



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

September 24, 2010

Ms. Pat Fain
926 West Outer Drive
Oak Ridge, Tennessee 37380

You have requested an opinion from this office that addresses the following issues:

When is a governing body required to record minutes?

In what format are minutes required to be recorded?

I. Background

On October 12, 2009, the current members of the Budget and Finance Special Committee (hereinafter the "Committee") were appointed by the Oak Ridge City Council. The Committee is composed of two council members and the mayor. Based upon the committee's report (Attached Exhibit A), the committee met approximately 17 times from November 2009 until April 2010. During the course of these meetings, the Committee "completed a comprehensive review of information and issues related to the FY11 budget for the City of Oak Ridge." At the City Council meeting on May 3, 2010, the Committee presented a report summarizing the work that it had done and make recommendations to the City Council relative to the FY11 budget. Those recommendations were approved by the City Council at the May 3, 2010 meeting. There are no recorded minutes from any of the Committee's meetings.

II. Analysis

The Tennessee Open Meetings Act (hereinafter the "Act") begins with a provision that reads, "The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret." Tenn. Code Ann. Section 8-44-101. The Act goes on to specify that "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." Tenn. Code Ann. Section 8-44-102(a). Tenn. Code Ann. Section 8-44-102(b) defines what constitutes a "governing body." For purposes of this opinion, Tenn. Code Ann. Section 102(b)(1)(A) is most relevant and it defines a "governing body" as "[t]he 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." The provision goes on to describe what constitutes a "meeting." A "meeting" is 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). As such, any time that two or more members of a governing body convene to make a decision or deliberate towards a decision relative to the business of the public body, a meeting is being conducted.

Prior to a meeting, the governing body is required to provide the public with adequate notice of its intention to meet. Tenn. Code Ann. Sections 8-44-103. After a meeting, the governing body is required to prepare minutes. The Act

provides that the minutes “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.” Tenn. Code Ann. Section 8-44-104.

Based upon the above cited statutory provisions, it is the opinion of this office that anytime multiple members of a governing body convene and make a decision or deliberate towards a decision on an issue relevant to the business of a public body, a meeting has occurred and minutes are required to be taken. It is also the opinion of this office that any governing body that has the authority to make decisions for or recommendations to a public body on issues of policy or administration, would only be allowed to convene without recording minutes when holding executive session or when meeting solely for the purpose of exchanging or receiving information. Even though a governing body has the ability to convene prior to a publicly noticed meeting for what many local governments refer to as “work sessions”, these work sessions should not be used as a means of circumventing the requirements of the Act. If at any point during a work session members of the governing body go beyond exchanging information and receiving reports and begin making decisions or “weigh[ing] arguments for and against a proposed course of action” or engaging in the “type of debate and reciprocal attempts at persuasion that would be expected to take place at a . . . meeting, in the presence of the public” and the governing body “as a whole,” then a meeting is occurring for which there must be adequate public notice and recorded minutes. *Neese v. Paris Special School District*, 813 S.W. 2d 432, 435 (Tenn. Ct. App. 1990) (quoting BLACK’S LAW DICTIONARY 384 (5th ed. 1979)) and *Johnston v. Metropolitan Government of Nashville and Davidson County*, 2009 WL 4738730 at *11 (Tenn. Ct. App. December 10, 2009).

While the Act requires that minutes be recorded, it does not specify the format in which they must be recorded or maintained. The Act simply requires that minutes be “promptly and fully recorded,” be “open to public inspection,” and “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.” Tenn. Code Ann. Section 8-44-104. Many local governments have provisions within the city or county’s charter that require minutes to be recorded in journals.¹ However, based upon the evolving nature of technology, it is possible that minutes that were recorded on paper and bound in journals are now being recorded electronically and maintained in electronic journals. It is the opinion of this office that as long as minutes are recorded and maintained in compliance with the requirements found in Tenn. Code Ann. Section 8-44-104 and any relevant charter or by-law provision, the minutes are in compliance with the Act.

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

Elisha D. Hodge
Open Records Counsel

Cc: Ken Krushenski, Oak Ridge City Attorney
Mark S. Watson, City Manager

¹ Article II, Section 8 of charter for the City of Oak Ridge reads:

There shall be a journal of proceedings of all council meetings, signed by the mayor and clerk and to which the public shall have access at all reasonable times. . . . The journal shall also report the names of the council members present and absent, each motion considered, and the title of each ordinance or resolution considered.

