

COPY

OPEN MEETINGS ADVISORY OPINION NO. 2001-05

Issued On April 4, 2001 By The

WEST VIRGINIA ETHICS COMMISSION  
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

John Kozak and Joyce Altizer, members of the board of directors of West Virginia Advocates, Inc, (WVA) ask if WVA's board meetings are covered by the Open Governmental Proceedings Act.

FACTS RELIED UPON BY THE COMMITTEE

WVA is a non-profit corporation which provides advocacy services and related assistance to people with disabilities. In compliance with the federal "Developmental Disabilities Assistance and Bill of Rights Act," 42 U.S.C. §§ 6000, *et seq.*, the Governor has designated WVA as the Protection and Advocacy System for persons with developmental disabilities in West Virginia. This designation authorizes WVA "to pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of all persons with developmental disabilities."

WVA is funded primarily by federal grants with additional state funds provided under contract to administer certain court-mandated advocacy programs.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

The Open Meetings Act applies to "public agencies" 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.

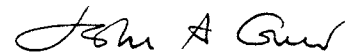
W. Va. Code § 6-9A-2(6).

ADVISORY OPINION

The Open Meetings Act applies only to public agencies. The Act defines a "public agency" as "any administrative 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."

If WVA is to be included in the Act's definition of a "public agency" it must be as a "public corporation." In Open Meetings Advisory Opinion 99-13, the Committee determined that a public corporation is a corporation created by state or local authority to carry out a governmental function. The Committee further noted that the Act does not look at an organization's receipt of state or local funds as a factor in determining whether the organization is a public corporation.

WVA is not a corporation created by state or local authority to carry out a governmental function. It exists independent of state authorization, and the Committee finds that it is not a public corporation and, therefore, is not subject to the Act.



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Chairman