

OPEN MEETINGS ADVISORY OPINION NO. 2001-04

COPY

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WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Braxton County Commission asks whether its meeting agenda may be published less than twenty-four hours prior to a regularly scheduled meeting.

FACTS RELIED UPON BY THE COMMITTEE

The County Commission meets the first and third Friday of each month at 9:00 A.M.. The Commission currently publishes an agenda for each upcoming meeting at noon of the previous day, 21 hours before the meeting starts. The Commission wants to know if this practice can be continued or, if not, how far in advance should the meeting agenda be published.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code 6-9A-3 provides in pertinent part:

Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media, except in the event of an emergency requiring immediate official action.

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.

ADVISORY OPINION

If the public is to benefit fully from open meetings, it must know both (1) when and where the meetings are to be held, and (2) what the meetings will deal with. To this end, the Open Meetings Act specifies that all public agencies must make the date, time, place and agendas of their regularly scheduled meetings, and the date, time, place and purpose of their special meetings, available to the public and news media in advance of the meeting.

The Act does not deal comprehensively with how and when this meeting information is to be made available. It does specify that State executive branch agencies must publish a notice of any meeting in the State Register five days before the meeting stating "the date, time, location and **purpose** of the meeting." The agenda is not required to be included in this notice.

An agenda, a statement of the matters which will be dealt with at the meeting, is something different from and more than, the statement of purpose which must be included in the State Register notice. State executive branch agencies must also make the agenda available to the public and news media, in advance, unless it was incorporated in the State Register notice.

The agenda could be incorporated in the State Register notice by expanding the statement of purpose to include reference to all the matters to be acted upon at the meeting. However, in many cases this is impractical and the agenda must be made available as a separate document.

Here the Braxton County Commission asks whether its practice of making its agenda available to the public 21 hours before the meeting complies with the Open Meetings Act, and if not, the minimum number of days before the meeting its agenda must be made available to the public.

The Act establishes no specific time and the Committee has previously ruled that notice must be reasonable under the circumstances peculiar to each agency. A county commission which met weekly would require a different standard than one which met less frequently. There would be a big difference between what is reasonable for a standing legislative committee which met daily during the legislative session and the council of a small municipality which met monthly.

The Committee finds that the Braxton County Commission, which meets twice a month, would comply with the requirements of the Act by making its agenda available to the public and news media at least three (3) days prior to its regularly scheduled meetings.

Items of business should not be added to the agenda less than one (1) days prior to the meeting, unless it is a matter of an emergency nature requiring immediate official action. In such an event, the amended agenda and the minutes of the meeting must state the facts and circumstances of the emergency which justify depriving the public of its right to reasonable advance notice.



Chairman