



JUSTIN P. WILSON
Comptroller

JASON E. MUMPOWER
Deputy Comptroller

June 4, 2019

Mr. Paul R. McAdoo
605 Berry Street, Suite A
Nashville, Tennessee 37204

Re: Informal Advisory Opinion

Mr. McAdoo:

Thank you for your request for an informal advisory opinion addressing whether email communications among members of a governing body may violate the Tennessee Open Meetings Act ("TOMA") and whether TOMA prohibits a governing body from denying individuals access to an open public meeting.

TOMA provides that it is "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. § 8-44-101(a). To effectuate this purpose, TOMA requires that all meetings of any governing body are public meetings and must be open to the public at all times. Tenn. Code Ann. § 8-44-102(a). Moreover, TOMA specifically provides that electronic communications shall not be used to decide or deliberate public business in circumvention of the spirit of its requirements. Tenn. Code Ann. § 8-44-102(c). Accordingly, a violation of TOMA can occur if emails among members of a governing body are used to deliberate public business. *Johnston v. Metro. Gov't of Nashville and Davidson Cnty.*, 320 S.W.3d 299, 312 (Tenn. Ct. App. 2009).

In *Johnston*, the Court of Appeals determined that emails constitute the deliberation of public business when emails weigh arguments for or against a proposed course of action and mirror the type of debate one would expect to occur at an open public meeting. *Id.* at 312. Accordingly, emails that merely disseminate information would not violate TOMA. *Id.* However, email exchanges weighing arguments for a proposed course of action relative to public business that would need to be voted upon by a governing body would violate TOMA. *Id.*

Article I, Section 19 of the Tennessee Constitution establishes a right to open government that extends to public meetings of governing bodies in Tennessee. *Dorrier v. Dark*, 537 S.W.2d 888, 892 (Tenn. 1976). In *Dorrier*, the Tennessee Supreme Court determined that TOMA implements a citizen's right to open government by requiring all meetings of a governing body be open to the public at all times. *Id.* However, this right does not appear to be absolute, as the Tennessee Court of Appeals has held that a governing body did not violate TOMA where a citizen was forcibly removed from a public meeting. *Whittemore v. Brentwood Planning Comm'n*, 835 S.W.2d 11



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(Tenn. Ct. App. 1992). As explained by the court in *Whittemore*, “[t]he Sunshine Law gives citizens the statutory right to attend the meetings of state and local governmental boards and agencies. However, it does not give citizens the right to participate actively in all public meetings nor does it require public officials to depart from their agenda or to interrupt their business to accommodate the public's demands to be heard.” *Id.* at 18. Accordingly, it appears an individual’s right to attend public meetings should be balanced with a governing body’s legitimate interests in conducting orderly and safe public meetings.

Courts in Tennessee have yet to address specifically the extent to which governing bodies may prohibit individuals to attend open public meetings. The Office of the Tennessee Attorney General has opined that governing bodies may place reasonable time, place and manner restrictions on access to public meetings, so long as those restrictions serve a legitimate public interest. Tenn. Op. Att’y. Gen. No. 95-126, Dec. 28, 1995. As such, it appears governing bodies in Tennessee may regulate access to public meetings in a manner that reasonably serves public safety and welfare, or its ability to conduct orderly and efficient proceedings. Prohibiting individuals from attending public meetings for other reasons that do not serve a legitimate public purpose would most likely be considered viewpoint discrimination that would run afoul of TOMA and Article I, Section 19 of the Tennessee Constitution.

Sincerely,

A handwritten signature in blue ink, appearing to read "LP", is written over the word "Sincerely,".

Lee Pope
Open Records Counsel