

OPEN MEETINGS ADVISORY OPINION NO. 99-11

Issued On September 2, 1999 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

GOVERNMENTAL BODY/MEMBER SEEKING OPINION

Kevin McClung, Secretary of the Marion County Enforcement Agency for Marion County Unsafe Building Ordinance.

OPINION SOUGHT

Is the inspection of property by all members of the Marion County Enforcement Agency pursuant to a complaint filed with the Agency a meeting under the Open Governmental Proceedings Act for which public notice and an opportunity to attend must be given?

FACTS RELIED UPON BY THE COMMITTEE

The Legislature authorized county commissions to adopt ordinances requiring buildings to be maintained and to create an enforcement agency to investigate complaints, make inspections and compel property owners to make necessary repairs. W. Va. Code § 7-1-3ff.

The Marion County Commission, in turn, enacted the Marion County Unsafe Building Ordinance 98-1 on April 9, 1999. The ordinance created the Enforcement Agency to receive complaints, investigate and enforce statutes concerning unsafe buildings and property. The Agency is composed of the county engineer, county health officer, the fire chief, and two other members at large appointed by the Commission. Ex-officio members include the Marion County sheriff and representatives of several state agencies.

The Enforcement Agency, by ordinance, meets once a month in a public session to receive public complaints about the condition of property in Marion County. The Agency votes at the public session whether to accept the complaint for investigation. If the complaint is accepted, the owner is notified that the Agency will visit the property in question to investigate the complaint allegations. The county engineer and sheriff and "other members of the Enforcement Agency" visit the property. The requester noted that sometimes the entire Agency is present for an inspection.

When the investigation is complete, the county engineer prepares a report which is sent to the Agency members and the property owner. At the next public session, the Agency votes on the appropriate disposition of the complaint, such as a dismissal or a determination that the building should be repaired, altered, improved, removed or closed.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMITTEE

West Virginia Code §6-9A-2 provides in pertinent part that...

(4) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means. The term meeting does not include:

(B) Any on-site inspection of any project or program;

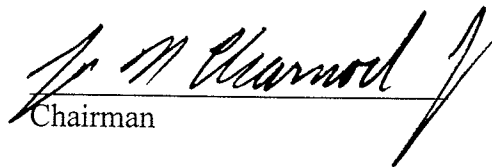
(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or

ADVISORY OPINION

The Open Governmental Proceedings Act specifically exempts on-site inspections of any project or program. The Committee finds that the inspection component of an Enforcement Agency investigation falls within this exception and that public notice of an inspection is not required.¹

The purpose of the inspection is to gather information. The county engineer is also charged with taking written statements whenever possible and preparing a written investigative report which is considered by the Agency as a whole during a public session.

The requester noted that a quorum of the Agency might be present at a particular inspection. The Agency members should avoid discussions intended to lead to official action during the on site inspection, since the Agency is required to render decisions on complaints in public sessions.


Chairman

¹ The ordinance provides for notification of an inspection to the property owner.