



STATE OF TENNESSEE  
COMPTROLLER OF THE TREASURY  
OFFICE OF OPEN RECORDS COUNSEL  
James K. Polk State Office Building  
505 Deaderick Street, Suite 1700  
Nashville, Tennessee 37243-1402

Justin P. Wilson  
Comptroller

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Ms. Melissa Ashburn  
MTAS Legal Consultant  
600 Henley Street, Suite 120  
Knoxville, TN 37996-4105

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

May an agenda be amended during a meeting to add items that did not appear in the meeting notice?

I. Analysis

The Tennessee Open Meetings Act (hereinafter referred to as 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). "Meeting" is defined in Tenn. Code Ann. Section 8-44-102(b)(2) 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." Anytime a meeting is scheduled to occur, whether the meeting be a regularly scheduled meeting or a special called meeting, a governing body is required to provide the public adequate notice of the scheduled meeting. Tenn. Code Ann. Section 8-44-103. The courts in Tennessee have declined to provide a bright-line rule for what constitutes "adequate public notice, but instead have held:

We think it is impossible to formulate a general rule in regard to what the phrase "adequate public notice" means. However, 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.

*Memphis Publishing Company v. City of Memphis*, 513 S.W.2d 511, 513 (Tenn.1974).

Unlike other states where an agenda is a required component of the public notices for meetings, Tennessee's Act does not require an agenda to be published. However, despite the fact that the Act does not require that governing bodies have an agenda published, other statutory provisions and case law have done so, but only as it relates to special called meetings. County legislative bodies, cities operating under a City Manager-Commission charter, cities operating under a modified City Manager-Council charter, and public school boards operating under a modified City Manager-Council charter all have specific statutory provisions that restrict the issues that can be brought up at a special called meeting to those items that are specifically set out in the notice. *See* Tenn. Code Ann. Sections 5-5-105, 6-20-208, 6-32-102, and 6-36-106. Additionally, the courts in Tennessee have held that in order for notice of a special called meeting to be adequate, the notice must reasonably inform the public of the issues that are going to be discussed at the meeting. *See Neese v. Paris Special School District*, 813 S.W. 2d 432, 435-36 (Tenn. Ct. App. 1990) and *Englewood Citizens for Alternate B v. Town of Englewood*, 1999 WL 419710 at \*4 (Tenn. Ct. App. June 24, 1999). Based upon the above-cited statutory provisions and case law, it is the opinion of this office that the agenda for a special called meeting cannot be amended during the course of a meeting.

Relevant case law and statutes are clear on the requirement that the notice for a special called meeting include the issues that are going to be considered at the meeting, which for all practical purposes requires that there be an agenda; however, there is no case law or statutory provisions that require the same for a regularly scheduled meeting. When trying to determine whether or not the notice for a regularly scheduled meeting is adequate, the courts have simply looked at whether or not the notice would fairly inform the public that a meeting was scheduled to occur. In *Memphis Publishing Company v. City of Memphis*, the Tennessee Supreme Court stated:

[w]e think it is impossible to formulate a general rule in regard to what the phrase 'adequate public notice' means. However, we agree . . . 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.

*Memphis Publishing Company v. City of Memphis*, 513 S.W. 2d 511, 513 (Tenn. 1974).

In *Souder v. Health Partners, Inc.*, the court, using a totality of the circumstances analysis, examined the adequacy of notice that stated only the name of the entity meeting, the date, the time, and the location of the regularly scheduled meeting. In determining that the notice was adequate, the court said the following:

In view of the totality of the circumstances, the notice of the meeting comports with the provisions of the Act. Notice was given to the media in order to notify the public of the meeting. The notice provided the public with a reasonable opportunity to be present at the meeting. . . Furthermore, while Souder protests the contents of the notice in not referring to the proposed action of limiting the physician network, the meeting was not limited to this sole subject. The agenda of the meeting presented several different areas regarding the business of the District. Thus, failing to specifically state in the notice the issue concerning HP did not make the notice

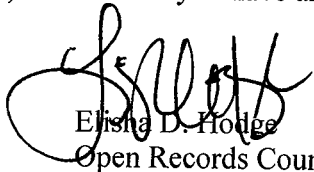
inadequate in light of the several purposes of the meeting. We are of the opinion that notice was given which “would fairly inform the public” under the circumstances.

*Souder v. Health Partners, Inc.*, 997 S.W. 2d 140, 150 (Tenn. Ct. App. 2008).

The *Souder* opinion illustrates that when asked to determine whether or not “adequate public notice” has been provided for a regularly scheduled meeting, the court looks to the content of the notice itself. While the court may acknowledge that there was an agenda for the meeting in question, the content of the agenda does not serve as the basis for whether or not the public received adequate notice of the meeting.<sup>1</sup>

Based upon the above-mentioned case law, it is the opinion of this office that the agenda for a meeting cannot be amended during the course of the meeting when the meeting is special called, but when the meeting is a regularly scheduled meeting, there does not appear to be any statutory provision or case law that would preclude the agenda from being amended during the course of the meeting. However, from a best practice perspective, this office would not suggest that a member of a governing body request to amend an agenda at a regularly scheduled meeting to address an item that the other members have not had an opportunity to consider or research. Likewise, from a best practice perspective, this office would not suggest that a governing body amend an agenda during a regularly scheduled meeting to include an issue in which the governing body knows that there is significant public interest and knows that if the item had been on the agenda that was originally published for the meeting, there would have been increased public interest and attendance at the meeting. While there is no case law on this issue currently, a citizen has the right to file an open meetings lawsuit asserting that a change in an agenda during the course of a meeting violates the notice requirements of the Act.

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

  
Elisha D. Hodge  
Open Records Counsel

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<sup>1</sup> See also *Lewis v. Cleveland Municipal Airport Authority*, 289 S.W. 3d 808, 824 (Tenn. Ct. App. 2008).