes are required for public meetings and they are available to the public in draft format and in final approved format. The courts have held that failure to fully and accurately record a meeting is a violation of the open meetings act. See Zeltvay v. Metropolitan Government of Nashville and Davidson County

<http://caselaw.findlaw.com/tn-court-of-appeals/1130683.html>. The use of electronic communications (emails) to deliberate towards and/or make decisions on public business has also been held to violate the open meetings act. See Johnston v. Metropolitan Government of Nashville and Davidson County

http://scholar.google.com/scholar_case?case=16558852478029586046&q=open+meetings+and+emails&hl=en&as_sdt=4,43v. This case also discusses what constitutes deliberations. Additionally, even when there is no quorum requirement or when there is an informal gathering (informal assemblage) or chance meeting, the members of the governing body cannot use that as a time to deliberate towards or make a decision on public business in violation of the open meetings act. Citizens have the right to observe a public meeting but not participate in a meeting, unless the governing body allows

citizens to participate. Citizens generally have the right to record public meetings. Tenn. Atty. Gen. Op. 95-101 (October 2, 1995). The City has the authority to set up an Internet Relay Chat Room. See Tenn. Code Ann. Section 8-44-109. However, the City does not have the authority to conduct a meeting via telephone. See Tenn. Code Ann. Section 8-44-108.

Also, attached are some slides from a presentation that I gave. It included records and meeting information. The meeting information begins at slide 30. The Knox County opinion that we discussed is also attached.

Is the advisory committee that is advising the Mayor on the pension reduction issue subject to the open meetings act?

The Mayor appointed the committee and they are supposed to make recommendations directly to the Mayor. Also, the entire Pension Board met with the advisory committee and the meeting was not open to the public.

I emailed her the Fain opinion and told her that if the Committee was appointed by the Mayor to advise him and is in no way connected to the City Council, I do not think, based upon the Fain opinion, that the meetings are required to be open. Additionally, if the Pension Board was only at the meeting to observe and they did not deliberate towards or make any decisions, there was nothing wrong with them attending the meeting.

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15 4	Can she attend the educational training workshop that the City of Jellico's BOMA is going to have?	If the Mayor and BOMA allow her to attend, then she is welcome. However, if the meeting is strictly a training session and there is not going to be any deliberation or decision making, the meeting does not trigger the open meetings act and the meeting can be conducted without notice and without the public having the right to attend.
15 5	Are draft minutes of the Beer Board open to the public? Is an audit of a public entity accessible to the public?	Yes, if the minutes exist they are open to the public; but I told him to make a written request for the records and give the entity 7 business days to respond to the request. I told him that if the audit is finalized and has been provided, it is public, but if it is a draft, it is not.
15 6	Can the entire BOMA meet privately and deliberate towards a decision on a recommendation that they will be making to the Mayor on whether or not the Police Chief needs to be fired or disciplined?	No, if the governing body is going to meet and deliberate towards a decision on a recommendation, even if they are not going to make the ultimate decision, it needs to be done in public.
15 7	I just called our local paper, and spoke to Janice at the Cleveland Daily Banner, and the Finance Meetings are not being put in legal notices, still. They are not giving adequate notice since the letter about the Dec 9th ad hoc meeting. http://www.bradleyco.net/ccomm_calendar.aspx?m=2013-12 . I asked about the HCI, and Tornado committee meetings in the past too, and there is no record of that meeting being put in paper either. There was one animal control meeting back in Sept, but that is it. So they are still not giving adequate notice, for Finance Committee meetings. Those have been the only meeting they have had on calendar!	There is no provision in State law that requires all meetings of a governmental entity to be published in a newspaper. The County Commission is required to place notice of a special called meeting in a newspaper if one is available and time permits pursuant to Tenn. Code Ann. Section 5-5-105. However, the statute does not contain similar language for committee meetings or regularly scheduled meetings. In speaking with Ms. Freiberg, she indicated that notices for meetings are posted at the annex building, on the doors of the court house, and on the door of the building where the meeting is scheduled to occur. She also said that since the County received the letter back in December, the purpose of the meetings are also being included in the notices. I understand that notices for special called County Commission meetings are placed in the paper and at the beginning of each year, the schedule of meetings for the entire County Commission is published for the entire year.

