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October 18, 2021  
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Hon. Roger A. Page  
Chief justice, Tennessee supreme court  
401 Seventh Ave. N.  
Nashville, TN 37219

RE: Letter request for administrative relief within the judicial branch commanding the court administrator to open the judicial conference to members of the public as it is a part of government in a public function.

## Memorial, remonstrance & petition invoking administrative authority to access AOC conference

Petitioner seeks to invoke the administrative authority of the court to grant access by right to the doings of the administrator the courts and the Tennessee judicial conference that fall under the authority of the open meetings act.

Specifically, he demands access to the Tennessee Municipal Judges Conference on Nov. 5 and 6, 2021 Embassy Suites South Cool Springs 820 Crescent Centre Drive, Franklin, TN 37067.  
<https://custom.cvent.com/90974B6F879748B5B12FB00A2A61F948/files/2801b03a179a4b6ab35c9fccc377b7a9.pdf>

He asserts his right to attend and report on the event pursuant to the open meetings act that says “the formation of public policy and decisions is public business and shall not be conducted in secret” T.C.A. § 8-44-101.

He has right to attend this event as it happens, at his discretion, by virtue of the doings at the conference being in the public interest and to make personal record of any and all lectures, talks, Q&A sessions, video presentations, and to obtain materials given to the members of the conference, either on site as purchases or afterward under the open records act.

The AOC oversees administration of the court, and its director “serves at the pleasure” of the supreme court. T.C.A. § 16-3-802. The director works “under the supervision and direction of the chief justice. T.C.A. § 16-3-803. For professional development, judges get training and attend conferences, and for “implementing the annual judicial education plan,” the director “with the approval of the chief justice, may apply for and expend grant funds from whatever source” T.C.A. § 16-3-803. The AOC oversees “orientation and continuing training and education of all elected or appointed judges” T.C.A. § 16-3-803(f)(1).

The Tennessee constitution at Article 1, section 19, envisions protections of the citizen activity via its press, whose members have right to inquire into the doings of government.<sup>1</sup>

The people of Tennessee in general assembly in 1953 created the judicial conference whose “membership shall consist of all judges of courts of records” T.C.A. § 17-3-101. Meetings are annual and focus on considering “all matters” pertaining to “discharge of the official duties and obligations” of the members.

(a) The conference shall meet annually for the **consideration** of any and all **matters pertaining to the discharge of the official duties and obligations** of its several members, to the end that there shall be a more prompt and **efficient administration of justice** in the courts of this state. [emphasis added]

T.C.A. § 17-3-104

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<sup>1</sup> The bill of rights, section 19: That the printing press shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty. But in prosecutions for the publication of papers investigating the official conduct of officers, or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libel, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other criminal cases.

It is “the official duty” of every member to attend unless he or she has a good reason or excuse, that every conference will have a quorum. T.C.A. § 17-3-105. Sessions judges’ expenses are paid by county government. T.C.A. § 17-3-204. The AOC pays city court judges’ expenses. T.C.A. § 17-3-301.

Taxpayers pay for municipal judge training partly by remitting fees to city courts for use by AOC, as “one dollar (\$1.00) shall be forwarded \*\*\* to the account for the administrative office of the courts (AOC) for \*\*\* providing training and continuing education courses for municipal court judges” T.C.A. § 16-18-304.

The conference is more than a gabfest and occasion to take notes from top barristers, jurists and graying law profs. It sets policy for judges.

The conference shall have **full power and authority to prescribe rules of official conduct** of all judges, the rules to be in compliance with the code of judicial ethics as promulgated by the American Bar Association but not otherwise. [emphasis added]

T.C.A. § 17-3-106

The joining of mind and breath among the judges is intended to raise the level of peace and security among Tennesseans. The conference “drafts suitable legislation” and *lobbies* — “submit[s] its recommendations” to — the general assembly for passage

It is the duty of the conference to give **consideration to the enactment of laws and rules** of procedure that in its judgment may be necessary to the more effective **suppression of crime** and thus **promote peace and good order** in the state. To this end, a committee of its members shall be **appointed to draft suitable legislation** and **submit its recommendations to the general assembly**. [emphasis added]

T.C.A. § 17-3-107

The Tennessee open meetings act generally requires meetings of public agencies to be open to members of the public. Gatherings are not to be secret. “The general assembly hereby declares it to be the policy of this state that the **formation of public policy** and decisions is public business and **shall not be conducted in secret**” T.C.A. § 8-44-101 (emphasis added). “All meetings of

any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee” T.C.A. § 8-44-102.

