

OPEN MEETINGS ADVISORY OPINION NO. 2003-08

Issued On August 7, 2003 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Upshur County Commission (Commission), City of Buckhannon (City) and Upshur County Development Authority (Authority) ask if certain matters relating to economic development activities may be discussed and approved in executive session.

FACTS RELIED UPON BY THE COMMITTEE

In the course of negotiating the conditions under which a businesses enterprise may be established, relocated or expanded, the Commission, City and Authority may each make certain commitments in exchange for various assurances from the business being recruited. Generally, this process involves developing a proposed package of financial incentives which is contained in a "Request for Financial Assistance." The specifics of any financial incentives, as well as any other terms and conditions, are then negotiated with the business before these mutual promises are finalized between the parties in an Economic Development Agreement. The requesting agencies want to know what portion of these arrangements can be discussed or decided in executive session.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-4 provides in pertinent part:

(b) . . . A public agency may hold an executive session and exclude the public only when a closed session is required for one of the following actions:

(9) To consider matters involving or affecting the **purchase, sale or lease of property, advance construction planning, the investment of public funds** or other matters involving commercial competition, **which if made public, might adversely affect the financial or other interest** of the state or any political subdivision: Provided, That information relied on during the course of deliberations on matters involving commercial competition are exempt from disclosure under the open meetings requirements of this article only until the commercial competition has been finalized and completed: Provided, however, That information not subject to release pursuant to the West Virginia freedom of information act does not become subject to disclosure as a result of executive session

(12) To discuss any matter which, by express provision of federal law or state statute or rule of court is rendered confidential, or which is not considered a public record within the meaning of the freedom of information act

The WV Freedom of Information Act, W. Va. Code § 29B-1-4(5) exempts from disclosure “information specifically exempted from disclosure by statute.”

WV Code § 5B-2-1, relating to the WV Economic Development Office, provides in pertinent part:

Any documentary material, data or other writing made or received by the West Virginia development office or other public body, whose primary responsibility is economic development, for the purpose of furnishing assistance to a new or existing business shall be exempt from the provisions of article one, chapter twenty-nine-b of this code: *Provided*, That any agreement entered into or signed by the development office or public body which obligates public funds shall be subject to inspection and copying pursuant to the provisions of said article as of the date the agreement is entered into, signed or otherwise made public.

W. Va. Code § 7-12-2, describes the purposes of county or municipal economic development authorities as follows:

The purposes for which the authority is created are to promote, develop and advance the business prosperity and economic welfare of the municipality or county for which it is created, its citizens and its industrial complex; to encourage and assist through loans, investments or other business transactions in the locating of new business and industry within the municipality or county and to rehabilitate and assist existing businesses and industries therein; to stimulate and promote the expansion of all kinds of business and industrial activity which will tend to advance business and industrial development and maintain the economic stability of the municipality or county, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of the county; to cooperate and act in conjunction with other organizations, federal, state, or local, in the promotion and advancement of industrial, commercial, agricultural and recreational developments within the municipality or county; and to furnish money and credit, land and industrial sites, technical assistance and such other aid as may be deemed requisite to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity within the municipality or county.

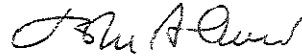
ADVISORY OPINION

The Open Governmental Proceedings Act permits governing bodies to hold an executive session and exclude the public only when a closed session is required for one of several actions specified in W. Va. Code § 6-9A-4. In Open Meetings Advisory Opinion 2002-06, this Committee recognized that premature disclosure of private commercial plans might adversely affect the interests of a County Economic Development Authority in promoting and facilitating development in the county.

This Advisory Opinion deals with the extent to which governing bodies can discuss and approve economic development initiatives in executive session.

The Commission, City and Authority may each meet in executive session to entertain and discuss proposals concerning various forms and amounts of financial or related assistance which may be committed in an effort to initiate or sustain commercial economic development in their particular jurisdiction.

Nonetheless, any vote to approve a particular proposal must be taken in open session. Either a Request for Financial Assistance or an Economic Development Agreement may be voted upon in generic terms, so that the identity or nature of the business and the specific terms of the agreement are not then revealed to the public. Once the Economic Development Agreement is approved by all required parties, this document, the Request for Financial Assistance and any other preliminary documents not exempt from release under the Freedom of Information Act, previously approved by the governing body but not released, must immediately be incorporated into the meeting minutes and made available for inspection by the public.



Chairman