I recently reviewed UCDD Board Minutes regarding the meeting of August 20, 2013. During the review, I discovered that a reference to the questionable KWILL contract was omitted from the minutes. Board member Chris Thompson brought up the KWILL contract during a discussion of Old Business. He asked if the issue had been referred to a committee for review. UCDD Director Mark Farley stated that the issue had not been discussed or reviewed. UCDD Board Chairman Ron Cyrus quickly passed over the issue and never addressed future reviews of the KWILL contract. I spoke with Mr. Cyrus after the meeting and asked him to place the KWILL contract on the next agenda for discussion. He assured me that he would place the issue on the agenda of the next UCDD Board meeting. Of course, the KWILL contract was never discussed at any UCDD Board meetings since August 20, 2013. Mr. Cyrus continues to ignore my requests to place the KWILL contract on the agenda for discussion. I understand that Mr. Cyrus is the Board Chairman and can set the agenda, but he also has an obligation to address issues regarding misuse of funds at UCDD. The fact that the reference to the KWILL contract was omitted from the Board Minutes of August 20 2013 causes me great concern. There is an audio recording of this meeting that clearly represents the discussions on August 20th. Board member Chris Thompson acting in his official capacity as a UCDD Board member brought up the KWILL issue for discussion. The discussion was ignored and references to the discussion were omitted from the official Board Minutes. Considering previous issues with fraudulent minutes at UCDD, I am requesting an investigation into this matter.

Tenn. Code Ann. Section 8-44-104 reads:

The minutes of a meeting of any such governmental body shall be promptly and fully recorded, shall be open to public inspection, and shall include, but not be limited to, a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of roll call.

At a minimum, the UCDD is required to have the information bolded in the minutes. UCDD staff can also place other information in the minutes, but the courts in Tennessee have only held a governmental entity to be in violation of the open meetings act when the items in bold were not in the minutes. Given that what you have described does not seem to constitute any of the bolded items, I cannot say that the failure to include that information that you described is a violation of the open meetings act.<http://caselaw.findlaw.com/tn-court-of-appeals/1130683.html>. However, if a governmental entity routinely places items such as the one that you described in the minutes, I suggest that the entity be consistent in that practice, even if failure to do so does not rise to the level of an open meetings violation. In the one case in Tennessee related to the violation of the open meetings act due to the failure to include certain information in the minutes of a meeting, the court held that the governing body violated the open meetings act because it failed to include that a vote was taken on an issue and the results of the vote in the minutes.

15 9	<p>City of Eagleville officials will open bids on Feb. 6, 2014, for the city's \$2.64 million sewer project. They have a mandatory pre-bid meeting set for Jan. 23 at 10 a.m. at Consolidated Utility District. The reason the meeting is being held at CUD's offices is the city and CUD are trying to coordinate the work to lay the sewer and new water lines. My understanding is the bid opening must be public. I have a question though about the mandatory pre-bid meeting. Is that required to be public also? If it is could you please provide me with the governing reference in the open meetings law.</p>	<p>I looked at multiple provisions related to opening bids in public and did not find any provision that addresses a "pre-bid meeting." Since I could not find a specific statutory provision related to the meeting that you have described, I am of the opinion that the meeting is only required to be open to the public if multiple members of a governing body are going to be at the meeting deliberating towards or making decisions on public business. If that is not going to occur, the open meetings act is not triggered and the meeting is not required to be open to the public.</p>
16 0	<p>He has been having a dispute over some of his land and he may be going to court. If he does go to court, he will probably represent himself instead of having an attorney. He would like to know if there are any land acquisition court hearings that are open to the public that he would be able to sit in on. If so, he would like to know if he is allowed to bring a recorder so that he can listen to the case again at home.</p>	<p>I told him how he could find out what cases are docketed and also explained to him that the trials are open to the public. As far as recordings are concerned, I explained that he needed to look at the local rules on the AOC website to see if recording devices are allowed. I also told him that if they are not, he can order the recording from the clerk's office.</p>
16 1	<p>I wanted to share this legislation, and I welcome your feedback:http://www.capitol.tn.gov/Bills/108/Bill/SB2073.pdf.</p>	<p>I checked the citations and they are correct. Additionally, I looked at what is currently in Tenn. Code Ann. Section 49-6-804 and the language that is in the bill mirrors almost exactly the language that requires these plans to be established. The Advisory Committee will get an email this afternoon that contains a link to this bill. I did mention at the meeting in December that this bill would likely be introduced.</p>

