

IN THE THIRD JUDICIAL DISTRICT FOR THE STATE OF TENNESSEE
GREENE COUNTY CHANCERY COURT

DONAHUE BIBLE, et al

Plaintiffs

vs.

No. 2014 0236

**INDUSTRIAL DEVELOPMENT BOARD
OF THE TOWN OF GREENEVILLE
AND GREENE COUNTY and US
NITROGEN, LLC**

Defendants

**POSITION STATEMENT AND CITATIONS OF LAW, AUTHORITY AND
ARGUMENT OF TENNESSEE COALITION FOR OPEN GOVERNMENT IN
SUPPORT OF ITS MOTION FOR LEAVE TO INTERVENE**

Comes now the Tennessee Coalition for Open Government ("TCOG"), by and through counsel, and presents the following Position Statement and Citations of Law, Authority and Argument in support of its Motion for Leave to Intervene:

1. In 1974, the Legislature for the State of Tennessee passed and the Governor signed into law what has become known as the Sunshine Law. The enactment of this statute was a response to the public tragedy of Watergate.

2. In its first section, the Act provides:

The general assembly hereby declares 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.¹

This section has been frequently quoted and universally asserted as a basis for broad and unrestricted openness except to the extent provided by statute or court decision.

The Act has been determined to be remedial. It, therefore, as remedial legislation, must be broadly construed to promote openness and accountability in government and to protect the public against closed door meetings at every stage of a government body's deliberations.²

In view of the remedial nature of the Act and the requirement that it be broadly construed, it has been determined that the law's intent is that **any** meeting related to any matter on which foreseeable action will be taken must occur **openly** and **publicly**. (emphasis supplied)³

The Act permits the courts to grant relief when the challenged conduct, though violating the purposes of the Act, does not squarely fall within its literal definitions.⁴

In interpreting the Act, the courts look to the substance of the meeting rather than its form, keeping in mind that the statute is to be construed so as to **frustrate all evasive devices**. (emphasis supplied)⁵

¹ T.C.A. §8-44-101(a).

² Metropolitan Air Research Testing Authority, Inc. v. Metropolitan Government of Nashville & Davidson County, 842 S.W.2d 611, 1992 Tenn. App. LEXIS 560 (Tenn. Ct. App. 1992).

³ Dorrier v. Dark, 537 S.W.2d 888, 891-95 (Tenn. 1976); Memphis Publishing Co. v. City of Memphis, 513 S.W.2d 511, 513 (Tenn. 1974); Tennessee ex rel. Matthews v. Shelby Bd. of Comm'rs, 1990 Tenn. App. LEXIS 183, 18 Media L. Rep. 1440 (Tenn. Ct. App. 1990).

⁴ Tennessee ex rel. Matthews v. Shelby Bd. of Comm'rs, *supra*, at 14.

Public knowledge of the manner in which public officials make governmental decisions is an essential ingredient of democratic government. Because the Act is remedial, it should be construed to promote the public's interest and be interpreted to promote openness and accountability in government at all times. That is why the courts are required to examine the substance of any meeting rather than its form, keeping in mind as previously stated, that the Act must be construed to frustrate all evasive devices.⁶

Where the Act is concerned, there is no such thing as a "technical violation" or "a violation of form rather than substance". The Act does not make any distinction between technical and substantive violations. Hence, strict compliance with the Act is a necessity if it is to be effective.⁷

TCOG is aware that it has been asserted by the Defendants that there was no violation of the Act because persons were allowed to be present in the room even though microphones and an amplification system appeared to be installed, but were not being used and a number of the members of the IDB were seated at a table with their backs to the audience. In other words, it appears to be the position of the Defendants that audibility is not a requirement of openness. It is respectfully submitted that any reading of the

⁵ Tennessee ex rel. Matthews v. Shelby Bd. of Comm'rs, *supra*, at 13.

⁶ State ex rel. Akin v. Kingston Springs, 1993 Tenn. App. LEXIS 586, 1993 WL 339305 (Tenn. Ct. App. 1993); Metropolitan Air Research Testing Authority, Inc. v. Metropolitan Government of Nashville & Davidson County, *supra*, at 616; Dorrier v. Dark, *supra*, at 891; Neese v. Paris Special Sch. Dist., 813 S.W.2d 432, 434 (Tenn. Ct. App. 1990); Tennessee ex rel. Matthews v. Shelby Bd. of Comm'rs, Shelby Eq. No. 7, 1990 Tenn. App. LEXIS 183, 15, perm. app. denied, (Tenn. Oct. 1, 1990).

⁷ Zseltvay v. Metropolitan Gov't, 986 S.W.2d 581, 585, 1998 Tenn. App. LEXIS 522 (Tenn. Ct. App. 1998).

above-cited authorities, which are unrebutted and have been continuously reaffirmed over the 40 year history of the Act, clearly demonstrates the requirement that the public must be able to be aware of decisions and the deliberations toward those decisions at all stages of the process. Awareness cannot be assured where there is no assurance of audibility. The opinion of the Attorney General of Tennessee appended to the Motion by TCOG in this cause refers to authorities from other jurisdictions, underscoring the significance of the requirement that the people in attendance at a meeting be able to hear as well as see the proceedings. For example, use of loudspeakers or simultaneous live broadcasts on a public radio station or the use of closed circuit television have been judicially recognized as appropriate methods to comply with the requirements of public meeting acts in other jurisdictions.⁸

When the Legislature addressed the participation by a Governing body in a meeting by electronic or other means, it emphasized that no meeting of this sort could be used to avoid the requirements of the Act. Specifically, the Legislature directed that any meeting held where there was participation by electronic or other means had to comply with the requirements of the Act and "shall not circumvent the spirit or requirements of that law".⁹

Each part of a meeting required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting. . . .¹⁰

⁸ Gutierrez v. City of Albuquerque, 631 P.2d 304, 307 (N.M. 1981); Windsor Owners Corporation v. City Council of the City of New York, 878 N.Y.S. 2d 545-551 (N.Y. Sup. Ct. 2009).

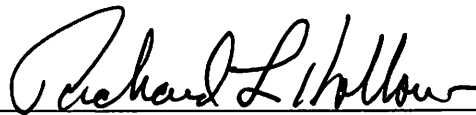
⁹ T.C.A. §8-44-108(c)(1).

¹⁰ T.C.A. §8-44-108(c)(3).

As stated in an editorial in the *Knoxville News Sentinel* on Sunday, January 18, 2015, the position urged by the defense is "an absurdity" given the language, spirit and interpretation of the Act.

TCOG restates and reiterates that, in urging this interpretation of the Act, it takes no position whatsoever with respect to the underlying conflict and controversy bringing this matter before the Court. TCOG simply urges the Court to correctly interpret the Act and to apply that interpretation to any fact-finding that it engages in in this action and any decision which it makes based thereon. By correctly interpreting the Act, the Court will substantially further the spirit and intent of the legislation, support the decisions of our appellate courts throughout the Act's 40 year history, and further the cause of public access, governmental transparency and accountability.

Respectfully submitted, this 19th day of January, 2015.



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CERTIFICATE OF SERVICE

I certify that a true and perfect copy of the foregoing Position Statement and Citations of Law, Authority and Argument of Tennessee Coalition for Open Government in support of its Motion for Leave to Intervene has been served upon the following counsel of record by electronic transmission, this 19th day of January, 2015:

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