OPEN MEETINGS ADVISORY OPINION NO. 2004-05

Issued On May 6, 2004 By The

WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Region VII Planning and Development Council (Council) asks if the Open Meetings Act applies to its meetings.

FACTS RELIED UPON BY THE COMMITTEE

The Council was established pursuant to the provisions of W. Va. Code § 8-25-1, et seq. The Council is responsible for engaging in various planning and development activities within a 7-county region of the state. The Council’s powers and duties, as authorized by the Legislature, are set forth in § 8-25-8 which is attached to this opinion as Appendix A.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

The Open Meetings Act defines a “public agency” as:

Any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing authorized by law to exercise some portion of executive or legislative power.


ADVISORY OPINION

The key question to be resolved is whether the Commission exercises “some portion of executive or legislative power” within the meaning of W. Va. Code § 6-9A-2(6). After considering all of W. Va. Code §§ 8-25-1 through 8-25-15, this Committee finds that the Council’s authority to exercise executive power is sufficient to meet the definition of a “public agency” under the Open Meetings Act. Therefore, the Council is subject to the requirements of the Act.

Chairman

Each regional council may:

(a) Continuously engage in comprehensive planning and development processes and prepare, and from time to time revise, amend, extend or add to, a plan or plans for the development of the region consistent with any state comprehensive planning and development objectives and reflecting plans and programs of the participating governmental units. Any such plan or plans shall be based on studies of governmental, social, economic, environmental and physical conditions and trends, and shall aim at the coordinated development of the region in order to promote the general health, welfare, convenience and prosperity of its people. Such plan or plans, or parts thereof, shall be prepared by persons appropriately qualified under state statutes dealing with the applicable profession or occupation. Such plan or plans shall be submitted for review to the appropriate agencies in accordance with the provisions of this article. The plan or plans shall embody the policy recommendations of the regional council, and may include, but shall not be limited to: (1) A statement of goals, objectives, standards and principles sought to be expressed in the plan or plans to guide economic, social, environmental and human resource development; (2) recommendations for transportation networks in the region, including land, water and air transportation, and for communication facilities; (3) recommendations concerning the need for and proposed general location of public and private works and facilities, which by reason of their function, size, extent or for any other cause are of a regional, as distinguished from a purely local concern; and (4) recommendations for the long-range programming and financing of capital projects and facilities.

(b) Prepare and from time to time revise, amend, extend or add to a regional development program to implement the policies contained in the comprehensive development plan for the region. The program shall contain a listing of development projects and programs, priorities for the financing of these projects and programs and recommended methods for project and program financing.

(c) Prepare and recommend ordinances, rules and regulations which would implement regional and local plans.

(d) Prepare and publish studies of the region's resources, both natural and human, with respect to existing and emerging problems of industry, commerce, transportation, population, housing, agriculture, environment, health, education, welfare, public service, local governments and any other matters which are relevant to regional planning.

(e) Collect, process and analyze the social and economic statistics for the region which are necessary to planning studies and make the results of such collection, processing and analysis available to the general public.

(f) Participate with other governmental agencies, educational institutions and private organizations in the coordination of the regional research and educational activities described in
subdivisions (d), (e) and (h) of this section.
(g) Cooperate with, and provide, upon request, planning and technical assistance to
municipalities, counties and planning and development agencies within the region, and
coordinate regional planning with the planning activities and plans of the state and of the
municipalities and counties within the region, as well as neighboring areas, including those in
adjoining states, and the programs of federal departments and agencies.

(h) Provide information to officials, departments, agencies and instrumentalities of the federal,
state and local governments and to the public at large, in order to foster public awareness and
understanding of the objectives of the regional plans and the functions of the regional and local
planning and development councils, and to stimulate public interest and participation in the
orderly, integrated development of the region.

(i) Apply for, accept and expend funds and grants provided for the purposes hereof by the
government of the United States or its departments or agencies; by departments and agencies of
the state or any other state; by one or more municipalities, counties or other political subdivisions
of this state or of any other state; or by any other agency, public or private; or from any individual
whose interests are in harmony with the purposes hereof, including planning councils and
commissions, all in accordance with any federal requirements and subject to any conditions or
limitations of the constitution or laws of this state.

(j) Perform development on a regional basis as necessary to undertake, complete or accomplish
the goals and purposes of comprehensive planning in the region by intergovernmental contract or
joint enterprises, or both, with local governmental units or combinations of such units pursuant to
article twenty-three of this chapter.

(k) Exercise powers jointly or in cooperation with agencies or political subdivisions of the state
of West Virginia or any other state, or with agencies of the United States, subject to
constitutional and statutory provisions applicable to interjurisdictional agreements.

(l) Adopt bylaws and such other rules and regulations as may be necessary to effectuate the
purposes of this article.

(m) Exercise all other powers and authority necessary and proper for the discharge of its duties.

Appendix A to OMAO 2004-05