



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL
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Nashville, Tennessee 37243-1402**

**Justin P. Wilson
Comptroller**

September 17, 2014

The Honorable Leon Humphrey
Chairman, Carter County Commission
801 East Elk Avenue
Suite 201
Elizabethton, Tennessee 37643

Dear Mayor Humphrey:

This office received a complaint regarding alleged open meetings violations committed by members of the Carter County Commission (hereinafter referred to as the "Commission"). The following information was presented to this office¹:

1. Prior to the September 15, 2014 Commission meeting, the individuals who represent each district on the Commission met privately and decided who should be recommended for appointment to the Commission's various committees.
2. During the September 15, 2014 meeting, one of the Commissioners in District 2, who had been notified by the other Commissioners within her district that they had decided that she would not be recommended for reappointment to the Budget Committee, questioned the appointment process.
3. After a brief discussion on this issue, the meeting was recessed and multiple members of the Commission from District 2 met privately in order to try to resolve the conflict related to the appointments that were going to be recommended.

Whenever this office receives a complaint regarding a possible open meetings violation, my routine practice is to contact the chairperson of the entity that is the

¹ See Exhibit 1.

subject of the complaint to make him/her aware that a complaint has been filed. As such, I am contacting you, as the chairman of the Commission, to inform you that this office received a complaint and to let you know what the law requires.

I. Analysis

The Tennessee General Assembly, in Tenn. Code Ann. Section 8-44-101, declared “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 et seq. generally governs how governmental entities are to notice and conduct regularly scheduled and special called meetings. Tenn. Code Ann. Section 8-44-102(a) reads, “All meetings of a governing body are declared to be public meetings open to the public at all times except as provided by the Constitution of Tennessee.” Meeting is later 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). Tenn. Code Ann. Section 8-44-103 requires a governing body to provide the public with adequate notice of the fact that a meeting is scheduled to occur. Additionally, Tenn. Code Ann. Section 8-44-104 requires governing bodies to “promptly and fully” record minutes of meetings that includes at a minimum, “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.”

Based upon the language above, it is the opinion of this office that in order for multiple members of a governing body to meet and deliberate towards or make decisions on public business, the meeting is required to be adequately noticed to the public, open to the public and have recorded minutes.

II. Conclusion

Based solely upon the information that has been provided to this office, it appears as though open meetings violations may have occurred. It is my understanding that when the September 15, 2014 Commission meeting reconvened, the members of District 2 voted on the recommended appointments and thereafter, the entire Commission voted on the appointments. However, those public votes alone are not enough to cure any violation that may have occurred prior to and during the September 15, 2014 Commission meeting. The courts in Tennessee have held that in order for a violation to be cured, the governing body must engage in new and substantial reconsideration of the issues that were discussed and decided upon outside of an adequately noticed public meeting.² It does not appear that there was new and substantial reconsideration of any of the recommended appointments prior to the meeting being recessed or afterwards. I strongly suggest that you confer with

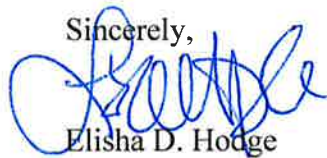
² See *Johnston v. Metropolitan Government of Nashville and Davidson County*, 320 S.W. 3d 299 (Tenn. Ct. App. Dec. 2009); *Dossett v. City of Kingsport*, 258 S.W. 3d 139 (Tenn. Ct. App. Nov. 2007); and *Neese v. Paris Special School District*, 813 S.W. 2d 432 (Tenn. Ct. App. May 1990).

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your attorney regarding this issue as soon as possible because pursuant to the Tennessee Open Meetings Act, a citizen has the right to bring a lawsuit against an entity when he/she feels that an open meetings violation has occurred. If a lawsuit were brought, a court would determine whether or not a violation of the Tennessee Open Meetings Act occurred based upon the facts presented to the court.

Please let me know if you would like to discuss or have any questions.

Sincerely,



Elisha D. Hodge
Open Records Counsel

Cc: Mr. Joshua Hardin, Esq., Carter County Attorney