A RESOURCE GUIDE PERTAINING TO OPEN MEETINGS AND OPEN RECORDS

TSBA
TENNESSEE SCHOOL BOARDS ASSOCIATION

A Resource Guide Pertaining To

OPEN MEETINGS AND OPEN RECORDS

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CHAPTER 1

QUESTIONS & ANSWERS ON OPEN MEETINGS

How Long Have We Had a "Sunshine Law"?

"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] With those words in 1974, the Tennessee General Assembly ushered in a new era of open government in Tennessee that is still being refined today. The "Open Meetings Act", more commonly referred to as the "Sunshine Law", has been the subject of heated debate ever since its passage. On the one hand, local government officials complain that they need to conduct some business in private and give a variety of legitimate reasons. On the other the press insists that ALL meetings must be public regardless of the circumstances.

What Is An Open Meeting?

The law provides a relatively simple and straightforward definition of an open meeting. "All meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee."[2] On its face the meaning seems clear but the law has been subject to many challenges over the years and the reference to the Constitution yielded some interesting results in a case styled *Mayhew v. Wilder* all of which will be discussed in greater detail later in this book.

What is a Governing Body?

The bulk of the definition section of the law outlines what is considered a governing body under the law. The first section is the one which covers school board and other local governmental bodies. It states that "the members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration and also means a community action agency which administers community action programs under the provisions of 42 U.S.C. § 2790 [repealed]. Any governing body so defined by this section shall remain so defined, notwithstanding the fact that such governing body may have designated itself as a negotiation committee for collective bargaining purposes, and strategy sessions of a governing body under such circumstances shall be open to the public at all times."[3]

Who Else Is Covered Under the Law?

Several other public entities are included in the definition. The board of directors of any nonprofit corporation which contracts with a state agency to receive community grant funds in consideration for rendering specified services to the public; provided, that community grant funds comprise at least thirty percent (30%) of the total annual income of such corporation.[4] This part of the law includes an exception for meetings of the board of directors of such nonprofit corporations that are called solely to discuss matters involving confidential doctor-patient relationships, personnel matters or matters required

to be kept confidential by federal or state law or by federal or state regulation shall not be covered under the provisions of this chapter, and no other matter shall be discussed at such meetings.

Other non-profits are also included such as any not-for-profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more counties, cities, towns and local governments pursuant to the provisions of title 7, chapter 54 or 58. There is one statutory exception as the law does not apply to any county with a metropolitan form of government and having a population of four hundred thousand (400,000) or more according to the 1980 federal census or any subsequent federal census.[5]

Additionally, utility type nonprofits which provide heat, steam or incineration of refuse through contract or otherwise provide a metropolitan form of government having a population in excess of five hundred thousand (500,000) according to the 1990 federal census.[6]

The Tennessee School Boards Association board of directors is covered under the section of the code that applies to associations or nonprofit corporations authorized by the laws of Tennessee provide that those organizations; (a) were established for the benefit of local government officials or counties, cities, towns or other local governments or as a municipal bond financing pool; (b) receive dues, service fees or any other income from local government officials or such local governments that constitute at least thirty percent (30%) of its total annual income; and (c) were authorized as of January 1, 1998, under state law to obtain coverage for its employees in the Tennessee consolidated retirement system.[7]

The board of directors of the Tennessee Performing Arts Center Management Corporation is also subject to, and must comply with, all of the provisions made applicable to governing bodies by the law.[8]

Obviously from the law a wide variety of entities are covered under the open meetings laws besides just county and city commissions and school boards. If you have a question about a specific organization, refer that question to your local attorney.

Are We Required To Give Notice?

The law requires that we give adequate public notice of all meetings. The code states that for regular meetings any such governmental body which holds a meeting previously scheduled by statute, ordinance, or resolution shall give adequate public notice of such meeting. A governmental body is also required to give adequate public notice of special meetings not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law. These notice requirements are in addition to, and not in substitution of, any other notice required by law.[9]

Are Meeting Minutes Required?

The law states that minutes of a meeting of any such governmental body shall be promptly and fully recorded, shall be open to public inspection, and shall include, but not be limited to, 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.[10]

There are a number of opinions, legal and otherwise, as to how detailed minutes should be. Here in Tennessee I think we have every point on the spectrum represented in this debate from the most basic of minutes that may be just a few pages to minutes that can run for 20 or 30 pages. Obviously a happy medium exists at some point and what is desirable in one school system may be too much or too little in another. The law requires the specific items listed above to be included in your minutes and beyond that it is pretty much a local decision as to how sparse or detailed your minutes will be.

What About Voting?

We get questions all the time from boards of educations wanting to know if they can vote by secret ballot on the choice of a new director or some other controversial matter. The law states very clearly that all votes of any such governmental body shall be by public vote or public ballot or public roll call. No secret votes, or secret ballots, or secret roll calls shall be allowed.[11] This language precludes the use of secret voting for any reason.

The code also gives specific direction as to what is meant by a public ballot. As used in this chapter, "public vote" means a vote in which the "aye" faction vocally expresses its will in unison and in which the "nay" faction, subsequently, vocally expresses its will in unison. Clearly the legislature means for the public to have some way of witnessing how a public body votes and knowing how each member of that body stands on an issue.

What Happens if a Board Violates The Law When It Takes Action?

An entity may not take an action that is in violation of the open meetings law or that action shall be void and of no effect. If the action involves a commitment that is otherwise legal affecting the public debt of the entity concerned, then the Open Meeting Act may not be used to nullify that action.[12]

How Is This Law Enforced?

As with so many other laws, to enforce the Sunshine Law we must turn to the courts. The law states that the circuit courts, chancery courts, and other courts which have equity jurisdiction, have jurisdiction to issue injunctions, impose penalties, and otherwise enforce the purposes of this part upon application of any citizen of this state.[13] If a suit is

brought, the court shall file written findings of fact and conclusions of law and final judgments, which shall also be recorded in the minutes of the body involved.[14]

Additionally, should the court find that there was a violation boards and board members may be placed under a permanent injunction to not violate this law. Each separate occurrence of such meetings not held in accordance with this part constitutes a separate violation.[15]

Once there is a final disposition of the case, the final judgment or decree in each suit shall state that the court retains jurisdiction over the parties and subject matter for a period of one (1) year from date of entry, and the court shall order the defendants to report in writing semiannually to the court of their compliance with this part.[16] As of the writing of this text we are aware of only one system placed under these sanctions in Tennessee, the Metro-Davidson County School System.

