



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

December 16, 2013

Ms. Charlotte Peak-Jones
Chairwoman, Bradley County Animal Control Ad Hoc Committee
1615 Lois Street
Cleveland, Tennessee 37312

Dear Chairwoman Peak-Jones:

This office received a complaint regarding an alleged open meetings violation committed by members of the Bradley County Animal Control Ad Hoc Committee (hereinafter referred to as the "Committee"). The following information was presented to this office:

1. On December 9, 2013, the Committee met and voted to recommend to the Bradley County Commission that the SPCA of Bradley County become the animal control agency for the County.
2. Notice for the meeting was posted on the calendar on the Bradley County website. The notice contained the time, date and location of the meeting, but did not contain the purpose of the meeting or the issues to be addressed during the meeting.
3. Notice was also sent to the local newspaper, but an ad was not purchased and the notice did not run in the newspaper.
4. Notice was not posted in any other public place.

Whenever this office receives a complaint regarding a possible open meetings violation, my routine practice is to contact the chairman of the entity that is the 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 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). Additionally, 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. Based upon the statutory definition for “meeting” and the applicable case law, whenever two or more members of any governing body convene in order to make a decision or deliberate towards a decision regarding public business, a meeting has occurred and as such, the public is required to be notified and has the right to be present, unless the Constitution of Tennessee provides otherwise.

Special Called Meeting and Notice

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 provision 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

I cannot say for certain whether or not the Board violated the open meetings act; however, based solely upon the information that has been presented to this office, it appears that a violation of the open meetings act may have occurred. I strongly suggest that you confer with legal counsel regarding this issue 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. I encourage you to focus your conversation on what is required in order to provide "adequate public notice" and how any potential violation that occurred at the December 9, 2013 meeting can be cured.

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

Sincerely,



Elisha D. Hodge

Open Records Counsel

Cc: Louie Alford, Bradley County Commission Chairman
Crystal R. Freiberg, Bradley County Attorney