

OPEN MEETINGS ADVISORY OPINION NO. 2001-35

Issued On December 6, 2001 By The

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

OPINION SOUGHT

The Pocahontas County Commission asks that its procedural rules be reviewed for compliance with the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The Pocahontas County Commission has adopted procedures governing the issuance of meeting notice and meeting agendas for all regular and special meetings. The Commission meets twice monthly on the first and third Tuesday of each month. Meeting agendas will be posted at the front door of the courthouse no later than three days before a regular meeting. Special meetings must also be posted three days in advance. 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.

The Committee finds that the three-day notice period provided for issuing meeting agendas and special meeting notices is consistent with the minimum requirements in the Act. Consistent with prior opinions from this Committee, the Commission's rules properly exclude Saturdays, Sundays and legal holidays when calculating these three-day notice periods.

However, the rules fail to provide that special meeting notices will include, the date, time, place and purpose of the meeting, as required by the Act. In addition, the rules do not specify the time and place for regular meetings. Once these rules have been revised to include these matters, the rules will satisfy the minimal requirements of W. Va. Code §6-9A-3.

It must be noted that the Committee's opinion, and any immunity which a governing body receives, is limited to whether any provisions in the rules are inconsistent with the Act, or fail to address a matter specified by the Act. Advisory opinions do not address discretionary application of a rule to a specific situation, unless the requester provides a proposed set of facts describing that situation.

For example, these rules contain provisions allowing for exceptions from the three-day notice period based upon "emergency situations to be determined by the Commission." The Act permits governing bodies to provide less notice "in the event of an emergency requiring immediate official action." Therefore, this rule is consistent with the Act. Nonetheless, Committee approval of this language does not release the governing body from the requirement to exercise appropriate discretion when determining whether a particular state of affairs presents an emergency situation.



Chairman

AGENDA POLICY AND PROCEDURES

The Commission will hold its regular meetings on the first (1st) and third (3rd) Tuesdays of each month, and the agenda for the same shall be posted at the front door of the Courthouse no later than three (3) days before a meeting, excluding Saturdays, Sundays, and legal holidays, by 4:30 p.m. of the first day, except for emergency situations to be determined by the Commission. Should a legal holiday fall on Friday or Monday prior to a regular meeting, then the agenda shall be posted at the front door of the Courthouse one (1) day earlier by 4:30 p.m. of the first day to account for the holiday, except for emergency situations to be determined by the Commission. No action will be taken on any agenda item added after the 4:30 deadline on the first day, except for emergency situations to be determined by the Commission. Reasonable effort will be made to provide notice of meetings via fax to the local media by 4:30 p.m. of the first day. Special meetings scheduled by the Commission will also be governed by the three (3) day guidelines outlined above.