

**OPEN MEETINGS ADVISORY OPINION NO. 2000-03**

**ISSUED BY THE WEST VIRGINIA ETHICS COMMISSION  
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS  
ON APRIL 6, 2000**

**GOVERNMENTAL BODY/MEMBER SEEKING OPINION**

Rhonda Hylton of the City of White Sulphur Springs Planning & Zoning Commission

**OPINION SOUGHT**

Should a panel composed of three Commission members which reviews building permits initially reviewed by the Zoning Officer be subject to the requirements of the Open Governmental Proceedings Act?

**FACTS RELIED UPON BY THE COMMITTEE**

The City of White Sulphur Springs has a Planning & Zoning Commission, the creation and operation of which is governed primarily by state statute, W. Va. Code § 8-24-1 *et seq.* Seven members serve on the Commission. Its duties include preparing a comprehensive plan and ordinance of land use, zoning, sanitation and recreation for review by City Council and approval of subdivision plats. Once a plan and ordinance have been adopted, no structure may be built or improvement made which does not conform to them.

A quorum must be present in order to conduct a Commission meeting, and a majority of the Commission constitutes a quorum. W. Va. Code § 8-24-9. This section also states that “[n]o action of a [planning and zoning] commission shall be official unless authorized by a majority of the members present at a regular or properly called special meeting.”

The statute further states:

The ordinance may designate the official or employee of the municipality. . .who shall have authority to issue and control improvement location permits within the jurisdiction of the commission and in conformity with the comprehensive plan and ordinance.

W. Va. Code § 8-24-37.

White Sulphur Springs’s ordinance currently provides for the appointment by City Council of an administrative zoning officer to approve permits. The Zoning Officer is not a member of the

Planning & Zoning Commission. Those objecting to the Zoning Officer's decision may appeal to the Board of Zoning Appeals, an entity distinct from the Commission.

City Council is considering amending the ordinance to create a panel of three Commission members to review the Zoning Officer's decision on permit applications. As envisioned by the Commission, each panel member would evaluate a permit request and determine if the request was in compliance with the code which spells out these requirements in detail. The three Commission members would reach a decision without first knowing of the Zoning Officer's decision. Any three members of the seven member Commission could be called to approve the permit request.

The Commission would like the three members to be able to come review the permit requests individually, instead of holding a formal meeting.

### **PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION**

The Open Governmental Meetings Act applies to the governing bodies of public agencies. Public agencies are defined 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. The term "public agency" does not include courts created by article eight of the West Virginia constitution or the system of family law masters created by article four, chapter forty-eight-a of this code.

W. Va. § 6-9A-2(6). A governing body consists of:

the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members. . . .

W. Va. Code § 6-9A-2(3).

Meetings of a governing body must be open. A meeting is 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." W. Va. Code § 6-9A-2(4).

### **ADVISORY OPINION**

It is the opinion of the Committee on Open Governmental Meetings that the permit panel created by the amended ordinance will be a subunit of an administrative unit of municipal government

authorized by law to exercise some portion of executive power. As long as the power to authorize permits resided in one person, no governing body existed, because the Act defines a governing body as consisting of two or more people.

However, the new panel will have three members from an appointed governing body, and a majority of those members are required to take official action, i.e., approve a permit. Since a delegation from the Commission will now have oversight of the process, there is now a governing body which will take official action, within the meaning of the Act.

Having the three panel members individually review a permit application and make a recommended decision in isolation from each other, in effect, defeats the purpose of the Act. Therefore, any decisions of the panel on permits must be made in a meeting subject to the open meetings requirements.

*John A. Quinn 4/6/00*

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Chairman