

OPEN MEETINGS ADVISORY OPINION NO. 2003-10

Issued On October 2, 2003 By The

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

OPINION SOUGHT

The West Virginia Lottery Commission asks that its procedural rules be reviewed for compliance with the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The Lottery Commission has adopted procedures governing the issuance of meeting notice and meeting agendas. The rules provide for publishing notice of regular and special meetings at least five days prior to the date of the meeting in the State Register and making meeting agendas available to the public at least three days prior to the meeting. A complete copy of the Commission's procedural rules is attached to this advisory opinion as Appendix A.

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

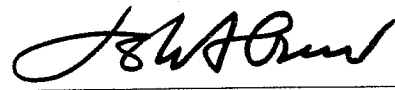
The Open Meetings Act requires each governing body to promulgate certain procedural rules. As a minimum, these rules must state how and when the date, time, place and agenda of all regular meetings, as well as the date, time, place and purpose of all special meetings, will be made available to the public and news media.

The provisions in the Lottery Commission's procedural rules governing meeting notice are consistent with the requirements for State executive branch governing bodies in W. Va. Code § 6-9A-3. Further, the provisions governing issuance of meeting agendas satisfy the Act's mandate for reasonable notice. These notice provisions collectively fulfill the minimum requirements of W. Va. Code § 6-9A-3.

In addition to describing meeting notice and agenda procedures, governing bodies may elect to include other provisions governing meeting procedures in their rules. Consistent with its legislative mandate to consider whether a proposed action violates any provision in the Act, this Committee will

review additional provisions in a governing body's procedural rules. However, the Committee's opinion, and any immunity which the governing body receives, will be limited to whether these additional rules are inconsistent with the Act. The opinion will not address discretionary application of a rule to a specific situation, unless the requester provides a proposed set of facts describing that situation.

Having noted the limited scope of its opinion, the Committee finds that no provisions in any additional meeting rules adopted by the Lottery Commission are inconsistent with the Act.



Chairman

TITLE 179

STATE LOTTERY COMMISSION PROCEDURAL RULE SERIES 6

NOTICE AND CONDUCT OF MEETINGS

§179-6-1. General.

1.1. Scope. --This procedural rule establishes requirements for notice of meetings and general rules for conduct of said meetings.

1.2. Authority. --W. Va. Code §§6-9A-3 and 29-22-5.

1.3. Filing Date. -August 27,2003.

1.4. Effective Date. -October 1, 2003.

§179-6-2. Preface.

2.1. The West Virginia Legislature has provided in W. Va. Code §6-9A-1 that all regular and special meetings of governing bodies shall be open to the people of the State and that the people shall be given reasonable advance notice of the time, date and location of such meetings being convened: *Provided, however,* that governing bodies may hold executive sessions as part of duly convened regular, special or emergency meetings under certain circumstances as permitted by law.

2.2. The Legislature has provided in W. Va. Code §6-9A-3 that each governing body shall promulgate rules by which the time, place and agenda of all regularly scheduled meetings and the 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 attention;

2.3. W. Va. Code §29-22-4(c) provides that the state lottery commission shall hold at least one meeting each month, and additional meetings may be called by the chairman, the Lottery director or a majority of the commission members.

§179-6-3. Notice of Meetings.

3.1. The State Lottery Commission shall meet at its headquarters building located at 312 MacCorkle Avenue in the City of Charleston, or at such other locations as the commission may from time to time deem necessary .

3.2. Regular and Special Meetings --Notice of regularly scheduled meetings and special meetings shall be provided through the State Register, administered by the West Virginia Secretary of State's office, and also shall be posted on the Commission's website at <http://www/wvlottery.com>. Meeting notices shall be published in the state register at least five days prior to the date of the meeting. Each notice shall contain the time, date, and location of the meeting. The agenda of the meeting shall be posted on the commission's website and made available in the commission's Charleston headquarters at least three days prior to the date of the meeting. This advance period excludes the day of the meeting, along with Saturdays, Sundays and legal holidays.

3.3. Emergency Meetings --The notice of any emergency meeting shall be published in the State Register, at any time prior to the meeting, and on the Commission's website, and shall include the date, time, place and purpose of the meeting. Any notice of an emergency meeting shall state the facts and circumstances of the emergency.

3.4. The minutes of the commission's meetings shall be open to the inspection of any member of the public at the Charleston office, as provided by W. Va. Code §6-9A-5.

§179-6-4. Conduct of Meetings.

4.1. All meetings must be open to the public, although the commission may, either on its own initiative or upon the request of an interested party, hold an executive session during a meeting after its presiding officer has identified the authorization under W.Va. Code §6-9A-4 for the holding of such executive session and has presented it to the governing body and to the general public, as required by W.Va. Code §6-9A-4. An executive session will only be held upon a majority affirmative vote of the commission members present or attending by teleconference.

4.2. Persons desiring to address the commission are encouraged to make arrangements in advance with the commission. However, advance arrangements are not necessary as such person may sign in prior to the scheduled commencement of any regular or special meeting. Any speaker shall provide his/her name, mailing address, telephone number and the subject to be addressed. Presentations shall be limited to five minutes, unless otherwise designated by the commission. Delegations are encouraged to use a spokesperson to present their concerns or proposals.

4.3 The chairman may have a person removed from the meeting room if the person, in the opinion of the chair, is disrupting the meeting to such an extent as to compromise the orderly conduct of the meeting. A motion to review the decision of the chair to have a person removed from the meeting shall have precedence over all other business, and a simple majority of members present and voting shall be necessary to overrule the initial decision of the chair .

§179-6-5. Meeting by Conference Call.

5.1. Occasions may arise when one or more commission members are not available to attend a meeting in person. On such occasions, members may attend and participate in the meeting by telephone or video teleconference to the same extent as if physically present. A speakerphone or other audio/video device shall be used at the meeting site to enable those present, including the public, to hear/see the members who are attending and participating by telephone or video teleconference.