

OPEN MEETINGS ADVISORY OPINION NO. 2002-18

Issued On October 3, 2002 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Greenbrier Valley Economic Development Corporation (GVEDC or Corporation) asks for guidance on proxy voting.

FACTS RELIED UPON BY THE COMMITTEE

GVEDC is a multicounty economic development authority established to plan and coordinate economic development in Greenbrier, Monroe and Pocahontas counties. The Corporation's bylaws provide that "each member in good standing shall be entitled to one vote at the annual meeting or at any other membership meeting in person or by proxy." The bylaws further define a quorum as "a majority of the members of the Corporation entitled to vote, represented in person, or by proxy." GVEDC asks if reading properly signed proxy forms would comply with the Act, or if there is some other way to accommodate "absentee" voting.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-8 provides, in pertinent part:

- (b) A public agency may not vote by secret or written ballot.

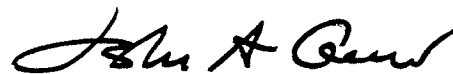
ADVISORY OPINION

Generally, a "proxy" involves a written authorization to act in place of another person. No provision in the Open Meetings Act governs attendance by the use of a written proxy. This Committee has no authority to determine who is eligible to participate as a voting member of a governing body.

However, a "proxy" which contains directions to vote for or against a particular candidate or proposition is a written ballot. The Act specifically prohibits voting by written ballot. The Committee believes that this specific prohibition in the Open Meetings Act supersedes any contrary provision in the Corporation's bylaws.

The Act permits governing bodies of public agencies to conduct meetings via telephone conference, provided that the persons who are participating by telephone are audible to the public attending the meeting in person. This option may enable a governing body to obtain a quorum when not enough voting members can be physically present.

The Act does not address whether a governing body may conduct a roll call vote. It simply provides that if a roll call vote is conducted in accordance with the procedures of the governing body, the vote of each member by name must be recorded in the meeting minutes.



Chairman