

OPEN MEETINGS ADVISORY OPINION NO. 2003-13

Issued On December 4, 2003 By The

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

OPINION SOUGHT

Members of the Parkersburg City Council seek guidance on which proceedings of an appointed Special Investigation Committee are subject to the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The Parkersburg City Charter provides for a Special Investigation Committee (SIC) to investigate governmental operations. An SIC is authorized to administer oaths, subpoena witnesses and compel production of documents. An SIC has been appointed to investigate certain alleged irregularities in the issuance of business permits and licenses. The SIC plans to engage the services of an outside attorney to lead the investigation. The SIC wants to meet with their counsel to discuss various procedural and logistical arrangements for conducting the investigation.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-2(4) defines "meeting" as: 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. . . . The term meeting does not include:

(A) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court of claims proceeding; . . .

(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.

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: . . .


(7) To plan or consider an official investigation or matter relating to crime prevention or law enforcement.

ADVISORY OPINION

When meeting to initiate, conduct or review an investigation performed by the members themselves, or someone designated to act in their behalf, the SIC is engaged in a quasi-judicial administrative proceeding which is not subject to the open meetings requirements of the Act. Further, the SIC may meet to discuss purely logistical matters, such as the date, time and place for a future meeting, what persons or parties need to be present or invited to the meeting, in what order they should appear, and what data or documentation needs to be provided by various participants in advance of the meeting, without holding a meeting subject to the Act.

However, when exercising any delegated executive or legislative authority, such as employing staff, contracting for professional services, or establishing general rules of procedure to follow when conducting an investigation, the SIC should follow normal open meeting requirements, including providing advance notice of a meeting and excluding the public only to conduct an executive session authorized under one of the exceptions in the Act.

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. The Committee finds that the City Council may elect to meet in executive session to consider the official investigation conducted by the SIC. Any required official action of the Council would have to be voted upon in open session.



Chairman