



JUSTIN P. WILSON  
*Comptroller*

JASON E. MUMPOWER  
*Deputy Comptroller*

February 21, 2019

Joe Wingate, Chairman  
Hamilton County School Board  
3074 Hickory Valley Rd.  
Chattanooga, Tennessee 37421

Chairman Wingate:

This letter is to inform you that our office received a complaint from Senator Todd Gardenhire that the Hamilton County Board of Education may have violated the Tennessee Open Meetings Act (“TOMA”). Specifically, the complaint alleges that the Board decided to refer a matter involving the assault of an Ooltewah High School student to the Tennessee Risk Management Trust (“TRMT”) during an executive session.

When this office receives a complaint regarding a possible open meetings violation, our routine practice is to contact the chairman of the governing body to make him or her aware of the complaint and to advise as to the requirements of Tennessee’s open meetings laws. As such, I am contacting your office to inform you of the concerns presented to this office and to review the requirements of the law.

In Tennessee, the formation of public policy is public business and shall not be conducted in secret. Tenn. Code Ann. § 8-44-101. To effectuate this purpose, TOMA requires that all meetings of a governing body, which includes the Hamilton County School Board, must be open to the public except as provided by the Constitution of Tennessee. Tenn. Code Ann. § 8-44-102. A narrow exception to this general rule does allow a governing body to hold a closed-door executive session with legal counsel to receive information about pending litigation or a pending controversy that may result in litigation. *Van Hooser v. Warren County Bd. of Education*, 807 S.W.2d 230, 237 (Tenn. 1991). However, a governing body may not make decisions or discuss or deliberate towards making a decision during such executive sessions. *Id.* Accordingly, although the Board may receive advice and information from counsel about pending litigation during an executive session, any deliberation or decisions about the pending litigation, such as whether to refer the matter to the TRMT, must occur at an open public meeting. Failure to make such decisions at an open public meeting would constitute a violation of TOMA. *Id.*

Any action taken by a governing body not held in accordance with TOMA is void. A governing body may properly ratify such action by subjecting the action to new and substantial consideration during an open public meeting. However, courts have still found violations and imposed sanctions even where a governing body properly ratifies actions taken outside an open public meeting. Our office would recommend consulting with the Board attorney regarding the



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foregoing allegations, as TOMA allows citizens to file a lawsuit when they believe an open meetings violation has occurred. If a lawsuit is filed, a court will determine whether a violation occurred based upon the facts presented to the court. Should the court determine a violation occurred, it can issue injunctions against the members of the governing body and the governing body would be subject to the court's supervision for a year from the date of the entry of judgment.

We understand members of governing bodies may often misunderstand the requirements of Tennessee's open meetings laws, and we hope this letter may rectify any possible issues. If you have questions or concerns regarding this matter or the open meetings laws, please feel free to contact our office at 615-401-7891 or [open.records@cot.tn.gov](mailto:open.records@cot.tn.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Lee Pope".

Lee Pope  
Open Records Counsel