

COPY

OPEN MEETINGS ADVISORY OPINION NO. 2001-07

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WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

Brenda Stewart, Town Recorder for the Town of Burnsville, asks if she can use a tape recorder to record the open portion of the Town Council's meetings, and whether private citizens attending the meeting can similarly record the meetings.

FACTS RELIED UPON BY THE COMMITTEE

The Town Recorder is the elected public official who is primarily responsible for preparing the minutes of Town Council meetings. She prefers to use a tape recorder to assist in making an accurate record of the proceedings, but one or more citizens and elected officials have objected to this process. In addition, questions have been raised as to whether individual citizens attending Town Council meetings can openly record the meetings.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-5 provides:

Each governing body shall provide for the preparation of written minutes of all its meetings. Subject to the exceptions set forth in section four of this article, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each member of the governing body present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- (4) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.

W. Va. Code § 6-9A-9 provides:

(a) Except as otherwise provided in this section, any radio or television station is entitled to broadcast all or any part of a meeting required to be open.

(b) A public agency may regulate the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting, so as to prevent undue interference with the meeting. The public agency shall allow the equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of the equipment may not be declared to constitute undue interference: *Provided*, That if the public agency, in good faith, determines that the size of the meeting room is such that all members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public agency, acting in good faith and consistent with the purposes of this article, may require the pooling of the equipment and the personnel operating it.

ADVISORY OPINION

The Open Meetings Act requires that fairly detailed minutes of Town Council meetings be prepared and made available to the public within a reasonable time after the meeting. As the elected official with primary responsibility for preparing these minutes, the Town Recorder has substantial discretion as to how the required information is obtained and preserved. No provision in the Act restricts her from using a tape recorder or similar device to record the public portion of an open meeting, including the comments of citizens who appear before the Town Council.

The Act gives the media and the public the right to record the open sessions of public meetings. A governing body may not prohibit recording, and may regulate the placement and use of recording equipment only to the extent necessary "to prevent undue interference with the meeting." The fact that the Mayor, members of Council or citizens object to having their public comments recorded does not deprive the media and the public of their right to record the proceedings, and is not a factor to be considered in determining that the use of recording equipment is causing undue interference with a meeting.



Chairman