

# WELCOME SPRING

Our next virtual training on the Ethics Act and the Open Meetings Act is on May 9 at 12 noon - 1 hour CLE/CPE credit. Email [kimberly.b.weber@wv.gov](mailto:kimberly.b.weber@wv.gov) for an invite.

## Executive Sessions: To Be or Not to Be on the Agenda?!

**To Be!!** Oftentimes, a public agency anticipates discussing an official matter in an executive session. However, that anticipation does not excuse the agency from giving the public reasonable notice on its agenda of the particular matter that will be considered.

For example, the Open Meetings Committee ruled in [OMAO 2009-04](#) that a proposed agenda item, "Outside Delegations: Jane Roe and John Roe Company," is too vague to notify the public that a city is going to discuss and/or vote on awarding a contract to a company. Instead, an acceptable agenda item that gives reasonable notice of the subject matter to be considered, even if the matter will be discussed in an executive session, would be:

**"Consider and/or vote on awarding a contract for engineering consulting services for the Smith Street project"**

It would be okay to annotate an agenda item as follows: "(executive session anticipated)"

A public agency may only hold an executive session upon a majority affirmative vote of the members present. Hence, for many reasons, agenda items such as these are **not** okay:

- X Executive session to meet with agency attorney
- X Executive session under commercial competition exception
- X Executive session to discuss a personnel matter pursuant to W. Va. Code § 6-9A-4 (b)(2)(A)

Many executive sessions relate to personnel matters. An agenda item that reads "Personnel matter" is insufficient. An agenda item that would be sufficient per [O.M.A.O 2009-02](#) is:

**"Consider and vote on combining the public works and sanitary department director positions"**

The Open Meetings Act does not shield the names of public officials or public employees from disclosure when a motion is being made that directly impacts them. The Committee has ruled, however, that the name of an employee does not have to be included in the agenda. An agenda item may, therefore, state: "Consider and vote on terminating a teacher at Northside School." [O.M.A.O. 2000-12](#). If a motion is made after the executive session to terminate the teacher, the motion must contain the teacher's name. The Committee discusses other rules governing privacy rights in [O.M.A.O. 2018-02](#).



For help with complying with the executive session requirements of the Open Meetings Act, see the Commission's Open Meetings Committee's step-by-step guide on our [website](#).

## JOB OPENING: Staff Attorney, Ethics Commission.

For information, click [here](#).

## New Opinions

### [A.O. 2024-01](#)

The Ethics Act does not prohibit a sheriff's department from conducting a criminal investigation of other county officials or the employees in the same county. A public servant may not use his or her investigative or prosecutorial powers for improper political reasons or retaliation against elected county officials or their employees.

### [O.M.A.O. 2024-01](#)

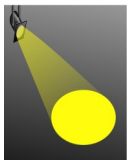
A county commission does not have standing to request an Open Meetings Advisory Opinion regarding the actions or proposed actions of a county planning commission because, although it was created by the county commission, it is a separate public agency.

### [S.B.A.O. 2024-01](#)

A president of a community and technical college does not hold a public office for purposes of W. Va. Code § 18-5-1a(a)(3)(A). Accordingly, a president may serve on a county board of education even though the college administers a charter public school.

## WV Ethics Act Quiz - True or False?

1. The Ethics Act disqualifies public employees and public officials from running for public office.
2. A county commissioner may work for a nonprofit to which the county appropriates less than 7% of the nonprofit's budget.
3. A county commission may hire a legislator's private construction business to build a county skate park.
4. A state worker may accept a \$100 gift certificate from a business that cleans the agency's offices each night.
5. A prosecutor may not hire the spouse of an assistant prosecutor to work as an assistant prosecutor in a different division of the office.



**Spotlight:** The Ethics Commission has lots of helpful information on our [website](#). Need a form or directions on how to request a Contract Exemption or file your Financial Disclosure Statement? Go to our [Forms, Brochures, and Guidelines page](#). See our newest brochure: [Second Jobs and the WV Ethics Act](#), which explains that the Ethics Act allows WV public servants to have a second job, but there are restrictions. A public employee or official should always check with his or her agency to see if it has any policies governing second jobs. Tip: Public officials and public employees who have second jobs with other government agencies may have to file verified time records with the Ethics Commission if they have overlapping work hours. [Leg. Rule 158, Series 14](#).

Answers: 1. False; See [A.O. 2019-18](#) (A state employee may run for a county office, but other state laws may apply.) and [A.O. 2023-09](#) (A college professor may serve as a Legislator, but other laws, including the State Constitution, may apply.) 2. True, but county funds may not be used to pay the county commissioner. [A.O. 2023-12](#). 3. True 4. False. 5. False; See [A.O. 2023-11](#).