



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

**Justin P. Wilson**  
**Comptroller**

February 3, 2014

The Honorable Kenneth Wilber  
Mayor, City of Portland  
100 South Russell Street  
Portland, Tennessee 37148

Dear Mayor Wilber:

This office received a complaint regarding an alleged open meetings violation committed by members of the Portland City Council (hereinafter referred to as the "Council"). The following information was presented to this office:

1. On January 7, 2014, the Council met in a special called meeting to vote on appointing an individual to a vacant Council seat.
2. Eight candidates were nominated and considered for the appointment during the meeting.
3. During the process of narrowing down the candidate pool, the Council voted a total of five times.
4. Each vote was conducted by ballot.
5. After each Council member voted, his ballot was passed to the City recorder who then tallied the votes.
6. The City recorder announced who had been eliminated and/or who was still on the ballot for the next round of voting.
7. At no point did any Council member indicate how he had voted nor did the City recorder indicate how each Council member had voted.
8. Additionally, during the meeting, there were references made to "gentlemen's agreements" which various Council members had entered into regarding how the nominating process would transpire.
9. None of these agreements were voted upon during the January 7, 2014 Council meeting or the December 16, 2013 Council meeting.

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 Council 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, when a governing body makes a decision on public business, the governing body is required to vote by "public vote or public ballot or public roll call. No secret votes, or secret ballots, or secret roll calls" are allowed. Tenn. Code Ann. Section 8-44-104(b). Based upon the language above, it is the opinion of this office that in order for a governing body to meet and deliberate towards or make decisions on public business, the meeting must be open to the public and be adequately notice. Additionally, it is the opinion of this office that when the members of a governing body make a decision on public business, the members are required to do so in a manner that allows the public to know how each of the members voted.

## II. Conclusion

Based solely upon the information presented to this office and the recording of the January 7, 2014 meeting on the City's website, it appears likely that an open meetings violation did occur. I reviewed the recording of the January 7, 2014 meeting and while I was not at the meeting and have no firsthand knowledge of exactly what occurred, it does not appear that any of the ballots were read aloud or any of the votes attributed to a specific Councilman. As such, it appears that the process that the Council members used to appoint a candidate to the vacant Council seat was "secret" and not "public." Additionally, it appears from some comments that were made during the meeting that deliberation and decisions about the process to be used in selecting a new Council member occurred outside of an adequately noticed public meeting.

I encourage you to confer with legal counsel about these issues as soon as possible because pursuant to the Tennessee Open Meetings Act, a citizen has the right to file an open meetings lawsuit if he/she feels that the Council deliberated towards or

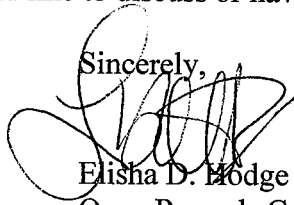
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made decisions outside of an adequately noticed public meeting and/or voted in a manner that violates Tenn. Code Ann. Section 8-44-104(b). If a lawsuit were brought, a court would determine whether or not a violation of the Tennessee Open Meetings 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,

A handwritten signature in black ink, appearing to read 'Elisha D. Hodge', is written over the word 'Sincerely,'.

Elisha D. Hodge  
Open Records Counsel

Cc: David Amonette, Portland City Attorney