May A Board Meet or Individual Board Members Vote Electronically?

A local board of education may conduct an electronic meeting so long as a quorum of members are physically present at the site of the meeting and other conditions are met. A board member wishing to participate in a meeting electronically must give notice, as required by law, and must be out of the county for work, family emergency or military service. A board member may not participate electronically more than twice in one year unless that member is out of the county due to military service.[17]

What About Collaborative Conferencing?

The Professional Educators Collaborative Conferencing Act (PECCA), was signed into law June 1, 2011, repealing and replacing the Education Professional Negotiations Act (EPNA).[18] PECCA allows professional employees to self-organize and to form, join or be assisted by organizations for the purpose of collaborative conferencing with local boards of education through representatives of their own choosing.[19]

PECCA did not affect the requirement under EPNA that discussions between representatives of the public employee association and local boards are subject to open meetings law. As was the case under EPNA with public employee unions, collaborative conferencing between representatives of the professional employees and the management personnel must be open to the public. However, the law allows for the board of education, the management personnel and the professional employees to meet in closed session for collaborative conference planning or strategy sessions. Members of the board must take special care in such a closed meeting to discuss only matters related to collaborative conference strategy and discuss no other business that will come before the board of education. All collaborative conferencing and discussion between these groups must be open to the public.[20] Both sides shall decide jointly and announce in advance of any such labor negotiations where such meetings shall be held.[21]

Have There Been Significant Modifications to the Law?

There have been recent significant legislative changes to the Open Meetings Law. One was passed by the General Assembly in May of 2007. Tenn. Code Ann § 49-6-3401(c)(6) was amended to permit disciplinary hearings requested by a student before the board of education to be closed to the public unless the student or student's parent or guardian request in writing that the hearing be conducted as an open meeting. If a closed meeting is conducted, the board may not conduct any business nor discuss any subject or take a vote on any matter other than the appeal. This change took effect on July 1, 2007.

In 2008 Public Chapter 1179 made significant and substantive changes to both the Open Meetings and Open Records laws. For instance, the legislature created the office of open records counsel as well as an advisory committee which is to provide guidance and advice for the office of open records counsel.[22] This committee consists of fourteen (14) members one of which is to be a representative from the Tennessee School Boards Association.[23] This committee may review and provide written comments on any proposed legislation regarding the open meetings or open records laws.[24]

Since July 1, 2012, the law was modified to require charter schools to comply with the requirements of the Open Meetings Act.[25]

CHAPTER 2

QUESTIONS & ANSWERS ON OPEN RECORDS

Has The Law Recently Changed?

A significant clarification occurred in 2011 when the General Assembly passed Public Chapter 353. This law distinguished the definition of a public record by specifically excluding "the device or equipment, including, but not limited to, a cell phone, computer or other electronic or mechanical device or equipment that may have been used to create or store a public record or state record." This change denies a citizen the opportunity to search through equipment on a "fishing" expedition.[26]

What is a Public Record?

The definition of a public or state record is quite extensive and includes all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material regardless of physical form or characteristics.[27] However, just because a document was created on a school district computer does not mean that document is necessarily a public record. A document is only a public record if it was made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.[28] Additionally in 2012, the General Assembly passed a law to treat teacher evaluation records as confidential and not open to the public.[29]

Must Records Be Available 24/7?

No, the only requirement is that all state, county and municipal records shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.[30]

How Quickly Must We Comply With a Record's Request?

The statute states that the record must be made available "promptly" but does not specifically define that term. The law does provide that if it is not practicable for the record to be promptly available for inspection the records custodian has seven (7) business days to do one of the following:

- Make the information available;
- Deny the request in writing or by completing a records request response form developed by the office of open records counsel and including in the response the basis for the denial; or
- Furnish the requestor a completed records request response form, also developed by the office of open records counsel, stating the time reasonably necessary to produce the requested records.[31]

May We Recover All or Part of the Cost Involved in Producing Records?

A records custodian may require a requestor to pay the custodian's reasonable costs incurred in producing the requested materials and to assess reasonable costs in the manner established by the office of open records counsel.[32] The office of open records is required to develop and maintain a schedule of reasonable charges which is available on their website. The schedule sets per page copying charges and outlines procedures for calculating labor charges.[33]

What Happens If We Don't Respond Properly?

If the governmental entity fails to respond in the manner described by law that constitutes a denial and the person making the request can then bring an action in circuit or chancery court.[34]

Do We Have To Sort Through Files To Compile Information?

The law doesn't require the entity to sort through files to compile information but the person requesting such information must be allowed to inspect the non-exempt records.[35]

What If a Record Does Not Exist?

A record that doesn't exist does not have to be created. However, if a record does exist but private information has to be redacted, that does not constitute creating a new record and the record must be redacted and produced if requested.[36]

May We Require The Request To Be Written?

Yes and no! The law states that a records custodian may not require a written request or assess a charge to view a public record unless required by law, but may require a request for copies of public records to be written or made on a form developed by the office of records counsel. Custodians may also require a citizen to present a photo identification issued by a governmental entity which includes the person's address. If the person does not possess such identification, the records custodian may require other forms of identification which he finds acceptable.[37]

What if the Request Is Vague or Broad?

Any request shall be sufficiently detailed to enable the records custodian to identify the specific records to be located or copied.

Are There Exceptions?

Adoption proceedings or records required to be kept confidential by federal statute or regulation as a condition for the receipt of federal funds or for participation in a federally funded program is one such area.[38]

Is It Possible to Inspect a Police Officer's Personnel Record?

With some exceptions, all law enforcement personnel records shall be open for inspection. However, whenever the personnel records of a law enforcement officer are inspected, the custodian is required make a record of such inspection and provide notice, within three (3) days from the date of the inspection, to the officer whose personnel records have been inspected. Included in that notice must be; that such inspection has taken place, the name, address and telephone number of the person making such inspection, for whom the inspection was made, and the date of such inspection.
Any person making an inspection of such records shall provide such person's name, address, business telephone number, home telephone number, driver license number or other appropriate identification prior to inspecting such records.[39]

Are Non-Profits Subject to the Open Records Law?

All records of any association or nonprofit corporation described in the "governing body" definition of the Open Meetings law, shall be open for inspection but the law provides a significant exception. The organization shall not be subject to the requirements of the law, so long as it complies with additional audit provisions of the law.[40]

How Does a Non-Profit Achieve Exempt Status?

