



July 15, 2011

Mary Cashiola  
Media and Communications  
125 North Main Street, Room 700  
Memphis, Tennessee 38103

Dear Ms. Cashiola:

You have requested an opinion from this office concerning the following:

**ISSUE PRESENTED**

Whether the meetings held by the Memphis Animal Shelter Advisory Board are subject to the Open Meetings Act?

**ANSWER**

No. The meetings held by the Memphis Animal Shelter Advisory Board are not considered a "meeting" by a "governing body" as defined by the Open Meetings Act. Consequently, the meetings are not subject to the Open Meetings Act and therefore, the option to open or close such meetings to the public is subject to the discretion of the administration.

**DISCUSSION**

Tennessee Code Ann. §8-44-101 (a) of the Open Meetings Act ("Act") declares that it is "the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret." §8-44-102 of the Act further provides that "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."

A determination of whether a meeting is covered by the Open Meetings Act hinges upon two factors: (1) whether the meeting is a "meeting" as defined by the Act and (2) whether the meeting is being conducted by a "governing body" as defined by the Act.

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The term "meeting" is defined by the Act 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." The term "governing body" is defined as "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." Tenn. Code Ann. § 8-44-102(b)(1). The term "public body" is not defined in the Open Meetings Act; however, the Tennessee Supreme Court stated as follows in *Dorrier v. Dark*, 537 S.W.2d 888,892 (Tenn. 1976):

[i]t is clear that for the purpose of the Act, the Legislature intended to include any board, commission, committee, agency, authority or any other body, by whatever name, **whose origin and authority may be traced to State, City or County legislative action** and whose members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector, (emphasis added)

Thus, in order to be considered a "governing body" covered by the Open Meetings Act, an organization must (1) consist of members of a public body which can be traced back to state, city, or county legislative action and (2) possess authority to make decisions or recommendations concerning policy or administration which affect people in the **governmental sector. *Chattanooga Bd. of Educ. v. Chattanooga Educ. Ass'n*, 7 T.A.M. 41 (5/15/87) (Term. Ct. App. 1982).**

You have asked whether the meetings held by the Memphis Animal Shelter Advisory Board are subject to the Open Meetings Act. Based upon the information provided to this office, this board was created for the sole purpose of making recommendations to the Animal Shelter Director and Director of Public Services for their review and consideration. Thus, the origin of the board is not traceable to any legislative action such as the City Charter or Code of Ordinances and is not required to have a quorum or to deliberate, or make recommendations to anyone other than the Animal Shelter Director and Director of the Division of Public Services. This board has no authority whatsoever to create any policy. Accordingly, the board is not a "governing body" per the requirements of the Open Meetings Act. Therefore, the convening of the board is not a "meeting" subject to the Open Meetings Act and the option to open or close such meetings to the public rests in the discretion of the administration.

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Further legal support of this conclusion is demonstrated by a plethora of caselaw. See *Mid-South Pub. Co. v. Tenn. State Univ. & Cmty. Coll. Sys. Bd. of Regents*, 1990 WL 207410, \*3 (Tenn. Ct. App. 1990) (holding that the General Assembly did not contemplate that the Sunshine Law would apply to meetings between individual public officials and their advisors or advisory committees); *Metro. Air Research Testing Auth., Inc. v. Metro. Gov't. of Nashville and Davidson County*, 842 S.W.2d 611,619 (Tenn. Ct App. 1992); perm. app. denied (Tenn. 1992) (holding that a meeting in the mayor's office consisting of various city officials with separate roles in the procurement process was not a meeting of a governing body - as the group was neither created nor recognized by the Metropolitan Charter, the city ordinances, or the rules and regulations of the Division of Purchases; and was not required to have a quorum or to deliberate, or even to make recommendations to a public body).

#### CONCLUSION

In sum, the Memphis Animal Shelter Advisory Board does not originate from any state, city or county legislative action and has been convened solely for the purpose of making recommendations to the Animal Shelter administration and Director of Public Services for his review and consideration as an individual public official. Consequently, the meetings of this committee are not subject to the Open Meetings Act and the option to open or close such meetings to the public is subject to the discretion of the administration.

Please do not hesitate to contact this office should you need further assistance.

Sincerely,



Herman Morris, Jr.,  
City Attorney



Jill Madajczyk  
Senior Assistant City Attorney

cc: A C Wharton, Jr., Mayor  
George M. Little, Chief Administrative Officer  
In-House Attorneys

Opn. No.: 035.11





**City of Memphis  
Boards, Commissions  
and Agencies**

125 N. Main St., Suite 700  
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**Memphis Animal Shelter Advisory  
Committee**

**Mission Statement**

1. First and foremost, to serve as advocates for the humane treatment of animals in the City of Memphis' animal shelter facility;
2. To advise and attempt to resolve conflicts relating to the efficient and humane operation of the City of Memphis' animal shelter facility;
3. To review citizens' comments and complaints and bring these to the attention of the Director, Public Services and Neighborhoods and the Administrator, Memphis Animal Services; and
4. To assist in promoting positive aspects of the City of Memphis' Animal Services to the public at large.

**Links**

- [Boards Main](#)
- [Animal Shelter Advisory Board \(partial\) Members](#)

**SELECTION PROCESS:** Members appointed by the City Mayor and approved by the City Council. The Manager in charge of the Animal Shelter and the Health Officer shall be ex-officio members of such Board.

**MEMBERSHIP:** 7 Member Board.

**FUNCTION & AUTHORITY:** The Animal Shelter Advisory Board shall:

- a.) Assist the Animal Shelter staff in the investigation and prosecution, if necessary, of all complaints of cruelty or mistreatment of animals or fowl, and if necessary, take charge of and make proper disposition of the animals or fowl involved in such complaints, when so requested by the Director of Public Service;
- b.) Advise the Director of Public Service and the Animal Shelter Administrator in matters relating to the efficient and humane operation of the Animal Shelter; and
- c.) Serve as advocates for the humane treatment of animals and fowl, as set out in this title, while maintaining an awareness of the needs to protect and enhance the total environment of the City.

**TERMS OF MEMBERS:** 2 Year Term

**ALL MAS ADVISORY BOARD MEETINGS ARE ON THE SECOND WEDNESDAY OF THE MONTH FROM 10 - 12 in Meeting Room A of the Central Library on Poplar Avenue.**

**Future Meeting Dates:** July 14 in Meeting Room A from 10am to Noon  
 August 11 in Meeting Room A from 10am to Noon  
 September 8 in Meeting Room A from 10am to Noon  
 October 13 in Meeting Room A from 10am to Noon  
 November 10 in Meeting Room A from 10am to Noon

**December 8 in Meeting Room A from 10 am to Noon**

**[View MAS Board Meeting Agendas](#)**