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Limited Exception for Attorney-Client Discussions

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Limited Exception for Attorney-Client Discussions

Reference Number: CTAS-2425

In *Smith County Education Association v. Anderson*, 676 S.W.2d 328 (Tenn. 1984), the Tennessee Supreme Court recognized a narrow exception to the Sunshine Law for meetings between a public body and its attorney concerning pending litigation. The exception applies only to discussions between the members of the public body and the attorney; once any discussion begins among members of the public body as to what action should be taken based on the advice of counsel, those discussions must be open to the public.

The application of the exception in the Smith County case was limited to cases in which there was present and pending litigation and the public body was named in the lawsuit. In *Van Hoosier v. Warren County Board of Education*, 807 S.W.2d 230 (Tenn. 1991), the Tennessee Supreme Court extended the exception to a meeting of the board with its attorney regarding a pending controversy that was likely to result in litigation. See also *Baltrip v. Norris*, 23 S.W.3d 336 (Tenn. Ct. App. 2000)(school board's private meeting with attorney to discuss legal options concerning a pending charge of unprofessional conduct against a teacher did not violate the Open Meetings Act).

In summary, this narrow exception applies only to meetings between a public body and its attorney that meet the following criteria: (1) The meeting must concern litigation that has already been filed or that is likely to be filed and to which the county is or will be a party, and (2) the private meeting must be limited to discussions between the attorney and members of the public body regarding the public body's legal options, and no discussions between members of the public body as to what action should be taken can take place.

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