First, the board of directors of the organization must annually audit the financial affairs of the organization, including all receipts from every source and every expenditure or disbursement of the money of the organization, made by an independent auditor. The audits must cover the period extending back to the date of the last preceding audit and it must be paid out of the funds of the organization;

Each audit must be conducted in accordance with the standards established by the comptroller of the treasury for local governments and the comptroller of the treasury, through the department of audit, shall be responsible for ensuring that the audits are

prepared in accordance with generally accepted governmental auditing standards, and determining whether the audits meet minimum audit standards which shall be prescribed by the comptroller of the treasury. No audit may be accepted as meeting the requirements of this section until such audit has been approved by the comptroller of the treasury.[41]

When Must the Audits be Completed and Who Gets Copies?

The audits must be completed as soon as practicable after the end of the fiscal year of the organization and one copy of each audit shall be furnished to the organization and one filed with the comptroller of the treasury. The copy of the comptroller of the treasury shall be available for public inspection.[42]

Additionally, copies of each audit shall also be made available to the press and along with any other information required by the comptroller it shall contain: a listing, by name of the recipient, of all compensation, fees or other remuneration paid by the organization during the audit year to, or accrued on behalf of, the organization's directors and officers; a listing, by name of recipient, of all compensation and any other remuneration paid by the organization during the audit year to, or accrued on behalf of, any employee of the organization who receives more than twenty-five thousand dollars ($25,000) in remuneration for such year; a listing, by name of beneficiary, of any deferred compensation, salary continuation, retirement or other fringe benefit plan or program (excluding qualified health and life insurance plans available to all employees of the organization on a nondiscriminatory basis) established or maintained by the organization for the benefit of any of the organization's directors, officers or employees, and the amount of any funds paid or accrued to such plan or program during the audit year; and a listing, by name of recipient, of all fees paid by the organization during the audit year to any contractor, professional advisor or other personal services provider, which exceeds two thousand five hundred dollars ($2,500) for such year. Such listing shall also include a statement as to the general effect of each contract, but not the amount paid.[43]

Are There Other Exceptions for Non-Profits?

Yes, in two particular instances these guidelines do not apply. If an association or nonprofit corporation employs no more than two (2) full-time staff members, then the guidelines don't apply. Also if an association, organization or corporation that was exempt from federal income taxation under the provisions of § 501(c)(3) of the Internal Revenue Code as of January 1, 1998, and which makes available to the public its federal return of organization exempt from income tax (Form 990) in accordance with the Internal Revenue Code and related regulations it is exempt as well.[44]

Are Governmental Records Exempt From This Law?

Obviously for safety's sake, not all information contained in public records should be made available for public inspection. For instance, one "common sense" exception states that all contingency plans of law enforcement agencies prepared to respond to any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction, or terrorist incident shall not be open for inspection.[45]

Are School Systems Specifically Mentioned?

The general assembly changed the law to specifically addresses consultants and superintendent searches. It states simply that all records, employment applications, credentials and similar documents obtained by any person in conjunction with an employment search for a director of schools or any chief public administrative officer shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee. The law was thorough in its application because it defines person as a natural person, corporation, firm, company, association or any other business entity.[46] Any documents related to the superintendent's contract would also be subject to open records requests once the search is complete.

What Are the Exceptions for Personal Privacy?

Every bit of information contained in a public record is not necessarily available for inspection. For example the medical records of patients in state, county and municipal hospitals and medical facilities, and the medical records of persons receiving medical treatment, in whole or in part, at the expense of the state, county or municipality, shall be treated as confidential and shall not be open for inspection by members of the public. Any records containing the source of body parts for transplantation or any information concerning persons donating body parts for transplantation shall also be treated as confidential and shall not be open for inspection by members of the public.[47]

Are Ongoing Criminal Investigation Files Open?

The law clearly states provides for some exceptions for certain types of investigative files. For instance all investigative records of the Tennessee bureau of investigation, the office of inspector general, all criminal investigative files of the department of agriculture and the department of environment and conservation, all criminal investigative files of the motor vehicle enforcement division of the department of safety relating to stolen vehicles or parts, and all files of the handgun carry permit and driver license issuance

divisions of the department of safety relating to bogus handgun carry permits and bogus driver licenses issued to undercover law enforcement agents shall be treated as confidential and shall not be open to inspection by members of the public.

These records may be accessed with a subpoena or an order of a court of record; and TBI investigations are open to elected members of the general assembly that inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house. In the executive branch, records are only available to the governor or to those directly involved in the investigation in the specified agencies.[48]

The records of the departments of agriculture and environment and conservation are closed until such time as the investigation is closed or all criminal court prosecution and appeals are exhausted. However, identifying information about a confidential informant or undercover law enforcement agent remains confidential.[49]

The TBI is authorized to furnish and disclose to an authorized state governmental agency the criminal history, records and data from its files, and the files of the federal government and other states to which it may have access for the limited purpose of determining whether a license or permit should be issued to a person or entity to engage in an activity affecting the public.[50]

Are There Rules For The Military?

Naturally anything that involves national security or the security of the state of shall be treated as confidential and shall not be open for inspection by members of the public.[51]

How Must Student Records Be Handled?

The records of students in public educational institutions shall be treated as confidential. The law clearly states that unless an employee of a school system is authorized to view this confidential information, they may not view it. This includes information that relates to academic performance, financial status of a student or the student's parent or guardian, and medical or psychological treatment or testing.

There is an exception for agencies authorized by the educational institution to conduct specific research or otherwise authorized by the board. Either the student or the parent or guardian of a minor student attending any institution of elementary or secondary education, may consent to these records released.

The governing board of the institution and the department of education shall have access on a confidential basis to such records as are required to fulfill their lawful functions otherwise, they too are denied access.

Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.[52]

May Any Student Information Be Released?

Under the federal Family Educational Rights and Privacy Act (FERPA), K-12 student information designated annually by the school district may be released (directory information), though parents may still opt-out. In addition, unless prohibited by FERPA, post-secondary institutions shall disclose to an alleged victim of any crime of violence or a non-forcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

The final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence, or a non-forcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

Information included in the final results would include the name of the student, the violation committed, and any sanction imposed by the institution on that student. It also may include the name of any other student, such as a victim or witness, only with the written consent of that other student and only applies to disciplinary hearings in which the final results were reached on or after October 7, 1998.[53]

What About Student Sex Offender Information?

Unless otherwise prohibited by FERPA, an educational institution shall disclose information provided to the institution concerning registered sex offenders who are required to register.[54]

May Parents View Video Footage From School Bus Cameras?

