

**OPEN MEETINGS ADVISORY OPINION NO. 2005-09**

**Issued On June 2, 2005 By The**

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

**OPINION SOUGHT**

The Superintendent of the Pocahontas County Schools asks if his service on the Board of Directors of a private organization requires that organization to comply with the requirements of the Open Meetings Act.

**FACTS RELIED UPON BY THE COMMITTEE**

Pocahontas Woods, established as a private, non-profit corporation, has adopted by-laws which specify that the County School Superintendent, or his alternate representing the County Board of Education, will serve as one of its voting members. The Superintendent is concerned whether his status as a public official prohibits him from attending private meetings, or converts the corporation into a public agency subject to the Open Meetings Act.

**CODE PROVISIONS RELIED UPON BY THE COMMITTEE**

W. Va. Code § 6-9A-2(6) defines a “public agency” as: “[a]ny administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing authorized by law to exercise some portion of executive or legislative power.”

**ADVISORY OPINION**

In Open Meetings Advisory Opinion 2003-09, this Committee determined that Pocahontas Woods was not a public agency subject to the Open Meetings Act. This determination followed this Committee’s long-standing approach that the Act applies to “public agencies,” units of state, county and municipal government, and “public corporations,” corporations which are created by state or local authority to carry out a governmental function. Pocahontas Woods, a private, non-profit corporation, did not fall into either category.

The fact that an organization’s by-laws call for a public official to serve on the governing board does not convert a private corporation, exempt from the Open Meetings Act, into a public corporation, subject to the Act. Based on the information provided by the requester, he may continue to participate in meetings of the board of Pocahontas Woods without violating any prohibition in the Open Meetings Act, and his participation does not convert this organization into a public agency that is subject to the requirements of the Act.



Chairman