

OPEN MEETINGS ADVISORY OPINION NO. 2000-05

**ISSUED BY THE WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS
ON MAY 4, 2000**

GOVERNMENTAL BODY/MEMBER SEEKING OPINION

Nancy A. Rush on behalf of the Region VI Planning and Development Council.

OPINION SOUGHT

Does the Open Governmental Proceedings Act prohibit a public board from establishing a quorum requirement which is less than a simple majority?

FACTS RELIED UPON BY THE COMMITTEE

Regional Planning and Development Councils (“councils”) were created by the Legislature to promote orderly growth and development and intergovernmental cooperation. The Governor divided the State into regions comprised of counties and municipalities. The statutory scheme provided that each county and municipality would be represented on its regional council as well as additional members to represent various interests, including commerce, industry, labor, education and health.

Under the enabling statute, the regional councils were to hold an initial meeting, and those attending were to constitute a quorum. W. Va. Code § 8-25-5(a). The members were to elect officers and establish bylaws. The statute mentions nothing else on the subject of a quorum.

The Region VI Council’s by-laws original defined a quorum as a simple majority of all active voting members of the Council. However, the Council often found itself lacking a quorum to conduct business. The Council has proposed amending its quorum requirement to consist of nine active voting members for the Full Council and five for the Executive Committee.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6-9A-2 provides the following definitions:

As used in this article:

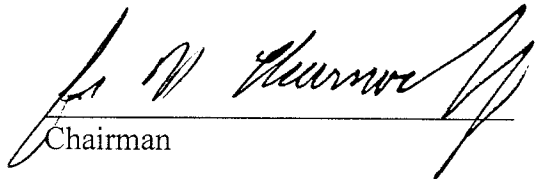
(4) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means...

(7) "Quorum" means the gathering of a simple majority of the constituent membership of a governing body, unless applicable law provides for varying the required ratio.

ADVISORY OPINION

The Open Governmental Proceedings Act's definition of "quorum" was not intended to prohibit public governing bodies from defining quorum in a different manner, provided the governing body's enabling legislation or ordinance gave it the authority to do so. In the case of Regional Planning and Development Councils, the statute only established a quorum for the initial meeting and directed the councils to establish their own bylaws, which are operational rules typically defining what constitutes a quorum.

Therefore, the Region VI Council has the power to vary the required ratio under "applicable law" and may establish a quorum of less than a majority of members without violating the Open Governmental Proceedings Act.


Chairman