Beginning in 2019, school boards must adopt policy that allows parents to view photographs or video footage collected from a camera or video camera inside a school bus. The law does not require the installation of cameras, only that a policy establishing the viewing process be adopted if there are one or more buses with a camera. The policy must require that footage be viewed under the supervision of the director/designee and establish the requisite duration for maintaining record of footage. The policy must also comply with state and federal privacy laws.[55] Best practice would be to limit the

viewing, in duration and portion of the footage, to the incident in question, if feasible and practicable considering the technological capabilities of the school system.

Are State Officials Exempt?

The office of the attorney general enjoys some protection in books, records and other materials which relate to any pending or contemplated legal or administrative proceeding in which the office of the attorney general and reporter may be involved.

Those include books, records or other materials which are confidential or privileged by state law; are relating to investigations conducted by federal law enforcement or federal regulatory agencies, which are confidential or privileged under federal law; the work product of the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control; communications made to or by the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control in the context of the attorney-client relationship; or books, records and other materials in the possession of other departments and agencies which are available for public inspection and copying pursuant to §§ 10-7-503 and 10-7-506.[56]

However, just because materials are in the possession of other departments and are subject to the open records laws and must be made available to the public still doesn't mean that the same materials which are also in the possession of the office of the attorney general must be available for inspection or copying in the office of the attorney general and reporter.

The attorney general's office must, however, make such materials available to the general assembly if either house or standing committee adopts a resolution directing it. The information may be disclosed to the public only in the discharge of the duties of the office of the attorney general and reporter.[57]

Do Other State Agencies Have Options to Close Records?

State agency records containing opinions of value of real and personal property intended to be acquired for a public purpose shall not be open for public inspection until the acquisition has been finalized. This doesn't prevent party to a condemnation action from making discovery relative to values pursuant to the Rules of Civil Procedure.[58] TSBA has lobbied the General Assembly to write such an exception into the law for local school systems and other governmental entities, but have yet to be successful.

Other state documents may go through a closed period before becoming re-classified as open records. For instance, proposals received pursuant to personal service, professional service, and consultant service contract regulations, and related records, including evaluations and memoranda, are open but only after the completion of evaluation by the

state. Sealed bids for the purchase of goods and services, and leases of real property, and individual purchase records, including related evaluations and memoranda are also available for public inspection under the same circumstances.[59]

What About DOC and DCS Records?

Both the department of correction (DOC) and the department of children's services (DCS) enjoy special protection under the law. All investigative records and reports of the internal affairs division of the department of correction or of the department of children's services are confidential and not open to inspection by members of the public.

However, the records are open to an employee of the department of correction or of the department of children's services if the records or reports form the basis of an adverse action against the employee. An employee of the department of correction shall also be allowed to inspect such investigative records of the internal affairs division of the department of correction prior to a due process hearing at which disciplinary action is considered or issued unless the commissioner of the department of correction specifically denies in writing the employee's request to examine the records prior to the hearing.[60]

Are There Protections for Employee Records?

State, county, municipal or other public employees, including former employee, or applicant to such position, enjoy some protection under the law. The following bits of personal information must be treated as confidential:[61]

- Telephone numbers and addresses;
- Bank account information;
- Social security number;
- Driver license information except where driving or operating a vehicle is part of the employee's job or incidental to the employee's job;
- The same information of immediate family members or household members;
- Emergency contact information; and
- Personal email addresses.

However, the government agency may use the presence of this information in documents as an excuse to deny access. The information, whenever possible, must be redacted.[62]

This general rule for public employees also applies to teachers except that teacher evaluations are specifically addressed by statute. All records containing the results of individual teacher evaluations administered pursuant to the policies, guidelines and criteria adopted by the state board of education shall be treated as confidential. This exception does not prevent the board from utilizing the evaluations to fulfill their lawful function, including the release of such records to parties conducting research.[63]

What Other State Information is Restricted?

- Official health certificates collected and maintained by the state veterinarian.[64]
- The capital plans, marketing information, proprietary information and trade secrets submitted to the Tennessee venture capital network at Middle Tennessee State University.[65]
- Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Tennessee board of regents or the University of Tennessee.[66]
- Personal information contained in motor vehicle records.[67]
- All memoranda, work notes or products, case files and communications related to mental health intervention techniques conducted by mental health professionals in a group setting to provide job-related critical incident counseling and therapy to law enforcement officers, emergency medical technicians, emergency medical technician-paramedics, and firefighters, both volunteer and professional.[68]
- All riot, escape and emergency transport plans which are incorporated in a policy and procedures manual of county jails and workhouses or prisons operated by the department of correction or under private contract.[69]
- There are additional situations regarding orders of protection, domestic violence shelters, personal private information, utility records, government contingency plans, and other records which must be kept closed and information may not be released and Tennessee code should be carefully consulted as to specifics.[70]

If any record has been designated as confidential it also affects their maintenance, storage and disposition. If destroyed, the destruction must be in a manner in which the records cannot be read and be in accordance with approved authorization from the public records commission.[71]

Records older than seventy (70) years may be open unless the disclosure is specifically prohibited by federal law or it is a record of services for a person for mental illness or intellectual and developmental disabilities.[72] Records of any employee's identity, diagnosis, treatment or referral for treatment maintained by state or local government employee assistance programs are confidential.[73] Unpublished telephone numbers in the possession of emergency communications districts are also confidential.[74]

Personnel information of a police officer who is working undercover may be segregated and treated a confidential but that may be challenged in chancery court.[75] Additionally records which identify a person who has been or may be involved directly in the process of executing a sentence of death are treated a confidential,[76] as well as security information that would allow a person to obtain unauthorized access to confidential information or government property.[77]

How Do Citizen's Enforce Rights Guaranteed by the Open Records Law?

If a governmental entity denies access, a citizen is entitled to petition the circuit or chancery court and to obtain judicial review of the actions taken to deny access. The court may direct that the records being sought be submitted under seal for review by the court and no other party. The decision of the court constitutes a final judgment on the merits.[78]

The official who denies access bears the burden of proof in such an action and the justification for nondisclosure must be shown by a preponderance of the evidence.[79] The court is required to render written findings of fact and conclusions of law and may exercise full injunctive remedies and relief and must broadly construe the law so as to give the fullest possible access to public records.[80]

Is a Public Official Liable if She Releases Information That Causes Damage?

That public official is not to be held criminally or civilly liable.[81] However, if a public official knows that a record is public and willfully refuses to disclose it, the court may assess all reasonable costs involved in obtaining the record including attorneys' fees against the governmental entity. The court may consider guidance from the office of open records counsel.[82]

What About Commercial Requests?

