**Tennessee Open Meetings Act & Attending Meetings Electronically**

**What this Means for People with Disabilities**

**2022**

**What is Tennessee’s Open Meetings Act?**

The Tennessee Open Meetings Act requires that state, city and town government meetings be open to the public, that the public has been given notice that the meetings will take place, and can access minutes from the meetings. It is also known as the “Open Meetings Law” and the “Sunshine Law.”

**Who must follow the Open Meetings Act?**

Any board, commission, committee, agency, authority, or any other body that was created or given power by state, city, or county legislative action and has the power to make decisions or suggestions on policy and administration.

*For example:* If a committee is created to give suggestions about changing City Hall landscaping (a suggestion on administration)…

It **MUST** follow the Open Meetings Act: If it was created by City Council (a legislative body) and reports to City Council.

It **does NOT** have to follow the Open Meetings Act: If it was created by a City Mayor (not a legislative body) and reports to a City Administrator.

**Electronic Participation for the Public:**

Bodies that must follow the Open Meetings Act may but are not required to allow the public to participate electronically (for example by calling in on your phone or computer).

**In-Person Rule for Members:**

All bodies that must follow the Open Meetings Act must have a “physical quorum” in order for a meeting to take place. This means that a majority of the voting members of the body must be present at the meeting in person.

*State Bodies only* - if there is a “physical quorum” of members already, voting members who can not attend in person may participate electronically and their vote counts.

*Local bodies* like city and town commissions or councils - voting members who can not attend in person are not allowed to participate electronically as a member or vote in the meeting.

**Electronic Exception for the Meeting:**

*State bodies only* - are allowed to hold a meeting without a “physical quorum.” This means that a majority of its members can participate electronically, but only if there is a “necessity” - when what the meeting is about “requires timely action” and meeting in person is not practical in order to take “timely action.”

If a state body decides there is a “necessity” to meet electronically, they must notify the public, provide the same materials to all members whether participating in-person or electronically, all members must be able to hear and speak to each other, they must state the reason and circumstances for the “necessity” in their meeting minutes, file a report with the Tennessee Secretary of State’s Office with this information within two (2) days after meeting, and all votes must be taken by roll call during the meeting.

*Local bodies* - must always have a “physical quorum” in order to hold a meeting.

**What This Means for People with Disabilities:**

People with disabilities have a lot to add as voting members on state and local councils, committees and other governing bodies. However, because of disability, it is sometimes difficult to attend a meeting in person.

*State body participation* - If we are a voting member of a state body, AND there is already a “physical quorum” of other members present for a meeting, we can participate electronically and our vote counts.

If there is NOT a “physical quorum” of members present for the meeting but there is a quorum participating electronically, the meeting can still take place if there is a “necessity” and the body follows the rules in the Open Meetings Act for meeting electronically.

*Local body participation* - If we are a voting member of a local body, our vote only counts if we participate in-person.

If there is NOT a “physical quorum” of members at the meeting in-person, even if members could participate electronically, the meeting can not take place.

**What About the Americans With Disabilities Act?**

Title II of the Americans with Disabilities Act (ADA) requires state and local governments to provide people with disabilities with meaningful access to all programs and services. They must provide “reasonable modifications,” when we need them because of a disability, in order for us to participate. For some of us, participating in a meeting electronically would represent a “reasonable modification.”

In the past, the kinds of “reasonable modifications” that have been requested have addressed physical or communication barriers. There is some question about whether electronic participation can be provided as a “reasonable modification” under the ADA for a person with a disability to participate in a governing body that must follow the Tennessee Open Meetings Act.

The ADA is a federal law. The Tennessee Open Meetings Act is a state law. All states must follow federal law. If there is a conflict between federal and state law whichever provides the most protections for the rights of people with disabilities wins. In this matter that is the ADA.

The State of Tennessee has not issued a formal opinion or court ruling on the matter.

The Tennessee Disability Coalition recommends that if you serve on a governing body and due to your disability, need to participate electronically - that you request this as a “reasonable modification” under the ADA.

If you have any questions or if the governing body you serve on needs more information, please contact us at: coalition@tndisability.org or 615-383-9442.

Tennessee Open Meetings Act citation: T.C.A. § 8-44-108