

## OPEN MEETINGS ADVISORY OPINION NO. 2002-13

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

#### OPINION SOUGHT

George Antonik, a member of the New Martinsville City Council, asks for guidance on committee meetings, conducting job interviews in executive session, and participation in an executive session.

#### FACTS RELIED UPON BY THE COMMITTEE

New Martinsville City Council has certain permanent, or standing, committees. In addition, certain special committees may be appointed on an ad hoc basis. From time to time, some of these committees may interview applicants for employment. The requester sometimes attends public meetings of committees on which he does not serve, and would like to remain in the meeting during executive sessions.

#### CODE PROVISIONS RELIED UPON BY THE COMMITTEE

West Virginia Code §6-9A-2 provides the following definitions:

As used in this article:

(3) "Governing body" means the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members; for the purposes of this article, a governing body of the Legislature is any standing, select or special committee, except the commission on special investigations, as determined by the rules of the respective houses of the Legislature.

(4) "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. Meetings may be held by telephone conference or other electronic means...

(6) "Public agency" means any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power.

W. Va. Code § 6-9A-4 provides in pertinent part that "[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: . . . [t]o consider: . . . [m]atters 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. . . .”

### **ADVISORY OPINION**

The Open Meetings Act applies to governing bodies of “public agencies.” A standing committee of City Council ordinarily acts as a conduit or prerequisite for matters coming before the parent body, and is presumed to exercise some portion of executive or legislative power. Therefore, any permanent or standing committee of a City Council, consisting of two or more members, the purpose of which is to formulate recommendations to the Council as a whole, is a governing body of a public agency, and must conduct its meetings in compliance with the Act.

Like the City Council, standing committees must provide advance notice of the date, time and place of each meeting, and make available to the public and media an agenda listing all items requiring official action by the Committee at a particular meeting. Any “special” committees, or committees appointed on an ad hoc basis, must similarly comply with the Act, when they have been delegated authority to exercise some portion of executive or legislative power.

A City Council Member may attend a properly noticed open meeting of a City Council Committee on the same basis as any member of the public or media. However, it would defeat the purposes of the Act for a quorum of a governing body to meet privately and discuss the merits of a matter they will later be deciding in an open meeting. Therefore, should any committee include a quorum of the City Council in its membership, its meetings will be subject to the Act.

The Act permits governing bodies to discuss certain personnel matters in executive session, unless the affected employee requests an open meeting. An interview seeking to determine a job applicant’s qualifications for employment by a public agency is an employment matter which may be discussed in executive session, when a majority of the governing body votes to do so, unless the affected applicant requests an open session. Where one applicant elects to be interviewed in an open session, and other applicants do not, the committee would conduct one interview in public while the remaining interviews could be conducted in executive session.

The Open Meetings Act does not specify whether a member of a parent governing body can attend an executive session of a committee or subcommittee to which he or she has not been appointed, or who may participate in a committee meeting in the absence of a designated member. Therefore, the appropriate governing body should determine these questions in accordance with other applicable laws or ordinances.



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Chairman