

## **OPEN MEETINGS ADVISORY OPINION NO. 2001-25**

**Issued On September 6, 2001 By The**

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

#### **OPINION SOUGHT**

The Clarksburg Water Board (Board) asks for guidance on conducting work sessions and meeting with its attorney in executive session.

#### **FACTS RELIED UPON BY THE COMMITTEE**

The Board proposes holding uncompensated work sessions to discuss future matters, plans, policies, and priorities, and to review prior decisions, directives, and policies. No votes would be taken, no minutes would be kept, and any action on the matters discussed would be taken only at future regular and special meetings. The public would be given advance notice of the work sessions and permitted to attend them.

The Board also asks if it may meet in executive session to obtain legal advice from its attorney concerning the plan by which its members are currently compensated.

#### **CODE PROVISIONS RELIED UPON BY THE COMMITTEE**

W. Va. Code § 6-9A-2(4) defines a “meeting” as “the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action.”

W. Va. Code § 6-9A-3 provides, in pertinent part: “Except as expressly and specifically otherwise provided by law, ... all meetings of any governing body shall be open to the public.”

W. Va. Code § 6-9A-4 provides, in pertinent part:

(a) The governing body of a public agency may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the governing body shall identify the authorization under this section for holding the executive session and present it to the governing body and to the general public, but no decision may be made in the executive session.

(b) An executive session may be held only upon a majority vote of the members present of the governing body of a public agency. 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:

\* \* \*

(11) Nothing in this article permits a public agency to close a meeting that otherwise would be open, merely because an agency attorney is a participant...

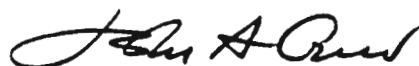
(12) To discuss any matter which, by express provision of federal law or state statute or rule of court is rendered confidential....

### ADVISORY OPINION

The proposed work session involves a gathering of a quorum of the members of a governing body where matters requiring official action will be discussed. This would be a "meeting" under the Act and would require the governing body to follow normal open meeting requirements, including providing advance public notice, an agenda of the items to be discussed, and minutes prepared in accordance with W. Va. Code § 6-9A-5. Where the work session is followed immediately by a formal meeting, the notice, agenda, and minutes of these two activities may be combined.

The Open Meetings Act permits governing bodies of public agencies to hold an executive session and exclude the public only when a closed session is required for one of the reasons specified in W. Va. Code § 6-9A-4. In Peters v. County Commission, 205 W.Va. 481, 519 S.E.2d 179 (1999), the Supreme Court of Appeals of West Virginia ruled that privileged communications between a public body and its attorney are exempt from the open meetings requirements of the Act based upon the common law attorney-client privilege. This privilege is recognized in Rule 1.6 of the Rules of Professional Conduct adopted by our Supreme Court, thereby satisfying the requirements of W. Va. Code § 6-9A-4(b)(12).

Based upon the Court's holding in Peters, this Committee has recognized that a governing body may meet with its attorney in executive session to discuss matters protected by the attorney-client privilege. Therefore, the Board may elect to convene in executive session, following the procedures set forth in the Act, and obtain advice from the Board's attorney on the legality of the compensation the Board Members are currently receiving. Once the attorney's advice has been obtained, the Board must reconvene in an open meeting, if there is any discussion or vote on official action to be taken.



Chairman