

OPEN MEETINGS ADVISORY OPINION NO. 2001-34

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WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Preston County Commission seeks guidance regarding the deadline for issuing meeting agendas, agenda specificity, addressing items that are not on the agenda, and discussions among Commissioners outside an open meeting.

FACTS RELIED UPON BY THE COMMITTEE

The Preston County Commission meets weekly on Monday at 9:30 A.M. The three Commissioners share a single office. From time to time, two or more Commissioners may be present when no meeting is scheduled. On occasion, an elected official or constituent may come in to discuss matters with two or more Commissioners which will require official action by the Commission.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

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. W. Va. Code § 6-9A-3.

“Meeting” means 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. The term meeting does not include:

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action
W. Va. Code § 6-9A-2(4).

ADVISORY OPINION

The Open Meetings Act requires public agencies to make meeting agendas available in advance to the public and news media, but does not specify how far in advance an agenda must be issued. This Committee has concluded that “reasonable notice” must be provided.

In the case of a County Commission meeting weekly, the Committee has previously ruled that making an agenda available at least two days in advance of its regularly scheduled meeting would comply with the Act. Similarly, the Committee has determined that notice of a special meeting, including the date, time, place, and purpose of the meeting, should be issued at least two days in advance. The Committee finds that these same two-day notice periods are appropriate for the Preston County Commission.

In calculating the number of days in the notice period, Saturdays, Sundays, and legal holidays are not counted. Therefore, in the absence of an intervening legal holiday, the Preston County Commission would comply with the requirements of the Act by making the agenda of its regular Monday meetings available to the public and media at any time before the close of business on the preceding Thursday.

The Committee has also determined an agenda may be amended to add additional items of business - items not known at the time the original agenda was prepared and made available to the public - no later than two days before a meeting, unless it is to deal with an emergency matter. Routine matters, such as approval of purchases and contracts that come up after the deadline for issuing an amendment has passed, must be held over to the next meeting. If an agenda is amended to accommodate action on an emergency matter, both the meeting agenda and the meeting minutes must explain the facts and circumstances of the emergency.

The statute does not establish how specific a meeting agenda's description of the items of business must be. However, this Committee has determined that, in order to comply with the Act, the language must be sufficient to make the public aware of the specific matters to be dealt with at the meeting. In this regard, generic language such as "old business" and "personnel matters" would not be sufficient.

The regular agenda of the Preston County Commission provides time for office holders to talk to the Commission under the heading of "recognition of office holders present." This generic language would not be sufficient to put the public on notice that the Commission may be taking official action on a particular matter, such as the Assessor's request to hire an additional appraiser, or the Sheriff's petition to fund a new communication system.

Although office holders may make presentations to the Commission regarding matters that are not specified in the meeting agenda, the Commission may not take official action on a matter that is not fairly described in the agenda, unless it involves an emergency situation requiring immediate official action. Otherwise, when a matter requiring official action by the Commission is brought up in a presentation, the item will need to be placed on the agenda and addressed at a subsequent meeting.

Describing the purpose of the Open Meetings Act, the Legislature noted "it would be unrealistic, if not impossible, to carry on the business of government [if] every meeting, every contact and every

discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting.” W. Va. Code § 6-9A-1. Accordingly, the Act provides that “general discussions among members of a governing body,” even when held in a planned setting with a quorum present, do not involve a meeting governed by the Act, **so long as there is no intention for the discussion to lead to an official action.**

Accordingly, not all conversations involving a quorum of a governing body, such as two County Commissioners in Preston County, are out of bounds. Elected officials remain free to meet with each other, their constituents, and other public office holders. However, any conversation among a quorum of the members of a governing body which involves deliberating toward a decision on a matter requiring official action must be deferred until the matter can be placed on a meeting agenda and discussed during an open meeting.



Chairman