

**OPEN MEETINGS ADVISORY OPINION NO. 2001-18**

**Issued On August 9, 2001 By The**

**WEST VIRGINIA ETHICS COMMISSION  
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS**

**OPINION SOUGHT**

The West Virginia Women's Commission (WVWC) asks: (1) may it conduct employee performance reviews in executive session; (2) must the employee be present when the review is conducted; and (3) may it take official action for or against an employee who is not present.

**FACTS RELIED UPON BY THE COMMITTEE**

The WVWC will conduct a performance review of its employees. Each employee has been issued advance written notice of the purpose of the meeting, and informed that they may request the review take place in an open meeting.

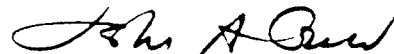
**CODE PROVISIONS RELIED UPON BY THE COMMITTEE**

W. Va. Code § 6-9A-4 provides in pertinent part that "[a] public agency may hold an executive session and exclude the public only when a closed session is required for any of the following actions: . . . [t]o consider: . . . [m]atters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee, or prospective public officer or employee unless the public officer or employee or prospective public officer or employee requests an open meeting. . . ."

**ADVISORY OPINION**

(1) In Open Meetings Advisory Opinion 99-02, the Committee found that the annual personnel evaluation of a county school administrator involves the type of employment matter which a governing body is permitted to discuss in executive session. Here the Committee finds that the WVWC employee performance reviews may also be discussed in executive session, unless the affected employee requests that the matter be discussed in an open meeting.

(2) & (3) No provision of the Act requires that an employee be present if the WVWC is to evaluate the employee's performance or take official action for or against the employee.



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Chairman