

OPEN MEETINGS ADVISORY OPINION NO. 2005-08

Issued On April 7, 2005 By The

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

OPINION SOUGHT

A Norton-Harding-Jimtown Public Service District Board Member asks if he is permitted to use a tape recorder and record board meetings.

FACTS RELIED UPON BY THE COMMITTEE

The Board Member wants to know if he is permitted to make an audio tape recording of the public portion of a board meeting.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-9 provides:

(a) Except as otherwise provided in this section, any radio or television station is entitled to broadcast all or any part of a meeting required to be open.

(b) A public agency may regulate the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting, so as to prevent undue interference with the meeting. The public agency shall allow the equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of the equipment may not be declared to constitute undue interference: *Provided*, That if the public agency, in good faith, determines that the size of the meeting room is such that all members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public agency, acting in good faith and consistent with the purposes of this article, may require the pooling of the equipment and the personnel operating it.

In addition, W. Va. Code § 6-9A-1 provides, in part:

The Legislature hereby finds and declares that public agencies in this state exist for the singular purpose of representing citizens of this state in governmental affairs, and it is, therefore, in the best interests of the people of this state for the proceedings of public agencies be conducted openly, with only a few clearly defined exceptions. The Legislature hereby further finds and declares that the citizens of this state do not yield their sovereignty to the governmental agencies that serve them. The people in

delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them.

Open government allows the public to educate itself about government decisionmaking through individuals' attendance and participation at government functions, distribution of government information by the press or interested citizens, and public debate on issues deliberated within the government.

ADVISORY OPINION

As previously determined by this Committee in Open Meetings Advisory Opinion 2001-07, there is no provision in the Open Meetings Act which restricts a member of a governing body from using a tape recorder or similar device to record the public portion of an open meeting. Consistent with the legislative intent set forth in W. Va. Code § 6-9A-1, any member of the media, public or governing body may record the open sessions of public meetings.

A governing body is only permitted to regulate the placement and use of recording equipment in an open meeting to the extent necessary to prevent undue interference with the meeting. However, because the Act grants governing bodies discretion to determine whether minutes of executive sessions are kept, governing bodies have similar discretion to determine who, if anyone, may be permitted to record any portion of an executive session.



Chairman