

OPEN MEETINGS ADVISORY OPINION NO. 2001-33

Issued On November 1, 2001 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Mason County Emergency Ambulance Service Authority (MCEASA) asks that its proposed procedural rules be reviewed for compliance with the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

MCEASA has drafted proposed procedural rules governing the issuance of meeting notice and meeting agendas for all regular and special meetings. In addition to posting a notice of its regularly scheduled meetings in the Courthouse, MCEASA will similarly post notice of any special meetings at least three days in advance, excluding Saturdays, Sundays and legal holidays. Agendas for regular meetings will be posted three days in advance of the meeting. A complete copy of the proposed procedural rules are attached to this advisory opinion as Appendix A.

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 each governing body to promulgate certain procedural rules. As a minimum, these rules must state how and when the date, time, place and agenda of all regular meetings, as well as the date, time, place and purpose of all special meetings, will be made available to the public and news media. Those provisions in MCEASA's proposed procedural rules governing meeting notices and meeting agenda are generally consistent with previous opinions from this Committee regarding these matters.

In addition to describing meeting notice and agenda procedures, Governing bodies may elect to include other provisions governing meeting procedures in their rules. Consistent with its legislative mandate to consider whether a proposed action violates any provision in the Act, this Committee will

review additional provisions in a governing body's procedural rules. However, the Committee's opinion, and any immunity which the governing body receives, will be limited to whether these additional rules are inconsistent with the Act. The opinion will not address discretionary application of a rule to a specific situation, unless the requester provides a proposed set of facts describing that situation.

Having noted the limited scope of its opinion, the Committee finds that no provisions in any additional rules proposed by MCEASA are inconsistent with the Act.



Chairman

Pursuant to Chapter 6, Article 9A, Section 3 of the West Virginia Code, the members of the Mason County Emergency Ambulance Service Authority do hereby adopt the following rules to make available, in advance, the date, time, place, and agenda of all regularly scheduled meetings of the Mason County Emergency Ambulance Service Authority to the public and news media, except in the case of an emergency requiring immediate action, as follows:

1. Regular Meetings. A notice shall be posted and maintained by the County Clerk at the front door or on the Meeting Room door on the Main Floor of the Mason County Courthouse of the date, time, and place fixed and entered of record by the Mason County Emergency Ambulance Service Authority for the holding of regularly scheduled meetings. In addition a copy of the agenda for each regularly scheduled meeting shall be posted on the Meeting Room door on the Main Floor of the Courthouse by the County Clerk not less than 3 days before such regular meeting is to be held. If a particular regularly scheduled meeting is canceled or postponed, a notice of such cancellation or postponement shall be posted at the same location as soon as feasible after such cancellation or postponement has been determined.

2. Special Meetings. A notice shall be posted by the County Clerk at the front door or the Meeting Room door on the Main Floor of the Mason County Courthouse not less than 3 days before a specially scheduled meeting is to be held, stating the date, time, place, and purpose for which such special meeting shall be held. If the special meeting is canceled or postponed, a notice of such cancellation or postponement shall be posted at the same location as soon as feasible after such cancellation or postponement has been determined.

3. Presentations. All persons that desire to address the Mason County Emergency Ambulance Service Authority regarding an agenda item must state their name for the official record. All persons that desire to address the Mason County Emergency Ambulance Service Authority on items not on the agenda shall be considered "walk-ins". "Walk-ins" will be allowed to address the Authority under the Public Forum Section of the agenda, but no official action may be taken on Public Forum subject matter until it can be presented as an agenda item at the next subsequent meeting. No person shall address the Mason County Emergency Ambulance Service Authority unless recognized by the President to do so.

4. Attendance. In the event that there is not room enough to conduct a scheduled meeting in the Meeting Room of the Mason County Emergency Ambulance Service Authority due to the number of members of the public that wish to attend, a scheduled meeting can be moved to accommodate all those wishing to attend upon proper motion by any member of the Mason County Emergency Ambulance Service Authority. Any scheduled meeting may be recessed and reconvened at a later date and time in the event that facilities are not readily available to accommodate the members of the public wishing to attend the meeting upon proper motion by any member of the Mason County Emergency Ambulance Service Authority .

5. Conduct. Any member of the Mason County Emergency Ambulance Service Authority can remove any member of the public attending a scheduled meeting of the Mason County Emergency Ambulance Service Authority that is disruptive, to the extent that orderly conduct of the meeting is compromised, from the meeting with the assistance of the Sheriff of Mason County upon proper direction.

6. Minutes. Written minutes of all meetings of the Mason County Emergency Ambulance Service Authority shall be prepared and maintained and shall be available to all members of the public after being approved at the following regularly scheduled 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.
- (5) A draft copy of the minutes, clearly marked, shall be available to the public within a reasonable time after the meeting.

7. Executive Sessions. If authorized by one of the exceptions in WV code 29-6A-4 the West Virginia Open Meeting Act, The Mason County Emergency Ambulance Service Authority may hold an executive session during any regular, special, or emergency meeting. During the open portion of a meeting, prior to convening an executive session, the President shall identify the authorization for conducting an executive session and shall present it to the members of the public present at the meeting. An executive session shall only be held upon a majority affirmative vote of the members of the Mason County Emergency Ambulance Service Authority and no decision shall be made in executive session.

8. Media Broadcasts. The Mason County Emergency Ambulance Service Authority shall allow the placement and use of equipment necessary for broadcasting, photographing, filming or recording a scheduled meeting. The equipment shall be placed or used within the meeting room so as to prevent undue interference with the meeting. In the event the Mason County Emergency Ambulance Service Authority determines that the size of the meeting room is not sufficient to accommodate all the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording in the meeting room without unduly interfering with the meeting, the Mason County Emergency Ambulance Service Authority may require the pooling of the equipment and personnel operating the equipment.

9. Agenda. The Mason County Emergency Ambulance Service Authority shall prepare a written agenda for all scheduled meetings and shall distribute it in accordance with paragraph 1 above. The agenda shall only include those items upon which official action is anticipated and those items to be presented to the Mason County Emergency Ambulance Service Authority for informational purposes.

10. Notice Period. For purposes of calculating the number of days in any notice period contained in these rules, the day of the meeting is not counted. Further, Saturdays Sundays, and legal holidays are excluded.

These rules implementing the provisions of the Open Governmental Proceedings Act shall replace any and all previous rules heretofore adopted by the Mason County Emergency Ambulance Service Authority .