



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL
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Justin P. Wilson
Comptroller

July 2, 2009

Ms. Pat Fain
Member, Oak Ridge Charter Commission
Oak Ridge, Tennessee

Dear Ms. Fain:

You have requested the opinion of the Office as to the applicability of the Tennessee Open Meetings Law and Tennessee Public Records Act ("TPRA") to a home rule city charter commission established pursuant to the Tennessee Constitution.

Article XI, Section 9 of the Constitution provides that a charter or an amendment to a charter for home rule municipalities may be proposed either by:

1. An ordinance by the home rule municipality;
2. A charter commission provided for by act of the General Assembly (and elected by the qualified voters); or
3. In the absence of legislation by the General Assembly, by a charter commission of seven members, chosen at large in a municipal election of the home rule municipality.

There are no Constitutional provisions that specifically address any operational requirements for charter commissions, such as a quorum requirement or whether the two acts (the Tennessee Open Meetings Law and the TPRA) apply. Additionally, the Tennessee General Assembly has not adopted any general law specifically regarding charter commissions for home rule municipalities.¹

The members of the Oak Ridge Charter Commission ("Commission") were elected in November of 2008. As a member of the Commission, you have shared with this Office Standing Rules adopted by the Charter Commission on March 13, 2009. These Rules provide that Robert's Rules of Order govern the proceedings of the Commission except as specifically provided. Two of the standing rules relevant to this opinion state:

A majority of the membership of the Commission shall constitute a quorum.

All meetings shall be open to the public. The Chairman shall have the discretion to recognize and limit everyone from the public who wishes to be heard at meetings of the Commission and hearings to three to five minutes for oral presentation, which limits the Chair may be (sic) extended at his discretion.

The Tennessee Open Meetings Act provides that "[a]ll meetings of any governing body are declared to be public meetings open to the public at all times." Tenn. Code Ann. Section 8-44-102(a). "Governing body" is defined, in part, as "members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration." Tenn. Code Ann. Section 8-44-102(b)(1)(A). "Meeting" is defined as "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." Tenn. Code Ann. Section 8-44-102(b)(2). "Quorum" is not defined in the statute but commonly refers to the number of

¹ The 105th General Assembly did approve 22 private acts related to amendments to charters, subject to local approval (three of which were not approved timely). Nine such private acts amending charters have been approved to date by the 106th General Assembly.

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members who must be present for business to be transacted, and does not refer to the number of members required to vote in favor of a question in order for it to be approved. "Public body" also is not defined. However, the courts have considered what constitutes a "public body" and said the following:

It is clear that for the purpose of the 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 business of the people in the governmental sector

Dorrier v. Dark, 537 S.W. 2nd 888, 892 (Tenn. 1976).

The seven member Charter Commission appears to meet the definition of a "governing body" as found in statute and of a "public body" as described by the courts. "Meeting" is defined in Tenn. Code Ann. Section 8-44-102(b)(2) as the gathering of a governing body "for which a quorum is required in order to make a decision or to deliberate towards a decision on any matter." However, neither the Tennessee constitution nor statutory law specify (or reference) the fact that a charter commission is required to have a quorum present in order to make a decision or to deliberate. The Attorney General has opined that determining "[w]hether a quorum is required is dependent upon the rules governing the proceedings of the body in question." Tenn. Op. Atty. Gen. No. 79-414. Since the Commission appears to meet the definitions of a governing body and a public body, and has imposed upon itself a quorum requirement, it is subject to the provisions of the Tennessee Open Meetings Law.

Therefore, members of the Commission should communicate about matters under the jurisdiction of the Commission and deliberate and/or reach a decision on such matters only at a meeting that complies with the requirements of the Tennessee Open Meetings Law. Any communications between members outside of a properly notice meeting, whether by e-mail, phone or in person, that involve deliberation or decision making on matters to be considered by the Commission would violate the Tennessee Open Meetings Law.²

With regard to the Commission's responsibility to provide public access to its minutes, the Open Meetings Act requires that the minutes of any meeting of a governing body be prepared promptly after the meeting and thereafter be made available for public inspection. Tenn. Code Ann. Section 8-44-104(a). Likewise, the TPRA states in part, "[a]ll state, county and municipal records shall...be open for personal inspection by any citizen of this state." Tenn. Code Ann. Section 10-7-503(a)(2)(A). Tenn. Code Ann. Section 10-7-503(a)(1) defines "public record or records," as basically any conceivable media "regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency." While "governmental agency" is not defined, it appears that the Commission would be considered a "governmental agency" since it was formed for purposes of developing proposed amendments to the City's Charter which are then submitted to the voters (by way of the City Council) for approval. Therefore, as a governmental agency, any records of the Commission that meet the definition of "public record," whether minutes or otherwise, are open to public inspection and/or copying by any citizen of Tennessee, unless there is a provision within the law that makes the records or information within the records confidential.

You expressed concern that the City (as the designated records custodian) would not accept notes from meetings where a quorum was not present as a record that must be maintained. Notes from and minutes of meetings would constitute public records (although the TPRA does not govern the period of time such records must be maintained). Therefore, notes from a meeting properly called but for which a quorum did not materialize do constitute public records and should be treated as such by the Commission's designated records custodian.

Please feel free to call either Elisha Hodge or myself upon receipt of this letter if you have anything further that you would like to discuss.

Sincerely,

Ann V. Butterworth, Director

² Note, the General Assembly in Public Chapter 175, Acts of 2009, authorized limited internet communications between members of certain governing bodies.