DAVID TROGDON,	)	
	)	**Davidson Chancery**
Plaintiff/Appellant,	)	**No. 96-444-I**
	)	
	)	
VS.	)	
	)	
	)	**Appeal No.**
CHARLES TRAUGHBER, Chairman,	)	**01A01-9609-CH-00426**
Tenn. Board of Parolees,	)	
	)	
Defendant/Appellee.	)	

IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT FOR DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE

HONORABLE IRVIN H. KILCREASE, JR., CHANCELLOR

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AFFIRMED AND REMANDED.

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

SAMUEL L. LEWIS, JUDGE
BEN H. CANTRELL., JUDGE

DAVID TROGDON,	)	
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O P I N I O N

The captioned plaintiff has appealed from the dismissal of his "complaint for Violation of the Public Meeting Act, T.C.A. 8-44-101 et seq." for failure to state a claim for which relief can be granted. The appellant presents for review the following issue:

> Whether the Tennessee Board of Paroles, a state administrative agency, is required to convene a public meeting as prescribed by Tenn. Code Ann. § 8-44-101 et seq. when its members deliberate toward a decision to grant or deny parole release.

The failure to state a claim for which relief can be granted is determined from an examination of the complaint alone *Wolcotts Financial Services, Inc. v. McReynolds*, Tenn. App. 1991, 807 S.W.2d 708, 710. The complaint states the following facts:

Plaintiff is an inmate of a state correctional institution. A hearing official of the Tennessee Board of Paroles conducted a parole hearing on August 29, 1995, and recommended to the Board that plaintiff not be paroled for the reasons that he "continue in AA and disciplinary reports." On September 26, 1995, another employee of the Board notified plaintiff by letter that the Board had denied parole for the reasons "seriousness of offense, continue in AA, and disciplinary reports." Plaintiff was not notified of or given opportunity to be present at any hearing or meeting of the Board after August 29, 1995. No public notice was given of any such meeting or hearing. No summary or transcript of any such meeting was promptly and fully recorded or provided to plaintiff. The actions of the Board was void as in violation of the Open Meetings Act.

The declared public policy of the state is that the formation of public policy and decisions in public business 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. T.C.A. § 8-44-102(a).

"Governing Body" means any body of two or more members with authority to make decisions or recommendations to a public body on policy or administration. T.C.A. § 8-44-102(b)(1).

A "Meeting" means the convening of a governing body of a public body for which a quorum is required. T.C.A.§ 8-44-102(b)(2). T.C.A. § 40-28-502.

The "Open Parole Hearings Act" states:

> **40-28-502. Applicable requirements**.- (a) The following requirements apply to parole board hearings:
>
> (1) In accordance with the provisions of title 8, chapter 44, part 1, parole hearings and parole revocation hearings shall be open to the public, except as provided in subsection (b).
>
> (2) The vote of each board member on each formal action shall be recorded. Formal actions include, but are not limited to, the granting or denial of parole, the revocation of parole or any actions taken under subsection (b).
>
> (b) The following exceptions and limitations apply:
>
> (1) The department of correction and/or the board of paroles may restrict the number of individuals allowed to attend parole or parole revocation hearings in accordance with physical limitations or security requirements of the hearing facilities.
>
> (2) The department of correction and/or the board of paroles may deny admission or continued attendance at parole or parole revocation hearings to individuals who:
>
> (A) Threaten or present a danger to the security of the institution in which the hearing is being held;
>
> (B) Threaten or present a danger to the other attendees or participants; or

(C) Disrupt the hearing. [Acts 1993, ch. 336, 2.]

T.C.A. § 40-28-103 provides that the Board of Paroles shall consist of seven members.

T.C.A. § 40-28-105 provides in pertinent part:

> (d) A majority of members of the board shall constitute a quorum for official administrative business. The chairman of the board may designate individual parole board members and appoint hearing officers who shall be authorized to conduct hearings, take testimony and make proposed findings of fact and recommendations to the board regarding a grant, denial, revocation or rescission of parole. Such findings and recommendations shall be reduced to writing and reviewed by board members who shall adopt, modify or reject the recommendations. No person shall be paroled nor shall the parole of any person be denied, revoked or rescinded without the concurrence of three (3) board members. No board action shall be invalid because it is based upon the recommendations of a hearing officer. The administrative continuance of a case will not require board approval. Inmates whose parole has been revoked or rescinded, or who have been denied parole, or whose grant of parole has been rescinded, may request an appellate review by the board. The board shall establish a reasonable time limit for the filing of such a request. If the time limit is not met, the request for an appellate review will be denied. An appellate request will be screened by a board member or designee and a review will be conducted if there is new evidence or information of misconduct by the hearing official that are substantiated by the record or if there were significant procedural errors by the hearing official. The appellate review will be conducted from the record of the first hearing and the appearance of the inmate will not be necessary. If a board member decides that an appearance hearing is necessary, it will be scheduled before a board member or hearing will be prepared and the board will vote after a review of the summary and the record of the first hearing. The decision after an appellate review will require the concurrence of three (3) board members. The decision rendered after an appellant review will be final.

The defendant takes the position that the Board of Paroles acts in a dual capacity: (1) as an agency with authority to made decisions or recommendations to a public body on policy or administration which requires a meeting with the presence of a quorum of four members present and full compliance with the Public Meetings Acts; and (2) as a group of individuals any three of which are authorized to make determination of applications of individuals for parole, for

which determination no meeting of the Board or quorum or compliance with the Public Meetings Act is required.

It appears that the August 29, 1995, was conducted by a hearing officer under the authority of the above quoted statute, and plaintiff complains of no defect in that hearing. Plaintiff's complaint is that the Board did not hold an official meeting in compliance with the Public Meetings Act to act upon the recommendation of the hearing officer.

This Court holds that the clear intent of the quoted statute is to exclude individual applications for parole from the area of "public policy" and "public administration" and to leave the granting or denial of paroles to three members of the Board acting upon the recommendation of a hearing officer and/or the record made at the hearing before such officer.

The judgment of the Trial Court is affirmed. Costs of the appeal are accessed against the plaintiff. The cause is remanded to the Trial Court for any necessary further proceedings.

AFFIRMED AND REMANDED

_____
HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

_____
SAMUEL L. LEWIS, JUDGE

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BEN H. CANTRELL, JUDGE