

## OPEN MEETINGS ADVISORY OPINION NO. 2008-06

Issued On March 6, 2008 By The

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

#### OPINION SOUGHT

The Kanawha County Board of Education asks if a Local School Improvement Council is a public agency subject to the provisions of the Open Meetings Act.

#### FACTS RELIED UPON BY THE COMMITTEE

W. Va. Code § 18-5A-1, *et seq.*, establishes a Local School Improvement Council (LSIC) in all schools. In addition to describing the membership of an LSIC and how its members are selected or elected, the statute permits LSICs to apply for competitive grant awards under W. Va. Code § 18-2-29, as well as "receive and expend such grants for the purposes provided . . . ." W. Va. Code § 18-5A-2(j).

The statute further provides:

[I]n order to promote innovations and improvements in the environment for teaching and learning at the school, a school improvement council shall receive cooperation from the school in implementing policies and programs it may adopt to:

- (1) Encourage the involvement of parent(s), guardian(s) or custodian(s) in their child's educational process and in the school;
- (2) Encourage businesses to provide time for their employees who are parent(s), guardian(s) or custodian(s) to meet with teachers concerning their child's education;
- (3) Encourage advice and suggestions from the business community;
- (4) Encourage school volunteer programs and mentorship programs; and
- (5) Foster utilization of the school facilities and grounds for public community activities.

W. Va. Code § 18-5A-2(j).

In addition, W. Va. Code § 18-5A-2(k) requires LSICs to develop guidelines concerning:

[T]he instruction and rehabilitation of pupils who have been excluded from the classroom, suspended from the school, or expelled from the school, the description and recommendation of in-school suspension programs, a description of possible alternative settings, schedules for instruction, and alternative education programs . . . .

W. Va. Code § 18-5A-2(m) further authorizes LSICs to implement guidelines governing the matters previously described as well as such matters as a student involvement program, which may include a peer mediation program, a preventive discipline program, and a

system for effective communication and coordination between school and local emergency services agencies.

W. Va. Code § 18-5A-1 explains that the Legislature established LSICs to provide one of several processes “to facilitate and encourage the involvement of the school community in the operation of the local schools to improve educational quality.” Moreover, LSICs are expected to provide opportunities for involvement of the school community in the operation of the local schools and support local initiatives to improve school performance.

### **CODE PROVISIONS RELIED UPON BY THE COMMITTEE**

W. Va. Code § 6-9A-2(6) defines “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**

The Open Meetings Act applies to governing bodies of public agencies which exercise executive or legislative power. In Open Meetings Advisory Opinion 2000-13, issued on October 5, 2000, this Committee concluded that a Local School Improvement Council was a governing body of a public agency subject to the Open Meetings Act.

This Committee’s determination in Open Meetings Advisory Opinion 2000-13 resulted from considering the provisions of W. Va. Code §§ 18-5A-1 through 18-5A-3 in their entirety. Although there have been some Legislative changes to W. Va. Code §§ 18-5A-2 and 18-5A-3 since this Committee’s earlier opinion was rendered, the Local School Improvement Council continues to exercise some portion of governmental authority within a given school. Therefore, except as otherwise provided in W. Va. Code 18-5A-1 *et seq.*, each Local School Improvement Council established in accordance with these statutes is a governing body of a public agency subject to the Open Meetings Act.

This advisory opinion is limited to questions arising under the Open Governmental Proceedings Act, W. Va. Code §§ 6-9A-1, *et seq.*, and does not purport to interpret other laws or rules. Pursuant to W. Va. Code § 6-9A-11, a governing body or member thereof that acts in good faith reliance on this advisory opinion has an absolute defense to any civil suit or criminal prosecution for any action taken based upon this opinion, so long as the underlying facts and circumstances surrounding the action are the same or substantially the same as those being addressed in this opinion, unless and until it is amended or revoked.

  
James E. Shepherd II, Chairman