TECHNICAL BULLETIN

MUNICIPAL TECHNICAL ADVISORY SERVICE
THE UNIVERSITY OF TENNESSEE
IN COOPERATION WITH THE TENNESSEE MUNICIPAL LEAGUE

Authorization Number E14-1050-00-003-86

June 11, 1986

Sunshine Law Codification Problem Corrected

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Chapter No. 290, Public Acts of 1985, entitled "AN ACT relative to meetings of the board of directors of certain nonprofit corporations and to amend Tennessee Code Annotated, Title 8, Chapter 44, Part 1" (the Sunshine Law) was codified in Section 8-44-102, Tennessee Code Annotated, in such manner as to reflect a broader application than apparently was intended.

Section 1 of the Act provided that: "Tennessee Code Annotated, Section 8-44-102(b), is amended by adding the following sentence: 'Governing body' shall also mean 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 community grant funds comprise at least thirty percent (30%) of the total annual income of such corporation." This sentence was codified as directed.

Section 2 of the Act, which did not provide how or where it was to be codified, was codified as subsection (d)(2) of Section 8-44-102 and provided that: "Except such meetings 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." It was not clear that "such meetings" referred only to meetings of "certain nonprofit corporations" and the exception did not apply to municipal governing bodies and other public bodies.

In 1986, when the General Assembly approved the codification of the 1985 Acts by Chapter No. 523, it changed the way Chapter No. 290 had been codified and reflected in the 1985 Supplement. Section 8-44-102 was corrected and reformatted to read as follows:

> **8-44-102. Open meetings -- "Governing body" defined -- "Meeting" defined. --** (a) All meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Tennessee Constitution.
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> (b)(1) "Governing body" means 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. 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.

(2) "Governing body" shall also mean 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 community grant funds comprise at least thirty percent (30%) of the total annual income of such corporation. Except such meetings 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.

(c) "Meeting" means 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. Meeting does not include any on-site inspection of any project or program.

(d) Nothing in this section shall be construed as to require a chance meeting of two (2) or more members of a public body to be considered a public meeting. No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part. [Acts 1974 (Adj. S.), ch. 442, § 2; 1979, ch. 411, §§ 1, 2; T.C.A., § 8-4402; Acts 1985, ch. 290, §§ 1,2.]

The corrected version of Section 8-44-102 was also published in the Tennessee Code Annotated Special Supplement which was distributed by the Michie Company (publisher of the Tennessee Code Annotated) in April of 1986.

To make it more abundantly clear that the 1985 exception to the Sunshine Law applies only to certain nonprofit corporations the General Assembly has now adopted Chapter No. 594, Public Acts of 1986. That act provides that:

> Tennessee Code Annotated, Section 8-44-102 (the corrected version as set out above), is amended in the second sentence of subsection (b)(2) by inserting the words "of the board of directors of such nonprofit corporations" after the words "such meetings" and before the words "that are called" so that the sentence reads as follows:
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> > Except such meetings of the board of directors of such nonprofit corporation 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.

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