

Sunshine Law and Public Documents

Open Meetings¹

The Sunshine Law establishes "... that the formation of public policy and decisions is public business and shall not be conducted in secret" (T.C.A. § 8-44-101).

The law applies to formal meetings that require a quorum and to informal meetings of two or more public-body members if they have the authority to make decisions for or recommendations to a public body. If the participants in the meeting "deliberate toward a decision," then the meeting should be open to the public. Public-body members may not use telephones or other electronic communications to evade Sunshine Law requirements (T.C.A. § 8-44-102).

At meetings, all votes must be public. Secret ballots are not allowed (T.C.A. § 8-44-104).

The Sunshine Law requires "adequate public notice" for both regular and special meetings (T.C.A. § 8-44-103). There is no specific statutory definition of "adequate," but the courts seem to have adopted a "totality of circumstances" test to help determine whether a notice is adequate under a particular set of facts. Retreats are covered under the act and may call for extended public notice. (See *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. App. 1990)).

An open meeting is not required for:

- On-site inspections of projects or programs (T.C.A. § 8-44-102(c));
- Chance meetings of two or more public-body members if they do not deliberate toward a decision (T.C.A. § 8-44-102(d));
- Strategy sessions of a governing body in labor negotiations, although actual labor negotiations must be conducted in public (T.C.A. § 8-44-201);
- Meetings of school boards to hear student suspension appeals (T.C.A. § 49-6-3401); and
- Meetings of public hospital boards to discuss, but not to adopt, marketing strategies, strategic plans, and feasibility studies (T.C.A. § 68-11-238).

The courts also have created narrow limitations with respect to communication between the city attorney and the governing body when:

- The discussion concerns a pending lawsuit;
- The governing body is a named party; and
- The discussion is informational only. (See *Smith County Education Association v. Anderson*, 676 S.W. 2d 328 (Tenn. 1984); *Van Hooser v. Warren County Board of Education*, 807 S.W.2d 230 (Tenn. 1991).)

A statute allows certain state bodies to meet using electronic means. This statute generally does not apply to municipal governing bodies, but it does apply to the governing bodies of municipalities incorporated under the general law city manager-commission charter with a commission of three members and a population of more than 2,500 (T.C.A. § 8-44-108).

Actions found to violate the Sunshine Law are void. If a citizen successfully sues a city for a Sunshine Law infraction, the circuit court may issue an injunction and impose penalties. The court retains jurisdiction over the city for a year, and the city must submit semiannual compliance reports (T.C.A. §§ 8-44-105-106).

¹See also the MTAS publication *Open Meetings in Tennessee: Compliance with the Public Meetings Law* by Melissa Ashburn.