MEMORANDUM

DATE: April 28, 2011

TO: Fellow Members of City Council

FROM: FY 2011 Budget and Finance Special Committee
Councilman L. Charles Hensley, Chair
Councilwoman Ellen D. Smith
Mayor Thomas L. Beehan

SUBJECT: COMMITTEE REPORT AND RECOMMENDATIONS

The Council's Budget and Finance Special Committee has met a total of 17 times, beginning November 3, 2009, and has completed a comprehensive review of information and issues related to the FY 2011 budget for the City of Oak Ridge. The Deputy City Manager, Steve Jenkins, and Finance Director, Janice McGinnis, provided staff support and guidance at all meetings. In addition, special presentations were made by the Chamber of Commerce; the Convention and Visitors Bureau; the Oak Ridge Rowing Association; Mr. Vernon Long, the Anderson County Property Assessor; Mr. Chris Mitchell, an electric rate consultant; and Mr. Ray Evans, representing the "Working Group Regarding Incentives for Older Homes."

Budget and Finance Committee meetings generally occurred on Tuesday, at 5:30 p.m. and were routinely attended by other Council members, members of the public, and representatives of organizations such as the League of Women Voters and the Charter Commission, as well as the press. Attendance logs were maintained and are available for review in the office of the City Clerk.

In the course of its meetings the Committee also reviewed all City Departments' expenditures and revenues. The Committee's most recent schedule is attached for reference. Each department, along with the Oak Ridge Schools, provided detailed projections of revenue and expenditures for the 2011 budget year. Each department was asked to provide (1) a status-quo budget, (2) a list of potential cuts, and (3) a list of potential budget additions and the justifications therefor.

Early in the process, on February 16, 2010, an attempt was made to arrive at budget policy guidelines through discussion of individual committee members' written suggestions. Councilwoman Smith and Chairman Hensley submitted suggestions. No consensus could be reached among the Committee members. As a result, at the February 23rd meeting, Mr. Jenkins suggested guidelines which received the Committee's general consensus. Those guidelines (reflected in the attached Multiyear Model) are attached for reference and represent the general guidance used by the staff for the proposed FY 2011 budget. Please see the notes at the bottom of the multi-year model.

There are two basic products that summarize the Budget and Finance Committee discussions.

1. Significant time was spent discussing the City's Multiyear Financial Model, and this model was used at each meeting to help visualize the impact of possible funding options. The version of the resulting model that is attached received the most attention and discussion. Note that this budget shows an increase of approximately 3% for municipal expenditures and an increase of 3.5% in transfers to the Oak Ridge Schools for 2011. It also shows no projected tax increase. In this scenario, without a tax increase no new municipal programs, municipal salary adjustments, or new facilities are recommended in FY 2011, although all critical City services can be maintained. Future tax increases appear to be necessary in the next few years, and the City's fund balance continues to remain near a minimum.

EXHIBIT

A

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Significant discussion occurred relative to future tax increases and restoration of the City's fund balance. A possible way to accomplish this would be to reduce the across-the-board budget increase to 2.0% or 2.5% instead of 3%. In so doing, future tax increases are greatly reduced and the future fund balance begins to grow. The primary impact of this action could be loss of critical staff in both the City and Schools.

The list of unfunded budget requests is attached. These funding requests received significant committee attention and were discussed at length.

The Committee's recommendations are:

- That the Economic Diversification Fund be held flat;
- That a separate fund be created for the photo enforcement camera revenues; and
- That each Council member review the list of potential funding requests and cuts, and be prepared to present alternatives and to participate in the budget deliberations at the public hearing and special meetings that have been scheduled for this purpose on May 10 and 24, 2010.


L. Charles Hensley, Chair

Attachments:

Most Recent Committee Meeting Schedule
Unfunded Budget Requests FY 2011 – Ongoing Expenditures
Potential Budget Reductions and Revenue Enhancements FY 2011
Economic Diversification – Unfunded Budget Requests FY 2011
Salary Adjustment – FY 2011
City of Oak Ridge Multiyear Financial Model
Summary of Capital Maintenance and Major Capital Project Estimates