

**OPEN MEETINGS ADVISORY OPINION NO. 99-07**

**Issued On August 5, 1999 By The**

**WEST VIRGINIA ETHICS COMMISSION**

**COMMITTEE ON OPEN GOVERNMENTAL MEETINGS**

**GOVERNMENTAL BODY/MEMBER SEEKING OPINION**

Dr. Larry Parsons, Superintendent of Schools of the Mason County Board of Education.

**OPINION SOUGHT**

Under what conditions may a Board of Education amend its agenda after public notice of a meeting has been given?

**FACTS RELIED UPON BY THE COMMITTEE**

The Requester gave several hypothetical situations in which the Board would like to add or modify an agenda. They are:

- (1) A personnel item on the Board's agenda recommends a particular employee be hired. After the agenda has been publicized, the bidding employee withdraws his or her name from consideration. The Superintendent would like to ask the Board's approval to hire the next qualified employee. If he must wait until the next regularly scheduled Board meeting, there will be a two-week delay.
- (2) Other personnel action items may need to be amended due to resignations submitted after the agenda has been publicized but before the Board meeting.
- (3) During the discussion of an agenda item at a meeting, the Board may want to amend a proposed action to improve it or make a decision more complete. The Requester suggested that an agenda item might be amended through the use of Roberts Rules of Order.

The West Virginia Ethics Commission has received several requests for informal advice from County Boards of Education wishing to amend agendas because of changed circumstances. The Committee is aware that Board of Education agendas tend to be very specific about each item for discussion and each proposed action.

## PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMITTEE

West Virginia Code 6-9A-3 provides in pertinent part that...Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media, except in the event of an emergency requiring immediate official action...

## ADVISORY OPINION

The Requester's questions highlight the tension in the Act between allowing "government to function and the public to participate in a meaningful manner in public agency decision making." § 6-9A-1. The 1999 amendments to the Act added the requirement that the public be given advance notice of the agenda of all regularly scheduled meetings, as well as the date, time and place. Such notice promotes the goal of increased public input and participation.

The Act is silent as to how much advance notice must be given, except for state executive agencies, or how specific the agenda items must be. The Act directs each governing body to promulgate rules on giving notice. The Committee presumes that notice must be "reasonable" under the circumstances peculiar to each governing body.

A balance must be struck between providing meaningful notice to the public what topics will be discussed at a meeting and constraining the governing body by an overly specific agenda which cannot be modified to accommodate a change circumstances.

The Committee makes two recommendations to resolve this problem. First, the Boards of Education should promulgate rules about agenda modifications. Such rules should set forth what circumstances constitute good cause to add or modify items and how public notice of the changes should be given. For example, counties which are served by a daily newspaper may be able to publicize agenda changes promptly. Others may consider posting notices at the Board's building, schools, libraries and other public places.

Second, the Boards should consider providing more leeway in their agendas. The statute creating County Boards of Education does not mandate a particular level of specificity in meeting agendas with several exceptions.<sup>1</sup> The Board might include as standard items for discussion "Resignations Submitted after Publication of Agenda" or add a notice to the agenda that all proposed actions on employment are subject to modification upon withdrawal of the bidding employee.

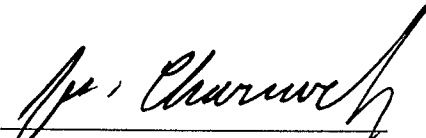
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A public hearing must be held not less than ten days after the preliminary budget has been made available for public inspection and notice of the hearing has been published as a legal advertisement. When a special meeting is called, no business may be transacted other than that designated in the call. W. Va. Code § 18-5-4.

If less detail on each item is provided, the Boards will not also not be prevented from modifying a proposal at meetings, as the Requester suggested in his third hypothetical.

The Commission cautions Boards of Education to be sensitive to the use of agenda modifications as a means of circumventing the purpose of the Act.

  
Chairman