

OPEN MEETINGS ADVISORY OPINION NO. 2002-07

Issued On March 7, 2002 By The

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

OPINION SOUGHT

The Clarksburg Water Board (Board) asks if it can go into executive session to discuss eliminating a position that is currently filled.

FACTS RELIED UPON BY THE COMMITTEE

The Board expects to consider whether to eliminate a position that is presently filled by an employee.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-4 says:

(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

(b) An executive session may be held only upon a majority affirmative 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:

(2) To consider:

(A) Matters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee, or prospective public officer or employee unless the public officer or employee or prospective public officer or employee requests an open meeting; or

(B) For the purpose of conducting a hearing on a complaint, charge or grievance against a public officer or employee, unless the public officer or employee requests an open meeting. General personnel policy issues may not be discussed or considered in a closed meeting. Final action by a public agency . . . shall be taken in an open meeting.

ADVISORY OPINION

When a governing body is discussing the total number of employees that can be funded within the agency's budget, this would ordinarily involve a general personnel policy issue that would need to be discussed in an open meeting. However, where the governing body wants to discuss elimination of a particular position which is currently held by an employee, a decision to eliminate the position would inevitably result in that employee's transfer or discharge.

Therefore, this discussion involves one of those matters which the Board may vote to discuss in executive session, unless the affected employee requests that the matter be discussed in an open session. Any vote to eliminate the position would need to be taken in an open session.



Chairman