The law discusses public records which have commercial value particularly from the standpoint of specific charges to the individual or corporation requesting those records.[83]

What About Employee E-Mail?

Governmental entities that operate or maintain an e-mail communications system are required to adopt a policy on any monitoring and the circumstances under which it will be conducted including a statement that employee correspondence may be subject to public inspection.[84]

Are Minutes of a Governmental Entity Public Records BEFORE They Are Approved?

Generally, working papers and other temporary documents of a governmental entity are considered public records, particularly when these documents lead to a final or permanent record. The key difference is that temporary records may be scheduled for disposal as authorized.[85]

When May Public Records Be Destroyed?

Both the municipal technical advisory service (MTAS) and the county technical advisory service (CTAS) are authorized to compile and print records retention manuals to be used as guides by officials in establishing retention schedules for all records created by governments in the state. The law does allow for disposal of permanent records if they have been preserved in another manner such as microfilm or preserved on computer media.[86] Additional information may be found at www.ctas.tennessee.edu or www.mtas.tennessee.edu.

CHAPTER 3

JUDICIAL INTERPRETATION OF THE OPEN MEETINGS LAW

What About Attorney-Client Privilege?

Since the passage of the Open Meetings Law there have been a number of court challenges that have refined the meaning and interpretation of the law. Probably the most significant involved a dispute between a local teacher association and board of education.

This action arose from unsuccessful collective bargaining negotiations between the Smith County Education Association and the Smith County Board of Education.[87] After months of negotiations, the SCEA sued the Board, its individual members, and Joe K. Anderson, the Superintendent of Smith County Schools, alleging the Defendants had committed acts made unlawful by the Education Professional Negotiations Act,[88] and had violated the Tennessee Open Meetings Act.[89] Following a jury trial, the Chancellor took the case from the jury and dismissed the complaint, deciding that both sides were negotiating in good faith, that the Defendants had not engaged in any unlawful acts, and that the Defendants had not violated the Open Meetings Act. The Court of Appeals held the Chancellor acted properly in taking the case from the jury; however, the Court found the Board had not negotiated in good faith and had violated the Open Meetings Act.

The initial cause of action was filed because of an allegation of bad faith bargaining in regard to the payment of insurance premiums. After the filing of the complaint, the board met privately, without notice, with its attorney and chief negotiator. The SCEA then filed a supplemental complaint alleging, inter alia, violations of the Open Meetings Act. At trial the Chancellor found that the Board had not violated the act. The Court of Appeals, however, reversed that holding finding that there was no express exception to the Act permitting a public body to meet privately with its attorney. Tennessee's Supreme Court noted that this is a minority position among the courts in other jurisdictions that have considered the issue…that in fact, the majority of courts have fashioned an exception to their states' open meeting laws to permit private attorney-client consultation on pending legal matters even where the statute itself makes no such express exception.

In analyzing Tennessee law, the Court noted that no attorney may disclose any communication made to him by a client. However, the Legislature's intent in creating the law is clearly in conflict but the act was mindful of constitutional exceptions that may exist and provided for those in the act.

Why Does Attorney-Client Privilege Matter?

It matters because the Court held that the licensing and regulation of attorneys practicing law in courts of Tennessee is squarely within the inherent authority of the judicial branch of government. Furthermore, the Supreme Court has original and exclusive jurisdiction to promulgate its own Rules. One of those rules states that a lawyer should preserve the confidences and secrets of a client.[90] That means that both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him. A client must feel free to discuss whatever he wishes with his

lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client. A lawyer should be fully informed of all the facts of the matter he is handling in order for his client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of his independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of his client not only facilitates the full development of facts essential to proper representation of the client but also encourages laymen to seek early legal assistance.

Attorney or Client: Who Is Responsible for Compliance?

The Court placed that responsibility squarely on the shoulders of the attorney and stated that they are aware of the potential misuse of this exception in order to circumvent the scope of the Open Meetings Act. A public body could meet with its attorney for the ostensible purpose of discussing pending litigation and instead conduct public business in violation of the Act. Although the Act imposes only limited sanctions on a public body for such violations, any attorney who participates, or allows himself to be used in a manner that would facilitate such a violation, would be in direct violation of the Code of Professional Responsibility and subject to appropriate disciplinary measures.

Ultimately, the Court held that discussions between a public body and its attorney concerning pending litigation are not subject to the Open Meetings Act. They emphasized that this is a narrow exception and applies only to those situations in which the public body is a named party in the lawsuit.

Has The Attorney-Client Privilege Broadened?

Yes it has. In a 1991 case from Warren County, the board met with its attorney in regard to a teacher dismissal hearing prior to the dismissal hearing.[91] The teacher alleged that the dismissal should be voided because the board violated the Open Meetings Act. The Warren County Board asserted in response that there was no violation of the Open Meetings Act. They contend that the attorney-client exception recognized in *Smith County* applies in this situation because, although there had been no charges preferred against the teacher as of August 16, 1983, there was a pending controversy that was likely to result in litigation between the school district and the teacher.

The Court agreed with the defendants' assertion that the board had a right to meet with its attorney to discuss the pending controversy pertaining to the teacher. There was a catch, however, and that was to the extent that the board made decisions or deliberated toward a decision, this was a "meeting" to which the Open Meetings Act applied. Given testimony that the Conditions were discussed in the meeting and the fact that these Conditions are not mentioned anywhere else in the minutes, the Court assumed that the board acted to approve the Conditions in this private meeting. Because this action was taken in violation

of the Open Meetings Act, the board's attempted settlement of this controversy by approval of the Conditions for Continued Employment is void and of no effect.

Bottom Line: What Does The Attorney-Client Privilege Mean?

A public body can meet with its attorney to discuss pending litigation in which the public body is a named party or to discuss issues which might result in litigation may not deliberate nor make decisions during that closed session. This exception to the Open Meetings Law is very narrow but offers public bodies the opportunity to meet with and receive privileged advice and recommendations from legal counsel to the same extent enjoyed by any other client and attorney in the state of Tennessee. However, unlike the citizen who may privately contemplate and discuss that advice, the public body must then adjourn its private session with its attorney and reconvene in public to deliberate and ultimately make decisions.

CHAPTER 4

OTHER SIGNIFICANT COURT HOLDINGS

Does the Law Apply to the General Assembly?

