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Bradley County Commissioners
c/o Joseph Byrd, County Attorney
155 Broad Street
Cleveland, Tennessee 37311

Dear Commissioners:

During a recent informational session on open meetings, I was asked by you all to address how long, after public notice is published, is the Bradley County Commission required to wait to convene a special session. I was also asked to address how long the City of Cleveland has to wait to convene a special session after notice is published to the public. Both of these issues are addressed below.

Tenn. Code Ann. Section 8-44-102(a) states, "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." So unless there is a specific provision within the law that restricts access to a meeting of a governing body, the meeting is open to the public. Governing body is defined in part as, "the members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration." Tenn. Code Ann. Section 8-44-102(b)(1)(A). Meeting is defined in part 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). Based upon these provisions, anytime two or more members of a governing body convene to discuss or make a decision on a matter that the entire governing body has been given the authority to make decisions or recommendations on, a "meeting" has occurred. In order for a governing body to convene a meeting, whether it is a regularly called meeting or a special called meeting, the public must be provided "adequate notice" that a meeting is scheduled to take place. Notice for regularly called meeting is addressed in Tenn. Code Ann. Section 8-44-103(a). Tenn. Code Ann. Section 8-44-103(b) and (c), address special called meetings and state the following:

- (b) Any such governmental body which holds a meeting not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law, shall give adequate public notice of such meeting.

- (c) The notice requirements of this part are in addition to, and not in substitution of, any other notice required by law.

The “other notice” requirement referred to above for county commissions is found in Tenn. Code Ann. Section 5-5-105. Tenn. Code Ann. Section 5-5-105(a) states:

- (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](#).

Because Bradley County is not a Class 1 county, the provisions of subsection (a) are applicable. Subsection (a) states that a special called meeting shall not convene more than fifteen (15) days nor less than forty-eight (48) hours from the time that application is made for the convening of the special called meeting. From this provision, it would seem that a forty-eight (48) hour notice is all that is required; however, the analysis does not stop with subsection (a).

Subsection (b) is not applicable to Bradley County because the County does not fall into the enumerated population brackets; however, subsection (c) is both applicable and directly addresses the question presented. Tenn. Code Ann. Section 5-5-105(c) states:

- (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.

When read together, both of these provisions seem to indicate that for special called meetings, adequate notice to both the public and the members of the county commission, must be published at least five (5) days prior to the convening of the meeting. It is important to note however, that if an emergency occurs and it is not feasible to wait until notice has been posted for five (5) days, the courts look at the “totality of the circumstances” regarding the meeting when determining whether or not notice was provided that would fairly inform the public of the convening of a meeting. *Memphis Publ'g Co. v. City of Memphis*, 513 S.W.2d 511, 513 (Tenn. 1974).

Notice requirements differ from one governing body to the next. While Tenn. Code Ann. Section 5-5-105 addresses notice for special called meeting of county commissions, only those municipalities that have modified city manager-council charters or a city-manager commission charters have specific statutory provisions with regard to special called meetings. *See* Tenn. Code Ann. Sections 6-20-208 and 6-32-102. However, in looking at the statutory provisions relative to both of the above-mentioned types of municipal governing bodies, the provisions only address written notice being given to the members of the governing bodies and not the public.

Since the Tennessee General Assembly has found the notice requirements set out in Tenn. Code Ann. Section 5-5-105 to be adequate for county commissions, it seems appropriate that those legislative bodies that do not have specific time frames in place for notice requirements relative to special called meetings would likewise be able to rely upon the time frame set out in that provision when assessing whether or not adequate public notice of a special called meeting has been provided.

The City of Cleveland operates pursuant to a private act charter. The private act charter for the City of Cleveland says the following with regard to special called meetings, “[w]henever in the opinion of the mayor or any three (3) council members, the welfare of the city demands it, the city manager shall call a special meeting of the city council.” There is nothing within the City’s charter that sets out a specific time frame for notice of special called meetings. As such, the City of Cleveland is not required to provide notice in a specified number of days, but rather is only required to provide what it determines to be “adequate public notice.”

The courts have determined that there is no bright line rule for what constitutes adequate public notice. Rather, the courts have found that the analysis for whether or not notice is adequate is based upon the following three (3) factors:

- (1) notice being posted in a location where a member of the community could become aware of such notice;
- (2) the content of the notice reasonably describing the purpose of the meeting or the action proposed to be taken; and
- (3) notice being 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.

Englewood Citizens for Alternate B v. Town of Englewood, 1999 WL 419710 at *2 (Tenn. Ct. App. June 24, 1999).

In addition to these three factors, it is also important to remember that when the court looks at the “totality of the circumstances” surrounding notice and whether it would fairly inform the public of the governing body’s plan to convene, the governing body’s past practice in providing notice could also become a factor. If the governing body is required by statute to provide notice within a certain number of days, but traditionally exceeds what the statute requires, then that could become an important factor if the notice was challenged through a legal proceeding. Likewise, even if the governing body was not required by statute to provide notice within a certain time frame prior to a special called meeting, but the governing body traditionally provides notice within a certain number of days, that too could factor into the “totality of the circumstances” analysis.

It was asserted during our session that the City Council for the City of Cleveland gives two (2) days notice of special called meetings. Based upon that assertion, it appears that the City has determined that two days notice of special called meetings is adequate based upon all of the circumstances involved.

Please feel free to call me at (615) 401-7891 if you have any further questions.

Sincerely,

Elisha D. Hodge
Open Records Counsel