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OPEN MEETINGS ADVISORY OPINION NO. 2001-12

Issued On June 7, 2001 By The

WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Lewis County Commission asks if its procedure for providing public notice of its regular meetings and an agenda for each meeting complies with the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The Lewis County Commission meets weekly on Monday at 10:00 A.M. When a holiday falls on Monday, the meeting is held on Tuesday. The Commission approves this meeting schedule at the first meeting of each calendar year. Copies of the meeting schedule are posted on separate bulletin boards at the front and back entrances inside the Lewis County Courthouse, and these copies remain posted throughout the year. The Commission similarly posts its agenda for each meeting on the courthouse bulletin boards not later than 12:00 P.M. (noon) Friday. The courthouse is ordinarily open to the public from 8:30 A.M. to 4:30 P.M. Monday through Friday.

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.

ADVISORY OPINION

The Open Meetings Act requires public agencies to inform the public of (1) the time, date, place and purpose of their meetings and (2) what will be dealt with at the meetings. This means agencies must (1) give "meeting notice," telling the public when and where the meeting will be held, and (2) provide a "meeting agenda," telling the public the items of business with which the meeting will deal.

Meeting notices and meeting agendas may be separate documents or may be combined in a single document. More often than not, agencies will treat them as separate documents and post or publish the meeting notice prior to making the meeting agenda available to the public. This is the approach adopted in Lewis County.

This opinion addresses questions from the Lewis County Commission concerning how and when the Commission makes its meeting notice and meeting agenda available to the public.

The Act does not deal comprehensively with how and when meeting information, either meeting notices or meeting agendas, are to be made available to the public. The Committee must decide, on a case-by-case basis, whether an agency's rules providing advance notice of meetings and availability of agendas are "reasonable".

MEETING NOTICE

The Lewis County Commission posts notice of its meeting schedule annually, and keeps this notice posted in a public place throughout the year. The Committee finds the Commission's method and timing for making notice of their regular meetings available to the public and media is reasonable in the circumstances presented.

AGENDA NOTICE

The Commission also seeks guidance on issuance of its meeting agenda. In Open Meetings Advisory Opinion 2001-10, issued today, the Committee found that when the Kanawha County Commission meets weekly on Thursday evening, it would comply with the Act by making its agenda available at least two days prior to the meeting.

As the Committee explained in the Kanawha County opinion, for purposes of calculating the number of days in the notice period, the day of the meeting is not counted. Further, Saturdays, Sundays and legal holidays must be excluded, as government offices are generally not open for business on such days, and there would be no one available to respond to questions from the public or news media regarding the agenda. Accordingly, the Lewis County Commission, when holding its regular weekly meeting on Monday, would comply with the Act by issuing its agenda during normal business hours on the preceding Thursday.

Just as the Open Meetings Act does not specify a deadline for making an agenda available to the public and news media, the Act does not specify a particular mechanism for disseminating the agenda. The Committee finds that the Act requires that the method used be "reasonable," but what is reasonable will vary with the agency involved and the community or region in which it operates.

In most cases, posting the agenda in a public place and providing a copy, upon request, to the news media and public by mail or telephone facsimile will satisfy this requirement. However, the Act does require each governing body to adopt rules governing these matters, and the County Commission is encouraged to adopt specific rules addressing these issues, if it has not already done so.



Chairman