

OPEN MEETINGS ADVISORY OPINION NO. 2004-09

Issued On July 1, 2004 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Town of West Union seeks guidance on the procedure to be followed when convening an executive session.

FACTS RELIED UPON BY THE COMMITTEE

When a Council Member makes a motion to convene in executive session, the usual practice is to state the reason an executive session is required, without stating a particular statutory provision, such as "W. Va. Code § 6-9A-4(b)(2)(A)." The Town Council seeks to determine if it is required to reference W. Va. Code § 6-9A-4 or the specific subsection which permits an executive session.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-4 provides:

- (a) The governing body of a public agency may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the governing body shall **identify the authorization under this section** for holding the executive session and present it to the governing body and to the general public, but no decision may be made in the executive session.

ADVISORY OPINION

The West Union Town Council seeks specific guidance on what information needs to be conveyed before convening an executive session. The Open Meetings Act only permits governing bodies to hold an executive session and exclude the public and the media when a closed session is required for one of several actions specified in W. Va. Code § 6-9A-4. The Act further requires each governing body to "identify the authorization under this section" for holding an executive session.

The Committee believes the Legislature included this requirement in the Act so that persons attending a meeting would be informed of the reason or reasons for excluding the public and media in order to convene in executive session. This required "authorization" for going into executive session is best provided by simply stating the general subject matter covered by a particular exemption in the Act, such as "a personnel matter involving an employee" or "to discuss pending litigation with the City Attorney."

While stating that an executive session is proposed “under the exemption provided in W. Va. Code § 6-9A-4(b)(2)(A)” would also identify the authorization for discussing a personnel matter involving an employee, most members of the public are likely to be more confused than enlightened by a reference to a numbered Code section. Accordingly, the Committee finds that a governing body may comply with the requirement for stating the authorization for holding an executive session by describing the action for which a particular exemption in the Act authorizes an executive session, such as “a personnel matter involving discipline of an employee” or “to consider an official investigation,” without including any reference to a numbered Code section.



Chairman