



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF OPEN RECORDS COUNSEL
James K. Polk State Office Building
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Nashville, Tennessee 37243-1402**

**Justin P. Wilson
Comptroller**

May 21, 2014

Ms. Joan Lovelace
Chairlady, Loudon County Salary and Benefits Committee
100 River Road, Suite 106
Loudon, Tennessee 37774

Dear Chairlady Lovelace:

This office received a complaint regarding an alleged open meetings violation committed by members of the Loudon County Salary and Benefits Committee (hereinafter referred to as the "Committee"). The following information was presented to this office:

1. On May 16, 2014, the Committee met and discussed several issues, including whether or not to recommend to the Budget Committee that employee contributions towards health insurance increase and wage and salary disparities between the various county offices.
2. During the course of the meeting, it was decided that the Committee would recommend to the Budget Committee that employee contributions towards health insurance remain at their levels.
3. There was no public notice provided for the Committee meeting.¹
4. There are no minutes recorded at any of the Committee's meetings.

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 subject of the complaint to make him/her aware that a complaint has been filed. As

¹ Staff for the County explained to me that an email was sent to the News Herald. However, the staff at the News Herald never received the email. Because the email was never received, the notice for the meeting was not published in the newspaper. Additionally, notice was not posted on the County website nor was notice posted in any public building in the County.

such, I am contacting you as the chairperson of the Committee 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."

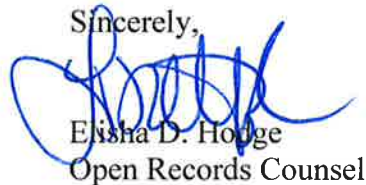
Because the Committee is an ad hoc committee which does not have meetings that are previously scheduled by resolution or ordinance, every meeting held by the Committee is a special called meeting. The Tennessee Court of Appeals in *Englewood Citizens for Alternate B v. The Town of Englewood* set out a three-prong test related to the adequacy of notice for special called meeting. The court said that in order for notice to be adequate for a special called meeting, the notice has to be posted in a location where members of the community would see the notice, the notice must reasonably describe the purpose of the meeting or the proposed actions to be taken, and the notice must be posted in enough time that members of the community would have the opportunity to both become aware of the meeting and attend. *Englewood Citizens for Alternate B v. The Town of Englewood*, 1999 WL 419710 at * 2 (Tenn. Ct. App. June 24, 1999); See also *Neese v. Paris Special School District*, 813 S.W. 2d 432, 435-36 (Tenn. Ct. App. 1990). With regard to the first prong of the test, the Court held, "for purposes of this prong of the adequate notice inquiry, the town can provide adequate notice simply by choosing reasonable public locations and posting notices at those public locations on a consistent basis. *Id.* at *3. With regard to the second prong of the test related to the content of the notice, the Court held, "the general public must be made aware of the issues to be deliberated at the special meeting through notice designed to inform the public about those issues." *Id.* at * 4.

Based upon the statutory provisions set out above and the language in *Englewood*, it is the opinion of this office that a governing body can only deliberate towards or make decisions on public business at special called meetings when the content of the notice reasonably describes the issues to be addressed at the meeting and the notice is posted far enough in advance of a meeting and in locations that would fairly inform the public that a meeting was scheduled to occur.

II. Conclusion

Based solely upon the information that has been presented to this office, it does appear likely that an open meetings violation occurred. I strongly suggest that you confer with 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. Additionally, I encourage you to speak with your attorney regarding the allegation that the Committee does not record or maintain minutes of the Committee's meetings. The court in *Zselvay v. Metropolitan Government of Nashville and Davidson County*, 986 S.W. 2d 581 (Tenn. Ct. App. 1998) held that "strict compliance with the Act is a necessity if it is to be effective" and as such, failure to "fully and promptly" record minutes of a meeting also constitutes a violation of the open meetings act.

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

Sincerely,

Elisha D. Hodge
Open Records Counsel

Cc: Bob Bowman, Esq., Loudon County Attorney
The Honorable Estelle Herron, Loudon County Mayor