In the year 2000, law school student and former WTVF (Nashville) news producer Mark Mayhew challenged the Legislature's practice of holding budget meetings in private.[92] It was Mayhew's contention that these meetings clearly violated the Open Meetings Act and the Legislature was bound by law to hold meetings that were open to public scrutiny. In rejecting Mayhew's claim the Court of Appeals held that there is no indication that the legislature intended to bind itself to the provisions of the Sunshine Law, or that they subsequently acted as if they were bound by it; even if the legislature intended to bind itself when it passed the Sunshine Law, the act would not bind a subsequently enacted general assembly pursuant to the provision in Tenn. Const. Art. II, § 12.

How Do the Courts View Private Non-Profit Corporations?

Public records laws may apply to private entities where such entities operate as a functional equivalent of a government entity.[93] Otherwise, a government agency, either intentionally or unintentionally, might avoid its disclosure obligations by contractually delegating its responsibilities to a private entity. The Courts have generally held that the Tennessee Supreme Court in *Memphis Publishing Co.*, intended the functional equivalency analysis to be applied to any nonprofit corporation or association seeking to keep its records closed under the Tennessee Public Records Act, T.C.A. § 10-7-503.[94]

An appellate court must make a functional equivalency determination where, even though a nonprofit corporation has complied with the audit exception in the Tennessee Public Records Act, T.C.A. § 10-7-503, its records are accessible to the public if it is the functional equivalent of a governmental agency. Its records will not be open to the public merely because it does business with or performs services on behalf of a municipal government.

Have the Courts Broadened the Definition of Governing Body?

A governing body is not limited solely to the group of officials elected by their respective communities. Generally, a committee or commission created by such an elected body is also considered a governing body for the purposes of the Open Meetings Act. The Tennessee Court of Appeals has addressed this issue when it held that the board of directors of a preferred provider organization created is a public body because it is a subsidiary of the district, is comparable to a division or department of the state or county and is subject to the requirements of the Tennessee Open Meetings Act.[95]

However, if a committee has been created by an administrative officer and not the elected body, that committee is not subject to the act. The Court held neither the faculty of the College of Law of the University of Tennessee nor committees composed of faculty members and students created to assist the dean in decision-making satisfy the definition of "governing body" since they make recommendations to the dean, who is an

administrative officer as opposed to a "public body," and hence their meetings are not subject to the provisions of this chapter.[96]

What if Less Than the Full Membership of a Public Body Meets?

If more than one member of an elected body are together outside a meeting, they are generally viewed with suspicion by members of the community and are often accused of having violating the law by participating in secret unannounced meetings. Elected officials are not required by the Act to shun all social contact with each other but should be mindful of public perception when meeting socially.

The Courts tend to focus on the purpose of the meeting and what transpired. In one such case the Court held that although members of the board of education met at the school superintendent's home prior to their regular meeting, the evidence was clear that while the superintendent may have spoken with four members of the seven-member board about public business, the superintendent did not speak individually or in a group to all members about the same topics, and such a gathering constituted the kind of informal assemblage contemplated by subsection (c).[97]

However, not long after the result was quite different when the Court held that a gathering of four of seven school board members, and the school district's superintendent at resort park, constituted a "meeting" under this section, where the five men present at the gathering discussed issues concerning the school district, including the issue of clustering, and deliberated toward making a decision concerning clustering, regardless of whether any board member made a decision at the gathering.[98]

What Is Adequate Public Notice?

One of the more difficult issues is determining just what amounts to adequate public notice under the Act and language in some court decisions tends to add to the confusion. For instance, this act is not unconstitutionally vague and ambiguous due to the phrase "adequate public notice" in this section, which is construed as adequate public notice under the circumstances.[99] The circumstances of each case must be taken into account to determine the adequacy of notice.[100]

However, some decisions seem to conflict. Although announcement of school board meeting was given at previously held regular meeting of board, such notice was inadequate where it failed to indicate the meeting was to be held for the purpose of discussing an issue of pervasive importance to public.[101]

But then what about this one? Notice to the media that announced the time, date, and location of the meeting eight days prior to the meeting provided the public with a reasonable opportunity to be present at the meeting and was adequate even if the notice did not state the agenda of the meeting.[102]

If a solid policy regarding notice is in place and that policy consistently followed, then public bodies shouldn't run afoul of notice laws.

What Must Be Recorded in Minutes?

Governmental bodies are required to keep minutes and the Act allows a broad discretion in what is included in those minutes above and beyond several mandatory requirements. Failure to do so can result in sanctions. Strict compliance with T.C.A. § 8-44-104 was necessary with respect to the matters required to be recorded and included in the minutes of the board;…*Grace Fellowship Church of Loudon County v. Lenoir City Beer Bd.*, — S.W.3d —, 2002 Tenn. App. LEXIS 49 (Tenn. Ct. App. Jan. 23, 2002).

Where local board of parks and recreation violated the Open Meetings Act by failing to fully record the minutes of its meeting, remedial action by subsequently amending its minutes did not foreclose the need to impose sanctions against the board under T.C.A. § 8-44-106. *Zseltvay v. Metropolitan Gov't*, 986 S.W.2d 581, 1998 Tenn. App. LEXIS 522 (Tenn. Ct. App. 1998).

What Sanctions May Be Imposed for Violations of the Law?

If a public body violates the act, the statutory remedy is to have that body's action nullified. In landowner's suit against city over annexation ordinance and an alleged violation of the Tennessee Open Meetings Act, T.C.A. § 8-44-101 et seq., repeal of the annexation ordinance would have been the statutory remedy had the Act been violated; as the ordinance had been repealed, this issue was moot. *Cathey v. City of Dickson*, — S.W.3d —, 2002 Tenn. App. LEXIS 342 (Tenn. Ct. App. May 10, 2002).

The Courts have held that actions taken in private meetings are void. Where school board acted to approve settlement conditions in a private meeting, action was taken in violation of the Open Meetings Act, and the board's attempted settlement of a controversy involving one of its teachers by approval of conditions for continued employment was void and of no effect. *Van Hooser v. Warren County Bd. of Educ.*, 807 S.W.2d 230, 1991 Tenn. LEXIS 24 (Tenn. 1991).

Boards generally cannot cure an illegal action taken in a private meeting by ratifying the action in a subsequent public meeting particularly if the ratification is nothing more than a rubber stamp of an illegal action. Action of the board of trustees in ratifying the actions of the board of directors of a preferred provider organization in limiting the physician networks was merely a perfunctory rubber stamp of previous actions taken in violation of the Open Meetings Act and failed to cure the previous violations of the Act because there was no discussion of the matter and the board of trustees failed to give new and substantial reconsideration to the issue. *Souder v. Health Partners, Inc.*, 997 S.W.2d 140, 1998 Tenn. App. LEXIS 714 (Tenn. Ct. App. 1998).