I am working with a client who has a zoning matter pending in Cheatham County. The County Attorney and I have been discussing an Open Meetings Act issue that he believes would be present if he takes an action I have requested. I will try to simplify the issue as much as possible because the County Commission meeting in question will take place next Monday evening, January 27. There is a zoning ordinance pending before the Cheatham County Commission for their January 27 meeting. The property involved is also the subject of an application to THDA for Low Income Housing Tax Credits. As part of the LIHTC program, an applicant is required to submit a form signed by the County Mayor or County Attorney that certifies the property to be within an area covered by a "revitalization plan." Unfortunately, there is no such plan under Tennessee law, so this provision often causes local government officials heartburn as they try to determine if they can sign it on behalf of an LIHTC applicant. In this instance, THDA has agreed that if the County Commission includes certain language in the resolution used to adopt the pending zoning, then it is THDA's opinion that the certification requirements are present and the county officials can sign the form. The proposed language is: The Cheatham County Commission finds that the area where this property is located, because of its access to a state highway and availability of utilities and other services, is suitable for revitalization. The Commission further finds that the proposed rezoning and revitalization of this property is consistent with the Pleasant View Land Use Plan, which identifies the property as being within the Urban Growth Boundary that is required to be established pursuant to the Tennessee Code. The concern of the County Attorney is that it would violate the Open Meetings Act if the Commission includes the above language in the resolution that changes the zoning for this property. His concern is based on the effect that the language would have of satisfying the THDA requirements for a revitalization plan to be in place. Because there was nothing in the public notice for this rezoning that mentions THDA, revitalization, or any plan, the County Attorney believes that including the language would create an Open Meetings Act violation. My position is that this language does not create or adopt any new plan. Rather, it identifies the location of the property as being 1) appropriate for revitalization, and 2) within the State-mandated Urban Growth Boundary for Pleasant View (i.e., an adopted plan). Essentially the language

I did speak with Mr. Bligh about his concerns. It is my understanding that at no point did the Planning Commission or the County Commission discuss the issue of revitalization, or the Low Income Housing Tax Credits, or the requirements from THDA and how they relate to this zoning ordinance at any of the 3 meetings where the proposed ordinance has been discussed. Additionally, it is my understanding that there was no mention of any of these issues in the public notice that was published. I am not prepared to say that adding the language to the ordinance would create an open meetings violation, but I too am concerned about adding language to an ordinance without there being any public discussion about what the language does and what it means. I am unfamiliar with this community and the public interest that has been shown with regard to the proposed ordinance, but if building an apartment complex that participates in the Low Income Housing Tax Credits Program would be of significant interest to the public (and significance is very subjective), I think that there needs to be some public discussion of this issue at a meeting where the public has notice that the issue is going to be discussed. I have attached the link to a case that examines an open meetings violation in the context of a governmental entity deciding upon a matter of significant public interest when the issue was neither on the agenda or the notice for the meeting. <https://www.casetext.com/case/long-v-city-of-coopertown>.

simply states the Commission's rationale for adopting the zoning request. Clearly that statement of rationale is also providing THDA with evidence that their requirements are in place, but there is no new legislative action being taken by the Commission that would require any notice beyond the standard rezoning notice. Can you advise whether inclusion of the requested language in the Commission's zoning approval would constitute, in your opinion, a violation of the Tennessee Open Meetings Act?

16 3	She wanted to discuss SB1734.	We discussed the fact that it appears to only be applicable to entities created or mentioned in Title 4 and we discussed the fact that "meeting" is not defined in the bill; but we also discussed the way in which it is defined in Tenn. Code Ann. Section 8-44-102.
16 4	What is the rule on how much notice you have to give for a special called meeting?	There is no bright line rule that exists. The courts have said that anything less than 72 hours is not sufficient, but there could be cases where you cannot wait that long and other cases where you can wait a week. He explained that the AOE is going on medical leave and they need to appoint an interm. I told him that was probably something that needed to be done quickly, so anything over 48 hours is probably sufficient as long as the Commission can justify why they needed to meet quickly.
16 5	For what purposes can a utility board go into executive session, and what can happen during the executive session?	The board can only go into executive session to discuss threatened or pending litigation (threat is real and memorialized or a named party to filed litigation). During the executive session, the board can give the attorney facts about the case and the attorney can give legal advice. All deliberation or decision making has to be done in public. The executive session can occur before or after the public portion of the meeting

