

**OPEN MEETINGS ADVISORY OPINION NO. 2006-03**

**Issued On June 1, 2006 By The**

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

**OPINION SOUGHT**

David C. Klinger, a resident of Berkeley County, requests an advisory opinion regarding the policies and practices of the Berkeley County Planning Commission.

**FACTS RELIED UPON BY THE COMMITTEE**

The requester is a resident of Berkeley County. He holds an appointment as a Notary Public. He is seeking a formal advisory opinion whether the Berkeley County Planning Commission is conducting its meetings in accordance with the Open Meetings Act in regard to certain policies and practices which he describes in his request. The requester is not a member of the Berkeley County Planning Commission nor has he been authorized to act as their agent.

**CODE PROVISIONS RELIED UPON BY THE COMMITTEE**

W. Va. Code § 6-9A-11 provides, in pertinent part:

(a) Any governing body or member thereof subject to the provisions of this article may seek advice and information from the executive director of the West Virginia ethics commission or request in writing an advisory opinion from the West Virginia ethics commission committee on open governmental meetings as to whether an action or proposed action violates the provisions of this article. The executive director may render oral advice and information upon request. The committee shall respond in writing and in an expeditious manner to a request for an advisory opinion. The opinion shall be binding on the parties requesting the opinion.

(b) Any governing body or member thereof that seeks an advisory opinion and acts in good faith reliance on the opinion has an absolute defense to any civil suit or criminal prosecution for any action taken in good faith reliance on the opinion unless the committee was willfully and intentionally misinformed as to the facts by the body or its representative.

## **ADVISORY OPINION**

The Open Meetings Act was amended in 1999, creating a Committee on Open Governmental Meetings within the West Virginia Ethics Commission. The Legislature authorized this Committee to issue written advisory opinions as to whether an action or proposed action violates the provisions of the Act. These opinions may be issued to **any governing body or member thereof** subject to the provisions of the Act.<sup>1</sup>

The requester is a citizen seeking a formal opinion from the Committee concerning the actions of a particular governing body. However, he is neither a member of that governing body nor is he inquiring on behalf of that body. The Act clearly limits this Committee's authority to issue written advisory opinions to governing bodies and their members. The requester's appointment as a Notary Public in West Virginia may confer some authority over and above the status of ordinary citizen, but it does not give him standing to obtain an opinion concerning the conduct of a governing body of a public agency on which he does not serve.

s/s James E Shepherd II  
Chairman

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<sup>1</sup>This statute was recently amended by the West Virginia Legislature in HB 2328. The amendment, which becomes effective later in June 2006, has no bearing on the issue of the requester's standing to seek a formal opinion from the Committee.

