

OPEN MEETINGS ADVISORY OPINION NO. 2002-05

Issued On March 7, 2002 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Hampshire County Commission asks: (1) when they must make agendas of their regular meetings available to the public; (2) how specific must their agendas be and in what manner must the agenda be made available; and (3) may they take official action on matters raised during a public comment period, if those matters were not on the meeting agenda.

FACTS RELIED UPON BY THE COMMITTEE

The Hampshire County Commission generally meets every two weeks. They post notice of the meeting at least three days before each meeting. Their agenda is recorded in a book in the County Clerk's office and contains a list of presenters including the person's name and appointed time to speak to the Commission. In addition, the Commission usually permits citizens to sign up to speak in a public comment period during each meeting.

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

(1) The Open Meetings Act requires an agency's governing body to make its meeting agenda available to the public and news media in advance of the meeting, but does not specify how far in advance. The Committee has held, and does so here, that notice three days in advance of a county commission's twice monthly meeting is sufficient. The day of the meeting, Saturdays, Sundays and legal holidays are not counted in the three days.

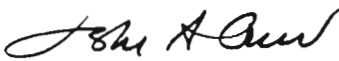
For example, when the Hampshire County Commission's regular meeting is held on a Tuesday, it would satisfy the Act by making the agenda available some time before the close of business on the preceding Thursday, assuming there is no intervening holiday.

When the Commission has made its agenda available three days or more in advance of the meeting, it could, at its option, amend the agenda to include additional items of business - items not known at the time the original agenda was prepared and made available to the public. Consistent with the forgoing guidance on calculating the notice period, amendments may be made as late as two days before the meeting, and made available to the public in the same manner as the original agenda.

(2) The Open Meetings Act does not establish how specific a meeting agenda's description of the items of business must be. The Committee has held that the description must be sufficient to make the public aware of the specific matters to be dealt with at the meeting. Generic language such as "personnel matters" is not sufficient. Nor is a mere listing of the names of the people who are scheduled to speak, unless the presentation is purely informational with no official action required. The Commission should use more specific descriptions of the items of business, such as "hiring Jane Doe to fill the vacant Clerk-Typist position in the Assessor's Office", "hiring John Law to fill a newly created Deputy Sheriff position in the Sheriff's Department" or "consider plan to remodel County Assessor's offices."

The Act does not provide specific guidance on how the agenda must be made available to the public and the media. Ordinarily, an agenda will be a document, which may or may not include a meeting notice, that lists all matters requiring official action by the governing body which will be dealt with at the meeting. To comply with the Act, the Commission may either post a copy of the agenda in a public place in the county courthouse, or make copies of the agenda available in the County Clerk's Office, or other public location, during normal business hours.

(3) Citizens who sign up to speak during a public comment period may address topics that are on the agenda, as well as new matters that have not been included on the agenda. However, in the absence of an emergency requiring immediate official action, the Commission may not take official action on matters raised by the public, if the matter was not on the meeting agenda. The Commission may consider whether the matter requires official action, and if it does, place the matter on the agenda of a subsequent meeting.



Chairman