		and there is no notice or minutes required.
16 6	Is it sufficient to post notice on a website where you have to drill down to several different drop boxes?	It is only sufficient if the location posted is one that interested citizens would know to go to in order to find out when a meeting is scheduled. There is also a concern about the notice only being posted on the Internet.
16 7	Are the meetings of the Board of Directors of a charter school required to be held in accordance with the open meetings act?	Yes, pursuant to Tenn. Code Ann. Section 49-13-111 the meetings must agree with the open meetings act.
16 8	1. When is the Board of Education required to print notice in the newspaper? 2. When is the County Commission required to print notice in the newspaper?	There is nothing in state law that requires the Board of Education to post notice in the newspaper. The same is true for a county commission, except when there is a special called meeting and there is publication available to get the notice out before the meeting. Notice can be posted in multiple public places and on the Town's website; and as long as those places are locations that the public would be likely to see the notice and become aware of the meeting, then that is adequate. We discussed the Englewood case and the differences between what is required for special called meetings and what is required for regularly scheduled meetings.
16 9	Does the office suggest that the staff send out a memo to the Mayor clarifying a decision that the Board made without the Board actually weighing in at a public meeting about what it meant by its decision?	I do not suggest that staff interpret and make a decision on a directive given from the Board. If there needs to be clarification, I suggest that be done in an adequately noticed public meeting so that the Board is not accused of making decisions and deliberating in private. There needs to be discussion about what impact a delay will have if there is not a meeting called between now and April.
17 0	1. Does a local board of education have to publish an agenda for a work session? How far out if they do? 2. Does a local board of education have to publish an agenda for a regularly scheduled meeting? If so, how far out?	1. A local board of education is only required to publish an agenda for a work session if the work session is special called (we discussed how the statute defined special called) and there is no time frame set in stone. There should be enough time that an interested person would become aware of the meeting and have the opportunity to attend. 2. For regularly scheduled meetings, there is only one case that requires an agenda in Tennessee and it came out of federal court and again, the standard is the same for special called meetings as far as how far in advance of a meeting notice has to be provided.
17 1	Who has the authority to take action against a governing body when the body violates the open meetings act?	I mailed information related to a citizen's right to file an open meetings lawsuit. See the attachment for this information.
17 2	He has a question about the public notice requirements for meetings. If a political party in a county decides to nominate candidates by convention or caucus, are those meetings required to be open to the public and noticed?	
17 3		He had a complaint regarding an open meetings violation committed by members of the Portland City Council (see attachment).
17 4		The office sent an open meetings letter to Mayor Wilber and the city attorney, Mr. Amonette regarding the fact that the City Council used secret ballots to appoint a new Councilman which is in violation of the open meetings act.
17 5		The reporter interviewed me regarding the City of Portland City Council's vote by secret ballot. He wanted to discuss why this could be considered a violation of the open meetings act.
17 6	He is requesting feedback from the investigation into the Crockett County E911 meeting that was not properly sunshined and ended before the start time.	We discussed the open meetings letter that I sent to the City of Portland and she asked for information on how to make a request for a copy of the complaint.
		Please see the attached letter that was sent to the Board back in October. Please let me know if you need any additional information.
17 6		The Stewart County Budget Committee has violated the open meetings act by having meetings without proper notice.
		The office sent a letter to Chairman Dortch and Mayor Joiner regarding the notice requirements for special called and regularly scheduled meetings. I also advised in the letter that I did not recommend that the notice only be placed on the County's website.

