

**OPEN MEETINGS ADVISORY OPINION NO. 2005-12**

**Issued On November 3, 2005 By The**

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

COPY

**OPINION SOUGHT**

Lynne E. White, a Member of the Mercer County Board of Education, seeks guidance on communicating with the County School Superintendent and other Board Members using electronic mail.

**FACTS RELIED UPON BY THE COMMITTEE**

The requester is an elected member of a governing body of a public agency, the Mercer County Board of Education. The requester occasionally communicates with the County School Superintendent concerning a variety of issues using electronic mail, commonly referred to as "e-mail." She would like to be able to send copies of this e-mail correspondence to the other Board Members, so that they will be better informed when they arrive at Board meetings. The requester has provided a sample inquiry to the Superintendent which is indicative of the communications she proposes to share.

**CODE PROVISIONS RELIED UPON BY THE COMMITTEE**

"Meeting" means 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. Meetings may be held by telephone conference or other electronic means. The term meeting does not include: . . .

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action;

(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting. W. Va. Code § 6-9A-2(4).

**ADVISORY OPINION**

The Open Meetings Act clearly contemplates that not all communication between or among the members of a governing body of a public agency will take place in the course of a scheduled meeting that is open to the public and the media. For example, in Open Meetings Advisory Opinion 2000-07, this Committee concluded that it was appropriate for Planning Commission Members to receive copies of proposed plans in advance of a scheduled meeting, so each member would have an opportunity to review the plans in preparation for the meeting.


Consistent with this approach, the requester may communicate with the Superintendent via e-mail seeking information or clarification on matters which may require official action by the Board at an upcoming or subsequent meeting. Further, other Board Members would not violate the Act by independently communicating with the Superintendent regarding their questions or concerns.

Nonetheless, written communications, including e-mail, should not be used to avoid public discussions that would ordinarily take place in the context of an open meeting. In Open Meetings Advisory Opinion 2001-36, the Committee determined that a series of phone calls was not a proper way to take official action because there was no opportunity for the public and media to observe the governing body's actions. Accordingly, an exchange of e-mail communications among a quorum of a governing body which involves deliberating toward a decision on a matter requiring official action would not be consistent with the Act and should be avoided.

If one Board Member sends copies of her electronic communications to other Board Members at the same time as the Superintendent, that would not, standing alone, constitute a meeting. However, the Committee believes that instantaneous group communication via e-mail could generate responses from other Board Members that would involve deliberation on the merits of an issue requiring official action. Because electronic communications can be exchanged in near real time, when each Board Member has access to a personal computer or other device capable of receiving and sending e-mail, a series of e-mail exchanges could virtually eliminate any need for discussion at an open public meeting. Therefore, the Superintendent likewise should not respond to e-mail from an individual board Member by sending a copy of that response to the other board Members, because the same problem would develop.

In Open Meetings Advisory Opinion 2003-02, the Committee concluded that a gathering of a quorum of a governing body to discuss purely logistical matters was not prohibited by the Act. Thus, members of a governing body may use e-mail to communicate with each other regarding such logistical matters as the time and place for holding a meeting, who should be invited to the meeting, what data or documentation needs to be available at the meeting, and what matters should be included on the meeting agenda.

Accordingly, to the extent the requester's sample communication to the Superintendent addresses purely logistical matters, it would be acceptable to send e-mail copies to other Board Members concerning these limited issues. Otherwise, disseminating copies of e-mail between one Board Member and the Superintendent to the other Board Members in advance of a meeting should be avoided.

  
Chairman