A public body or governing body is open because its decisions affect the public. “Governing body” means:

(A) The members of **any public body \*\*\* with the authority to make decisions for or recommendations to a public body on policy or administration \*\*\*** . 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. [emphasis added]

T.C.A. § 8-44-102

A “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.” T.C.A. § 8-44-102

Public meetings have a notice requirement for the public benefit.

- (a) Notice of Regular Meetings. Any such governmental body which holds a meeting previously scheduled by statute, ordinance, or resolution shall give adequate public notice of such meeting.
- (b) Notice of Special Meetings. Any such governmental body which holds a meeting not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law, shall give adequate public notice of such meeting.
- (c) The notice requirements of this part are in addition to, and not in substitution of, any other notice required by law.

T.C.A. § 8-44-103

Public meetings have a requirement that a record be kept and that no vote be in secret.

- (a) The minutes of a meeting of any such governmental body shall be promptly and fully recorded, shall be *open to public inspection*, and shall include, but not

be limited to, a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of roll call.

(b) All votes of any such governmental body shall be by public vote or public ballot or public roll call. *No secret votes, or secret ballots, or secret roll calls shall be allowed.* As used in this chapter, “public vote” means a vote in which the “aye” faction vocally expresses its will in unison and in which the “nay” faction, subsequently, vocally expresses its will in unison. [emphasis added]

#### T.C.A. § 8-44-104

Violations of the open meeting law are enforced by the judicial branch of government “upon application of any citizen of this state” in a “suit” brought before a chancery or circuit judge or “other courts which have equity jurisdiction.”<sup>2</sup>

The supreme court says the purpose of the open meetings act is to open government operations broadly to public interest and presence.

It is clear that for the purpose of this Act, the Legislature intended to include any board, commission, committee, agency, authority or any other body, by whatever name, whose origin and authority may be traced to State, City or County legislative action and whose members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector.

#### Dorrier v. Dark, 537 S.W.2d 888, 892 (Tenn. 1976)

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<sup>2</sup> a) The circuit courts, chancery courts, and other courts which have equity jurisdiction, have jurisdiction to issue injunctions, impose penalties, and otherwise enforce the purposes of this part upon application of any citizen of this state.

(b) In each suit brought under this part, the court shall file written findings of fact and conclusions of law and final judgments, which shall also be recorded in the minutes of the body involved.

(c) The court shall permanently enjoin any person adjudged by it in violation of this part from further violation of this part. Each separate occurrence of such meetings not held in accordance with this part constitutes a separate violation.

(d) The final judgment or decree in each suit shall state that the court retains jurisdiction over the parties and subject matter for a period of one (1) year from date of entry, and the court shall order the defendants to report in writing semiannually to the court of their compliance with this part.

#### T.C.A. § 8-44-106

Dorrier marks the court's defense of the open records law from an attack claiming that terms such as "governing body," "public body," "governmental" and the verb "to deliberate" are ambiguous, imprecise, undefined and unconstitutionally vague.

We are aware that the Open Meetings Act has far reaching implications, and that there are many well informed persons in addition to appellant who insist that in certain respects it is detrimental to the public interest that closed meetings cannot be held for certain deliberations and decisions.

Dorrier v. Dark, 537 S.W.2d 888, 895–96 (Tenn. 1976)

The court says some matters are subject to officials' justly going into a closed session (nonpublic) — "meetings involving pending or prospective litigation, disciplinary hearings, promotion and demotion decisions, prospective land purchases, labor negotiations, etc." — but that "it is the Legislature, not the Judiciary, that must balance the benefits and detriments and make such changes as will serve the people and express their will."

The court indicates that benefits of open government activity under article 1, section 9, of the constitution far outweigh the "detriments" that occur when secrecy and privacy are not available.