17 7	She reported that she believes that some of the members of the Monroe County School Board violated the open meetings act by discussing the replacement for the school superintendent outside of a public meeting.	I watched the recording of the meeting online. The office sent a letter to Chairman Lovingood regarding the allegation and the comments made by school board member during the meeting. The letter focused on the fact that any deliberation on an issues is required to be done during an adequately noticed public meeting.
17 8	She would like to receive a phone call to discuss meetings at a city council; and if they use recordings and also take minutes, is the audio recording public record?	As we discussed this morning, if the City records the City Council meetings and those recordings are in existence at the time that you make your public records request, you have the right to a copy of the recording, after you pay reasonable fees in accordance with the City's public records policy. This right is set out in Tenn. Code Ann. Section 10-7-503(a)(2)(A) which reads, "[a]ll state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law." Please let me know if you have any additional questions.
17 9	She is reporting an alleged violation of the open meetings act by Monroe County Board of Education. This is the second complaint received.	I told the complainant that I have received a similar complaint and that the office would be sending an open meetings letter to the School Board chairman. The letter was sent and it focused on the fact that based upon the comments made by one of the Board members during the meeting, it appears that there was some communication about who to appoint as the Superintendent outside of a publically noticed meeting. The letter also focused on what the law says about that type of communication.
18 0	The Solid Waste Board needs to take action related to an employee immediately and there are concerns about how quickly that can happen based upon the requirements of the open meetings act.	We discussed the need for immediate action and I told him that he needed to follow-up with the Board Chair on the developments related to the need for this meeting and call me back. I told him that if there really was an immediate need, notice needed to be posted right now in several public places and on the City and County website, but I would not have the meeting until later this evening. I also explained that the notice would need to be speciifc about what was going to be considered and possibly acted upon at the meeting. I told him that if there was not an immediate need to meet, the notice could be posted today and the meeting could be held at the end of the week, over the weekend or early next week. After he spoke with the Board Chair, it was determined that the meeting could wait until next week.
18 1	http://www.mckameyanimalcenter.org/?page_id=112 . As the board meets regularly on the second Wednesday of each month, is it necessary to post the specific month/day or is the fact that they indicate on the website that the meetings are held on the second Wednesday of each month sufficient to fulfill the requirements of the law?	Notice needs to be posted for each meeting that is held, even if they have a statement on the website indicating that the Board meetings are the second Wednesday of each month. Also, I suggest that the posting be both on the website and in some other public places. Please let me know if you have other questions.
18 2	The City Council sits as a disciplinary board for city employees as well. Can the Council deliberate on discipline outside of a public meeting? What if there could be litigation filed based upon their decision?	No, the Council has to deliberate in public. They cannot have an executive session. Also, even if there was pending or threatened litigation, any decision made by the Council would have to be done publically. Executive session would only allow the members to meet with the Council attorney to give him/her facts and to get legal advice related to those facts. Any deliberation or decision making has to occur in a public meeting.
18 3	This organization receives more than 30% of its budget from the City of Chattanooga. It is my understanding that they are required to follow the open meetings and open records acts of Tennessee. Attached is the screen shot and the link of the website as of tonight, 2-19-14. They held a board meeting tonight and several important issues were approved by the board (i.e. two new members and the Center's annual fiscal budget). As the meeting was not advertised on the website or otherwise, what is the legality of the votes of the board at this meeting?	I do not believe that they are subject due to the fact that they receive more than 30% of its funding from the City, but I do believe that they are subject for other reasons. If the meeting was not noticed at all, the meeting is subject to being challenged legally and a court could find that all of the votes are null and void.

18 4	<p>She is having a dispute with the Lafayette Housing Authority regarding the open meetings law. They removed a member from his position and did not give notice for a public meeting so no one, including the man who was removed from his position, was able to be there for the meeting. She has told the Board that they need to hold another public meeting and revote on the issue, but the Board says that it's not necessary.</p>	<p>I called Charlie Jones, the Commissioner that put together the notices and discussed with him the fact that I think that the Housing Authority BOD needs to have the meeting again, properly notice it, and give the public more notice since at this juncture, the ED is not longer in a position to make decisions for the Housing Authority.</p>
18 5	<p>I requested from the Law Director's office the email records for the Audit Committee regarding the newly appointed Internal Auditor. The Law Director's response is attached in a post from County Commissioner Broyles. I have several questions with respect to this thread and the responses from the Law Director's office as to who is the keeper of records and whether emails sent on a "personal" account or a government account, concerning government business, becomes public record. When you have an opportunity, I would like to discuss this further with you.</p>	<p>We discussed the fact that it is not whether the email is sent from a government or personal account that makes it public. It is whether or not the content of the email relates to government business that determines whether or not the email is public.</p>
18 6	<p>1. Is it possible to set up some type of screening mechanism, prior to the Complaints going public, to make an initial determination of validity? 2. If so, at what point do these complaints become public record? The shock value may be all that the filer is seeking. Is there a way, without violating the law, to keep these from going public until an initial assessment can be made?</p>	<p>No, I do not think that is possible, assuming that the complaints are being made to the Committee and the Committee is the entity that has the authority to make the decisions on the validity of the complaints (in a public meeting). As soon as a complaint is received by the Committee, it becomes a public record.</p>
18 7	<p>I'd like to get in touch with someone about whether the local delegation's vote is open. I've been told by the delegation's chairman that the vote was private.</p>	

