

OPEN MEETINGS ADVISORY OPINION NO. 99-10

Issued On September 2, 1999 By The

**WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS**

GOVERNMENTAL BODY/MEMBER SEEKING OPINION

Dr. Mary Ellen Komorowski, a member of the Marshall County Board of Education.

OPINION SOUGHT

Does the Open Governmental Meetings Act require a Board of Education's agenda to list the name of a grievant who is requesting that the Board hear his or her Level III grievance?

FACTS RELIED UPON BY THE COMMITTEE

The Open Governmental Proceedings Act requires public agencies to give advance public notice of the time, date and location of their meetings. The 1999 amendments to the Act mandate advance public notice of the meeting's agenda as well.

The Board of Education has the authority to hear Level III grievances by Board employees, and it votes as a body on whether to hear the grievance or to refer it to Level IV, which is a hearing before the State Superintendent. The statute setting forth the grievance procedures for Board of Education employees states that, the Open Governmental Proceedings Act notwithstanding, all conferences and hearings shall be conducted in private unless the grievant requests them to be public at levels two and three. W. Va. Code § 18-29-3(m).

The Open Governmental Proceedings Act, amended since this portion of the grievance procedures act was enacted, provides that grievances may be heard in executive session, but that final action shall be taken in an open meeting.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMITTEE

West Virginia Code §6-9A-3 provides in pertinent part that

Each governing body of the executive branch of the state shall file a notice of any meeting with the secretary of state for publication in the state register. Each notice shall state the date, time, place and purpose of the meeting. Each notice shall be filed in a manner to allow each notice to appear in the state register at least five days prior to the date of the meeting.

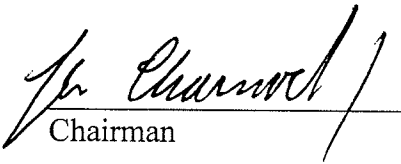
West Virginia Code §6-9A-4 provides in pertinent part that...(b) An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public agency. A public agency may hold an executive session and exclude the public only when a closed session is required for any of the following actions:

(B) For the purpose of conducting a hearing on a complaint, charge or grievance against a public officer or employee, unless the public officer or employee requests an open meeting. General personnel policy issues may not be discussed or considered in a closed meeting. Final action by a public agency having authority for the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of an individual shall be taken in an open meeting;

(12) To discuss any matter which, by express provision of federal law or state statute or rule of court is rendered confidential, or which is not considered a public record within the meaning of the freedom of information act as set forth in article one, chapter twenty-nine-b of this code;

ADVISORY OPINION

Although section 6-9A-4(b)(2) of the Open Governmental Proceedings Act states that final decisions regarding employee should be taken in an open meeting, section 6-9A-4(b)(12) provides that a governing body may go into executive session to discuss any matter which, by express provision of state statute is rendered confidential. Because the statute on grievance procedures for Board of Education employees specifically dictates that a Level III grievance hearing or conference be conducted in private, the Open Governmental Proceedings Act does not mandate that the agenda released to the public contain the name of the grievant, unless the grievant has requested in advance that the proceedings be conducted in an open meeting. It is sufficient to refer to the matter on the agenda and for purposes of making a final decision as a "Level III grievance".


Chairman