



**STATE OF TENNESSEE**  
**COMPTROLLER OF THE TREASURY**  
**OFFICE OF OPEN RECORDS COUNSEL**  
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Justin P. Wilson  
Comptroller

July 18, 2011

Dr. Stephen Tower, DVM  
Chairman, Memphis Animal Services Advisory Board  
125 N. Main St., Suite 700  
Memphis, TN 38103

Dr. Tower,

This office has received multiple complaints since July 12, 2011 which state that Memphis Animal Services Advisory Board (hereinafter referred to as the "Board") is violating the Tennessee Open Meetings Act by deliberating and making decisions on public business at meetings that are not noticed and are closed to the public.

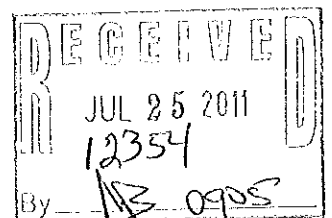
Whenever this office receives a complaint regarding a possible open meetings violation, my routine practice is to contact the chairman of the entity that is the subject of the complaint to make him/her aware that a complaint has been filed. As such, I am contacting you as the chairman of the Board to inform you that this office has received multiple complaints and to let you know what the law requires.

Tenn. Code Ann. Section 8-44-101 et seq. generally governs how governmental entities are to notice and conduct meetings. Tenn. Code Ann. Section 8-44-102(b)(1)(A) defines governing body in part 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 and also means a community action agency which administers community action programs under the provisions of 42 U.S.C. § 2790.

According to Sections 8-12-6 through 8-12-8 of the Memphis Code of Ordinances, the specific duties of the Board are enumerated as follows:

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- 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;
- 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.

If the members of the Board are only performing those duties that they are specifically authorized to perform, it is the opinion of this office that the Board is not subject to the Tennessee Open Meetings Act and as such, there has been no violation of the Act. In *Fain v. Faculty of College of Law of University of Tennessee*, the court determined that the meetings of faculty committees that advised the Dean of the College of Law were not subject to the Tennessee Open Meetings Act because the faculty committees were not "governing bodies." *Fain v. Faculty and College of Law of University of Tennessee*, 552 S.W. 2d 752, 754 (Tenn. Ct. App. 1977). The Plaintiffs argued that because the by-laws of the University of Tennessee stated in part that the faculty was charged with planning and developing curricula, the faculty committees were governing bodies. *Id.* at 755. The court held otherwise and said:

the individual college faculties have no authority to affect changes in the curriculum of their respective colleges, nor does the faculty of a college, as such, have the authority to make recommendations pertaining to the curriculum of any authority outside of the college. The faculty may make recommendations pertaining to the curricula but, unless the Dean approves the recommendation or elects to pass it to the Undergraduate Council which will, in turn submit the recommendation to the Faculty Senate for final approval, the recommendation does not leave the College of Law. Therefore, even with respect to matters pertaining to curricula, the faculty does not exercise any governmental authority, nor does it have the power to make recommendations to a governing body, which would bring it within the provisions of the Act.

*Id.* The same appears to be true of the Board. Assuming that the Board only carries out those duties that it is authorized to by the Memphis Code of Ordinances, it appears to this office that the Board members have no authority to make any decisions affecting public business themselves. Instead, it appears as though the Board members have the ability to work with the director of public service and staff for the shelter when specifically requested and make recommendations related to the work of the shelter to the director of public service and staff only, but not to a governing body.

Based solely upon the facts that have been presented to this office, it is the opinion of this office that the Board is not subject to the Tennessee Open Meetings Act and therefore is not required to have adequately noticed public meetings.<sup>1</sup> However, it is

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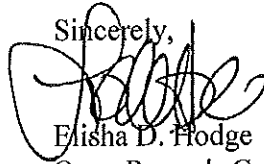
<sup>1</sup> While it is the opinion of this office that the Board is not required to have adequately noticed public meetings based upon the facts that have been presented for my consideration, it is also the opinion of this office that the Board is not precluded from having meetings that are noticed and open to the public.

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important to note that any citizen of Tennessee can bring a lawsuit against the Board for violation of the Tennessee Open Meetings Act. A judge could find a violation based upon the facts and circumstances presented to him/her, so I strongly advise you to contact the Memphis City Attorney's office regarding this matter if you have not done so already. Additionally, I suggest that the Board reconsider the manner in which the decision was made to close the monthly meetings of the Board to the public. It is my understanding that the decision to close the Board's monthly meetings was made at a meeting that was not publically noticed and open to the public. Because the Board has held itself out as being subject to the Tennessee Open Meetings Act in the past by posting public notice of the meetings and holding public meetings, I suggest that you all speak with legal counsel about the possibility of reconsidering the action to close the monthly meetings at an adequately noticed public meeting.

Sincerely,

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

Elisha D. Hodge  
Open Records Counsel