

OPEN MEETINGS ADVISORY OPINION NO. 2004-04

Issued On April 1, 2004 By The

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

OPINION SOUGHT

The **City of Moundsville** (City) asks that its procedural rules be reviewed for compliance with the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The City is proposing to adopt procedural rules which will require that notice of the regular meeting schedule be posted and maintained on the front door of the City Building, and that agendas of all regular meetings be similarly posted at least three days in advance of each meeting, excluding Saturdays, Sundays, legal holidays and the day of the meeting. Notices of special meetings shall likewise be posted at least three business days in advance. A complete copy of the City's proposed procedural rules are 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.

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

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

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 City's procedural rules governing meeting notices and meeting agendas are generally consistent with previous opinions from this Committee regarding these matters. The rules satisfy 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.

Proposed Section (d)(5) states:

In the instance of any votes by ballot, the same shall not be secret but each member shall sign his or her ballot and the City Clerk shall immediately thereafter publicly announce the vote of each member, by name, which shall be recorded in the minutes.

The Open Meetings Act does not permit a public agency to vote by secret **or** written ballot. The Act supersedes any local ordinance or charter provision which may provide otherwise. Accordingly, this section should be deleted from the proposed rules because it is incompatible with the Act. No other provisions in the City's proposed rules conflict with the Act.



Chairman

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MOUNDSVILLE, WEST VIRGINIA, AMENDING THE CODE OF THE CITY OF MOUNDSVILLE BY AMENDING SECTION 121 OF SAID CODE TO PROVIDE FOR RULES TO MAKE AVAILABLE, IN ADVANCE, THE DATE, TIME, PLACE AND AGENDA OF ALL REGULARLY SCHEDULED MEETINGS OF THE MOUNDSVILLE CITY COUNCIL TO THE PUBLIC AND NEWS MEDIA, AND FOR OTHER RULES IMPLEMENTING OPEN GOVERNMENTAL MEETINGS.

**THE COUNCIL OF THE CITY OF MOUNDSVILLE, WEST VIRGINIA
HEREBY ORDAINS:**

The Code of the City of Moundsville, West Virginia, is hereby amended by amending Section 121.05, as follows:

Section 121.05 .NOTICE OF MEETINGS AND AGENDAS

Pursuant to Chapter 6, Article 9A, Section 3 of the West Virginia Code, the members of the Moundsville City Council do hereby adopt the following rules to make available, in advance, the date, time, place and agenda of all regularly scheduled meetings of the Moundsville City Council to the public and news media, except in the case of an emergency requiring immediate action, as follows:

(a) Regular Meetings. A notice shall be posted and maintained by the City Clerk at the front door of the Moundsville City Building of the date, time, and place for the holding of regularly scheduled council meetings. In addition a copy of the agenda for each regularly scheduled council meeting shall be posted on the front door of the City Building by the City Clerk not less than three days before such regular meeting is to be held. If a particular regularly scheduled meeting is canceled or postponed, a notice of such cancellation or postponement shall be posted at the same location as soon as feasible after such cancellation or postponement has been determined.

(b) Special Meetings. A notice shall be posted by the City Clerk at the front door of the City Building not less than three days before a specially scheduled council meeting is to be held, stating the date, time, place, and purpose for which such special meeting shall be held. If the special meeting is canceled or postponed, a notice of such cancellation or postponement shall be posted at the same location as soon as feasible after such cancellation or postponement has been determined.

(c) Presentations. All persons that desire to address the Moundsville City Council on items not on the agenda will be allowed to address the City Council under the General Public Hearing section of the agenda, but no official action may be taken on new subject matter until it can be presented as an agenda item at a future meeting.

(d) Minutes. Written minutes of all meetings of the City Council shall be prepared and maintained by the City Clerk and shall be available to all members of the public after being approved at the following regularly scheduled meeting, and shall include, at least, the following information:

(1) The date, time and place of the meeting;

(2) The name of each member of the governing body present and absent;

(3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and

(4) The results of all votes and, upon the request of a member, roll call votes of each member, by name;

(5) In the instance of any votes by ballot, the same shall not be secret but each member shall sign his or her ballot and the City Clerk shall immediately thereafter publicly announce the vote of each member, by name, which shall be recorded in the minutes.

(6) A draft copy of the minutes, clearly marked, shall be available to the public within a reasonable time after the meeting.

(e) Executive Sessions. If authorized by one of the exceptions in W.Va. Code 6-9A-4, the West Virginia Open Meeting Act, the City Council may hold an executive session during any regular, special or emergency meeting. During the open portion of a meeting, prior to convening an executive session the Mayor or some other person shall identify the authorization for conducting an executive session and shall present it to the members of the public present at the meeting. An executive session shall only be held upon a majority affirmative vote of the members of the City Council and no decision shall be made in executive session.

(f) Media Broadcasts. The City Council shall allow the placement and use of equipment necessary for broadcasting, photographing, filming or recording a council meeting. The equipment shall be placed or used within the meeting room so as to prevent undue interference with the meeting. In the event the City Council determines that the size of the meeting room is not sufficient to accommodate all the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording in the meeting room without unduly interfering with the meeting the City Council may require the pooling and sharing of the equipment and personnel operating the equipment among the media.

(g) Agenda. The City Council shall prepare a written agenda for all scheduled meetings and shall distribute it in accordance with subsection "(a)" above. The agenda shall include those items upon which official action is anticipated and those known items to be presented to the City Council for informational purposes.

(h) Notice Period. For purposes of calculating the number of days in any notice period contained in these rules, the day of the meeting is not counted. Additionally, Saturdays, Sundays and legal holidays are excluded.

This ordinance shall be effective from and after the date of its passage.

(d) Minutes. Written minutes of all meetings of the City Council shall be prepared and maintained by the City Clerk and shall be available to all members of the public after being approved at the following regularly scheduled meeting, and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each member of the governing body present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- (4) The results of all votes and, upon the request of a member, roll call votes of each member, by name;
- (5) In the instance of any votes by ballot, the same shall not be secret but each member shall sign his or her ballot and the City Clerk shall immediately thereafter publicly announce the vote of each member, by name, which shall be recorded in the minutes.
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