## Argument

Judicial conference meetings are subject to public scrutiny and press coverage. The judicial conference is a government creature established by the general assembly. Its gatherings are funded by taxes and exactions. Attendance is compulsory for all judges. State, county and city employees who, as judges, are part of the conference meet annually to debate, discuss, learn about and forge policy regarding their jobs, ostensibly in the interest of the public, protecting the rights of the people and administering greater justice for their benefit and prosperity. The judges put their heads together to draft legislation and lobby the legislature, T.C.A. § 17-3-107. They reach consensus — after hearing lectures and policy papers from learned academic doctors of jurisprudence — on how to tackle developing issues and problems facing the judiciary. These

might include new types of offenses under old laws, recurring tricks by members of the bar or how to assist — perhaps limit? — police activity as new technology arrives on the scene.

It's not immediately known if judges vote on proposed bills to be pushed in the general assembly or on internal policy documents, as do attorneys in local and national bar associations. The only news reports or press releases emanating from conferences are rosters of new officers, such as Lila Statom and Pamela Fleenor of Hamilton County being elevated by their peers.

Petitioner demands the court recognize the open meetings law, as discussed in Dorrier, to direct the AOC, when tapped by requests for in-person and online access to judicial conferences, to agree to attendance by petitioners and other members of the public.

Such recognition of petitioner's assertion of his rights in this administrative petition may implicate other practices of the agency, such as whether a public notice might need to be made if not heretofore. Petitioner makes no claim as to that point except to insist on consistency of administrative policy in light of his rights under the bill of rights, the open meetings law and the open records law. If no member of the press has demanded access to the conference, petitioner being such a citizen raises the issue for internal review, to give occasion for administrative rules to be evaluated, and as necessary to be brought into conformity with the law.

The public has an infeasible right to know what is going on in the conferences. Just as a mom has the right to review a history or math book in a daughter's high school class, the public has a right to know the curriculum for judges when they go to school.

The people have a right of discovery in the work of these courts. They wonder: Who are the speakers at the conference? Who are the influencers, the shapers of policy and judicial opinion? Are the speakers in favor of the people and their ancient liberties —and how the judges defend them; or do they favor unitary consolidated neo-feudal government? What is the role of the Municipal Technical Assistance Services? The Municipal League? The Uniform Law Commission? Do judges hear from high-end lawyers from California or South Dakota, from judges who become news columnists or stars on TV shows? Do the speakers favor judicial respect for men and women made in God's image, or do they favor humans, persons, individuals

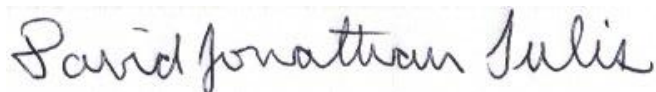
and human husbandry and the claims of administrative law? If the judges hear from the Southern Poverty Law Center, the top attorney at Defamation League or the ACLU, are the people more secure in their rights when the judges come home and take to their gavels?

The upcoming municipal judge conference is a governing body subject to the open meetings act, as it has “authority to make decisions for or recommendations to a public body,” T.C.A. § 8-44-102. The law says it is “authorized to adopt and, from time to time, **amend rules or bylaws** that it deems necessary or prudent for the conduct of its affairs” T.C.A. § 17-3-301. More importantly, the group meets yearly “for the **consideration of any and all matters pertaining to the discharge of the official duties** and obligations of its members” so that there “shall be a more efficient and prompt administration of justice” in city courts. T.C.A. § 17-3-301 (emphasis added).

This year, a whole day is given to “educational seminars or training,” T.C.A. § 17-3-301(c), regarding “sovereign citizens.” The training about these members of the public is paid for by the AOC funded by the \$1.00 litigation tax pursuant to T.C.A. § 16-18-304(a) “for training and continuing education courses for municipal court judges” T.C.A. § 17-3-301(2).

It is clear to petitioner that these are public meetings and that under the bill of rights section 19 petitioner has a right to attend in person. Given the above review, he asks the chief justice to administratively direct Director Deborah Taylor Tate, general counsel Rachel Harmon and other staff people to obey the law regarding the openness of the conferences, create no barrier to petitioner and his associates and to respect his person and his God-given constitutionally guaranteed rights to attend and report.

Respectfully submitted,

A handwritten signature in cursive script that reads "David Jonathan Tulis". The signature is written in dark ink on a light-colored background.

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David Jonathan Tulis

Encl/ Correspondence with general counsel Rachel Harmon