

OPEN MEETINGS ADVISORY OPINION NO. 2001-09

COPY

Issued On June 7, 2001 By The

WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Faculty Senate of Hurricane Middle School in Putnam County asks if the Open Governmental Proceedings Act applies to its meetings.

FACTS RELIED UPON BY THE COMMITTEE

W. Va. Code § 18-5A-5 establishes a Faculty Senate in every public school. All permanent, full-time professional educators assigned to a school are voting members of its Faculty Senate. The Faculty Senate may make recommendations to the school's Principal regarding such matters as employing new personnel, staff scheduling, curriculum scheduling, and selection of mentors for new teachers. The statute does not require Principals, Superintendents, or Boards of Education to follow or give any particular weight to these recommendations.

The Faculty Senate controls funds allocated to the school under the provisions of W. Va. Code § 18-9A-9. The Code directs each Faculty Senate to approve a budget governing the expenditure of \$150 per "professional instructional personnel employed at the school" on academic materials, supplies or equipment. In addition, the Faculty Senate is authorized to "solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available" to it. Further, the Faculty Senate is required to develop a strategic plan to integrate special needs students into the regular classroom.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

The Open Meetings Act defines a "public agency" 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).

The Act also defines "official action" as "action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the position held." W. Va. Code § 6-9A-2(5).

ADVISORY OPINION

Meetings of the Faculty Senate are subject to the Open Meetings Act if, and when, the Senate is exercising executive or legislative power in taking official public action on behalf of its school.

Most Faculty Senate duties are advisory and the Committee has previously ruled that the authority to consult and advise involves neither executive nor legislative power. However, the Senate is given the authority and responsibility to budget certain public funds, accept and allocate grants and develop plans for integrating special needs students into regular classrooms. This is executive power which the Faculty Senate was given to carry out official public action.

The Committee finds, based on these statutory duties, that the Faculty Senate is a public agency and is subject to the provisions of the Open Meetings Act. The Commission also finds that not all its meetings will necessarily be open public meetings subject to the provisions of the Act. A Faculty Senate meeting is not subject to the Act, and need not be open to the public, if its agenda includes no matter on which the Senate exercises executive power to take official action.

A Faculty Senate meeting is subject to the Act when its agenda includes any of the public matters for which it must take official action, for example budgeting the expenditure of funds on academic supplies, materials and equipment. The public must be given notice of the time, place, location and agenda of such a meeting and the meeting must be open to the public, while the Senate is dealing with those public matters.



Chairman