I just left you a rather lengthy email about a special called meeting of the IDB of the City of Morristown that was, in my opinion, adequately noticed in the newspaper for February 14, 2014, at 7:30 AM with an agenda provided in the notice. The major item on the agenda was receipt and discussion of an economic impact statement in connection with a proposed \$4M + tax-increment financing plan for a Wal-Mart –and potentially other stores-- in Morristown. I arranged my schedule so I could attend. I arrived at about 7:20 AM. Another member of the public was present as were the chairman and secretary of the IDB. None of the other 14 or so members of the IDB were present, nor did any other member of the IDB arrive late for the 7:30 meeting. At or around 7:30 AM, the Chair announced that he was recessing or adjourning the special called meeting until 11 AM that same day. I questioned whether such an action complied with the notice requirements for special called meetings, and I was told that was what was being done PERIOD. Because of insufficient notice of the 11 AM meeting, I was not able to rearrange my schedule so as to attend that meeting. It is my understanding that about 12 members of the Board showed up at 11 AM. While I expect that the IDB would say that anyone who came at 7:30 had notice of the new meeting time, there is a countervailing argument in that many people cannot attend 7:30 AM meetings but could attend an 11 AM meeting IF they were aware and had adequate public notice of the meeting. Also someone who made special arrangements to attend at 7:30 as scheduled could not simply change their schedule again and be there at 11 AM. I have several questions:

1. May a special called meeting announced in the newspaper and noticed for 7:30 AM be recessed or adjourned by the Chair and re-set for 11 AM that same day?
2. May the chair “recess” a special called meeting to a later time when the meeting had never begun because there was no quorum?
3. May the chair “adjourn” a special called meeting to a later time when the meeting had never begun because there was no quorum?
4. If your answer to #1 is yes, what “type” of notice to the public of the 11 AM meeting would be adequate?
5. If 3-1/2 hours notice of a special called meeting to discuss a \$4M TIF and other matters is inadequate, what action should have been taken in order to set the meeting

I sent a response to your voicemail to the AOL account that we have in spreadsheet. The content of the email is:

It is the opinion of this office that the Board was required to provide the public adequate notice before it reconvened and deliberated towards or made any decisions related to public business. Attached is the link to an AG opinion related to this issue.<http://www.tn.gov/attorneygeneral/op/2007/op/op30.pdf>

for another day/time and provide adequate public notice?

Any other comments you might have would be appreciated.

18 9	<p>I am with the Macon County Times. We have had local complaints on a special called meeting that was held last week by the board of the Lafayette Housing Authority, where they decided to dismiss Executive Director Jon Wells. Wells has contended that because the meeting was never posted or advertised, it was not a legal meeting and that he was not legally dismissed (he is trying to resign, as an alternative to dismissal). We are covering this story for the paper and want to speak accurately about the legality of this special called meeting. Can you advise?</p>	<p>I told her that this office discussed with a Board member and staff the fact that I thought that the meeting needed to be held again and that public notice needed to be provided (even though I understand the emergency situation that necessitated the meeting). A draft copy of the notice was sent to me and I reviewed it, made comments to it and made suggestion on how the notice and where the notice is posted.</p>
19 0	<p>She asked me to review the notice.</p>	<p>I spoke with Mr. Jones as well. Thank you for providing me his cell phone number. The notice looks good. I just added some punctuation. Also, as we discussed, try to get the radio station to run the notice, place it in as many public places as possible today, and send the amended notice to the newspaper.</p>
19 1	<p>She was told at a school board meeting last night that she was not allowed to bring in her camera. The school board prodced a policy that indicated that all media outlets were required to ask for and get permission from the school board before they could bring in a camera. Is this allowed?</p>	<p>I provded her a copy of AG opinion 95-126. We discused the opinion and the fact that the policy does not limit what citizens are able to do, only what the media is able to do.</p>
19 2	<p>He asked whether or not a committee that discussed and made recommendation to the City Council on redistricting issues is required to publish notice of its meetings in the newspaper.</p>	<p>we discussed the fact that without knowing who the "committee" is and what the role of the committee is, I cannot say for sure. However, if the committee is a part of the government and the members are deliberating towards or making decisions on public business, the meeting likely has to be noticed, but it does not necessarily be noticed in the newspaper. we discussed the various other places that a governing body can post notice.</p>