

OPEN MEETINGS ADVISORY OPINION NO. 2001-02

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WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

Betty Waggoner, a member of the Pleasant Valley City Council, asks if the Council can go into executive session to draft a job description for a city employee. She also asks if the Council can go into executive session without identifying the Open Meetings Act exemption relied upon to convene the executive session.

FACTS RELIED UPON BY THE COMMITTEE

The City has an employee who has been on the job for six months. City Council wants to go into executive session to draft a formal job description for the position. This will be the first job description prepared for this position. This discussion will not involve the employee holding the position or her job performance.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

The Act defines "executive session" to mean "any meeting or part of a meeting of a governing body which is closed to the public." W. Va. Code § 6-9A-2(2).

W. Va. Code § 6-9A-4 says:

(a) The governing body of a public agency may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the governing body **shall** identify the authorization under this section for holding the executive session and present it to the governing body and to the general public, but no decision may be made in the executive session.

(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:

(2) To consider:

(A) Matters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee, or prospective public officer or

employee unless the public officer or employee or prospective public officer or employee requests an open meeting; or

(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 hearing**

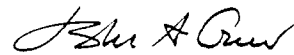
ADVISORY OPINION

The Open Meetings Act allows a governing body to go into executive session and exclude the public “only when a closed session is required” for one of the reasons listed in W. Va. Code § 6-9A-4. Subsection(2) of that section lists certain personnel matters, those dealing with specific individuals, which may be considered in executive session, and goes on to say “General personnel policy issues may not be discussed or considered in a closed hearing”

A job description generally sets forth the duties and responsibilities of an employment position. Although it may be specific to a position, or a group of positions, it is not personal to the individual who currently occupies the position.

The Committee finds that the creation or modification of a job description is a general personnel policy matter and may not be considered or discussed in executive session. This is true even if the job description is for a position in which an incumbent has worked for several months.

Prior to going into executive session, it is the responsibility of the presiding officer of City Council or of other governing bodies to announce the justification for doing so. One of the reasons listed in W. Va. Code § 6-9A-4 must be identified and thereafter a majority of the governing body members who are present must vote to go into executive session for the reason announced. This procedure is not discretionary and the governing body members, as well as the presiding officer, are at risk, if it is ignored.



Chairman