However, under certain circumstances the Court has held that subsequent ratification, when done consistent with the act, was acceptable. The legislative intent of the Public Meetings Act was not forever to bar a governing body from properly ratifying its decision made in a prior violative manner. However, neither was it the legislative intent to allow such a body to ratify a decision in a subsequent meeting by a perfunctory crystallization of its earlier action. The purpose of the act is satisfied if the ultimate decision is made in accordance with the Public Meetings Act, and if it is a new and substantial reconsideration of the issues involved, in which the public is afforded ample opportunity to know the facts and to be heard with reference to the matters at issue. *Neese v. Paris Special Sch. Dist.*, 813 S.W.2d 432, 1990 Tenn. App. LEXIS 327 (Tenn. Ct. App. 1990).

How Are The Laws Enforced?

Enforcement of the Act is generally accomplished by bringing a suit in either circuit or chancery court and based on the statement from the Court of Appeals which follows, closely following the letter of the law is of the utmost importance to the courts. Strict compliance with the Open Meetings Act is a necessity if the act is to be effective. *Zseltvay v. Metropolitan Gov't*, 986 S.W.2d 581, 1998 Tenn. App. LEXIS 522 (Tenn. Ct. App. 1998).

REFERENCE MATERIALS

Appendix A – Forms: Office of Open Records

PUBLIC RECORDS REQUEST FORM

The Tennessee Public Records Act (TPRA) grants Tennessee citizens the right to access open public records that exist at the time of the request. The TPRA does not require records custodians to compile information or create or recreate records that do not exist.

(Governmental Entity Name and Name and Contact Information for the Public Records Request Coordinator)

To:

(Insert Requestor's Name and Contact Information (include an address for any TPRA required written response))

From:

Is the requestor a Tennessee citizen? ☐ Yes ☐ No

Request: ☐ Inspection (The TPRA does not permit fees or require a written request for inspection only[i].)

☐ Copy/Duplicate

If costs for copies are assessed, the requestor has a right to receive an estimate. Do you wish to waive your right to an estimate and agree to pay copying and duplication costs in an amount not to exceed $_____? If so, initial here: _____.

Delivery preference: ☐ On-Site Pick-Up ☐ USPS First-Class Mail
☐ Electronic ☐ Other: _____

Records Requested:

Provide a detailed description of the record(s) requested, including: (1) type of record; (2) timeframe or dates for the records sought; and (3) subject matter or key words related to the records. Under the TPRA, record requests must be sufficiently detailed to enable a governmental entity to identify the specific records sought. As such, your record request must provide enough detail to enable the records custodian responding to the request to identify the specific records you are seeking.

_____ _____
Signature of Requestor and Date Submitted Signature of Public Records Request Coordinator and Date Received

Print Form Reset Form

[i] Note, Tenn. Code Ann. § 10-7-504(a)(20)(C) permits charging for redaction of private records of a utility.

PUBLIC RECORD REQUEST RESPONSE FORM

[Insert Governmental Entity Name and Address]

[Date]

[Requestor's Name and Contact Information]:

In response to your records request received on [Date Request Received], our office is taking the action(s)[1] indicated below:

☐ The public record(s) responsive to your request will be made available for inspection:
Location: _____
Date & Time: _____

☐ Copies of public record(s) responsive to your request are:
- ☐ Attached;
- ☐ Available for pickup at the following location:
_____; or
- ☐ Being delivered via: ☐ USPS First-Class Mail ☐ Electronically ☐ Other: _____.

☐ Your request is denied on the following grounds:
- ☐ Your request was not sufficiently detailed to enable identification of the specific requested record(s). You need to provide additional information to identify the requested record(s).
- ☐ No such record(s) exists or this office does not maintain record(s) responsive to your request.
- ☐ No proof of Tennessee citizenship was presented with your request. Your request will be reconsidered upon presentation of an adequate form of identification.
- ☐ You are not a Tennessee citizen.
- ☐ You have not paid the estimated copying/production fees.
- ☐ The following state, federal, or other applicable law prohibits disclosure of the requested records:
_____.

☐ It is not practicable for the records you requested to be made promptly available for inspection and/or copying because:
- ☐ It has not yet been determined that records responsive to your request exist; or
- ☐ The office is still in the process of retrieving, reviewing, and/or redacting the requested records.

The time reasonably necessary to produce the record(s) or information and/or to make a determination of a proper response to your request is: _____.

If you have any additional questions regarding your record request, please contact
[Records Custodian or Public Records Request Coordinator]

Sincerely,

[Records Custodian or Public Records Request Coordinator]
[Name, Title, and Contact Information]

[1] If all requested records do not have the same response, so indicate.

Endnotes

[1] Tenn. Code Ann. § 8-44-101(a).
[2] Tenn. Code Ann. § 8-44-102(a).
[3] Tenn. Code Ann § 8-44-102(b)(1)(A).
[4] Tenn. Code Ann. § 8-44-102(b)(1)(B).
[5] Tenn. Code Ann. § 8-44-102(b)(1)(C).
[6] Tenn. Code Ann. § 8-44-102(b)(1)(D).
[7] Tenn. Code Ann. § 8-44-102(b)(1)(E).
[8] Tenn. Code Ann. § 8-44-107
[9] Tenn. Code Ann. § 8-44-103.
[10] Tenn. Code Ann. § 8-44-104(a).
[11] Tenn. Code Ann. § 8-44-104(b).
[12] Tenn. Code Ann. § 8-44-105.
[13] Tenn. Code Ann. § 8-44-106(a).
[14] Tenn. Code Ann. § 8-44-106(b).
[15] Tenn. Code Ann. § 8-44-106(c).
[16] Tenn. Code Ann. § 8-44-106(d).
[17] Tenn. Code Ann. § 49-2-203(c).
[18] Tenn. Code Ann. § 49-5-601 et. seq.
[19] Tenn. Code Ann. § 49-5-603.
[20] Tenn. Code Ann. § 8-44-201(b).
[21] Tenn. Code Ann. § 8-44-201(a).
[22] Tenn. Code Ann. § 8-4-601.
[23] Tenn. Code Ann. § 8-4-602.
[24] Tenn. Code Ann. § 8-4-603.
[25] Tn. Pub. Ch. 794.
[26] Tenn. Code Ann. § 10-7-503(a)(1)(B)
[27] Tenn. Code Ann. § 10-7-503(a)(1).
[28] Tenn. Code Ann. § 10-7-503(a)(1).
[29] Tn. Pub. Ch. 811.
[30] Tenn. Code Ann. § 10-7-503(a)(2)(A).
[31] Tenn. Code Ann. § 10-7-503(a)(2)(B).
[32] Tenn. Code Ann. § 10-7-503(a)(7)(C)(1)
[33] https://comptroller.tn.gov/content/dam/cot/orc/documents/oorc/policies-and-guidelines/ScheduleofReasonableCharges.pdf
[34] Tenn. Code Ann. § 10-7-503(a)(3).
[35] Tenn. Code Ann. § 10-7-503(a)(4).
[36] Tenn. Code Ann. § 10-7-503(a)(5).
[37] Tenn. Code Ann. § 10-7-503(a)(7)(A).
[38] Tenn. Code Ann. § 10-7-503(b).
[39] Tenn. Code Ann. § 10-7-503(c)(1).
[40] Tenn. Code Ann. § 10-7-503(d)(1).
[41] Tenn. Code Ann. § 10-7-503(d)(1)(A).
[42] Tenn. Code Ann. § 10-7-503(d)(1)(E).
[43] Tenn. Code Ann. § 10-7-503(d)(1)(F).
[44] Tenn. Code Ann. § 10-7-503(d)(2).
[45] Tenn. Code Ann. § 10-7-503(e).
[46] Tenn. Code Ann. § 10-7-503(f).
[47] Tenn. Code Ann. § 10-7-504(a)(1).
[48] Tenn. Code Ann. § 10-7-504(a)(2)(A).
[49] Tenn. Code Ann. § 10-7-504(a)(2)(B).
[50] Tenn. Code Ann. § 10-7-504(a)(2)(C).
[51] Tenn. Code Ann. § 10-7-504(a)(3)
[52] Tenn. Code Ann. § 10-7-504(a)(4)(A).

[53] Tenn. Code Ann. § 10-7-504(a)(4)(B-D).
[54] Tenn. Code Ann. § 10-7-504(a)(4)(E).
[55] Tenn. Code Ann. § 49-6-2119.
[56] Tenn. Code Ann. § 10-7-504(a)(5)(A).
[57] Tenn. Code Ann. § 10-7-504(a)(5)(B-C).
[58] Tenn. Code Ann. § 10-7-504(a)(6).
[59] Tenn. Code Ann. § 10-7-504(a)(7).
[60] Tenn. Code Ann. § 10-7-504(a)(8).
[61] Tenn. Code Ann. § 10-7-504(f)(1).
[62] Tenn. Code Ann. § 10-7-504(f)(2).
[63] Tenn. Code Ann. § 10-7-405(a)(23).
[64] Tenn. Code Ann. § 10-7-504(a)(9).
[65] Tenn. Code Ann. § 10-7-504(a)(10).
[66] Tenn. Code Ann. § 10-7-504(a)(11).
[67] Tenn. Code Ann. § 10-7-504(a)(12).
[68] Tenn. Code Ann. § 10-7-504(a)(13).
[69] Tenn. Code Ann. § 10-7-504(a)(14).
[70] Tenn. Code Ann. § 10-7-504(a)(15-30).
[71] Tenn. Code Ann. § 10-7-504(b).
[72] Tenn. Code Ann. § 10-7-504(c).
[73] Tenn. Code Ann. § 10-7-504(d).
[74] Tenn. Code Ann. § 10-7-504(e).
[75] Tenn. Code Ann. § 10-7-504(g).
[76] Tenn. Code Ann. § 10-7-504(h).
[77] Tenn. Code Ann. § 10-7-504(i).
[78] Tenn. Code Ann. § 10-7-505(a-b).
[79] Tenn. Code Ann. § 10-7-505(c).
[80] Tenn. Code Ann. § 10-7-505(d).
[81] Tenn. Code Ann. § 10-7-505(f).
[82] Tenn. Code Ann. § 10-7-505(g).
[83] Tenn. Code Ann. § 10-7-506.
[84] Tenn. Code Ann. § 10-7-512.
[85] Tenn. Code Ann. § 10-7-701.
[86] Tenn. Code Ann. § 10-7-702.
[87] *Smith County Education Association v. Anderson*, 676 S.W.2d 328, 1984 Tenn.
[88] Tenn. Code Ann. § 49-5-609.
[89] Tenn. Code Ann. § 8-44-102(a).
[90] Tennessee Code of Prof'l Responsibility Canon 4.
[91] *Van Hooser v. Warren County Bd. of Educ*., 807 S.W.2d 230.
[92] *Mayhew v. Wilder,* 46 S.W.3d 760, 2001 Tenn. App. LEXIS 17 (Tenn. Ct. App. 2001).
[93] *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67, 79 (Tenn. 2002)
[94] *Fodness v. Newport & Cocke County Economic Dev. Comm'n*, 2005 Tenn. App. LEXIS 148 (Tenn. Ct. App. Mar. 16, 2005).
[95] *Souder v. Health Partners, Inc.*, 997 S.W.2d 140, 1998 Tenn. App. LEXIS 714 (Tenn. Ct. App. 1998).
[96] *Fain v. Faculty of College of Law*, 552 S.W.2d 752, 1977 Tenn. App. LEXIS 257 (Tenn. Ct. App. 1977).
[97] *Bundren v. Peters,* 732 F. Supp. 1486, 1989 U.S. Dist. LEXIS 16980 (E.D. Tenn. 1989).
[98] *Neese v. Paris Special Sch. Dist.*, 813 S.W.2d 432, 1990 Tenn. App. LEXIS 327 (Tenn. Ct. App. 1990).
[99] *Memphis Publishing Co. v. Memphis*, 513 S.W.2d 511, 1974 Tenn. LEXIS 465 (Tenn. 1974).
[100] *Kinser v. Town of Oliver Springs*, 880 S.W.2d 681, 1994 Tenn. App. LEXIS 51 (Tenn. Ct. App. 1994), appeal denied, 1994 Tenn. LEXIS 227 (Tenn. July 11, 1994).
[101] *Neese v. Paris Special Sch. Dist*., 813 S.W.2d 432, 1990 Tenn. App. LEXIS 327 (Tenn. Ct. App. 1990).
[102] *Souder v. Health Partners, Inc.*, 997 S.W.2d 140, 1998 Tenn. App. LEXIS 714 (Tenn. Ct. App. 1998).