

OPEN MEETINGS ADVISORY OPINION NO. 2009-07

Issued On December 3, 2009 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

Michael Queen, a Member of the Harrison County Board of Education, asks whether the Harrison County Comprehensive Education Facilities Plan Committee is subject to the requirements of the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The Requester is a member of the Harrison County Board of Education (BOE). Pursuant to W. Va. Code § 18-9D-2, County BOEs must establish a ten-year countywide comprehensive educational facilities plan (CEFP) in accordance with guidelines adopted by the School Building Authority of West Virginia.

County BOEs must also update such plans annually to reflect projects completed, current enrollment projections and new or continuing needs. For those projects wherein County BOEs seek State funding, the State Board of Education and the School Building Authority must approve the CEFP prior to the distribution of state funds therefor.

The School Building Authority's Legislative Rules at § 164-1-3 requires a County BOE to develop its CEFP in accordance with State Board Policy 6200, codified at Legislative Rule § 126-172. State Board Policy 6200 provides, in relevant part:

The development of a ten-year CEFP must be achieved in the following manner:

- A. Establish a CEFP planning team and committees representative of citizens and staff from each high school attendance area.
- B. Develop countywide goals and objectives and evaluate the previous ten-year plan.
- C. Research and compile [certain] data
- D. Translate educational needs into facility needs.
- E. Develop a finance plan to implement the facility improvements.
- F. Conduct public hearings and develop a synopsis of public comments.
- G. Develop an objective methodology for evaluating the effectiveness of the plan....
- H. Meet with officials of the SBA and WVDE to assure that the plan meets their mission and goals.
- I. Submit proposed CEFP to the local board of education for approval.
- J. Submit the CEFP to the WVBE and SBA for ... approval as prescribed by the WVDE WVBE and the (SBA)....

According to the Requester, the Harrison County BOE Superintendent selected the CEFP Committee. He further states that no BOE member serves on the Committee. The Superintendent, however, serves on the Committee. Further, the BOE hired a consultant to work with the Committee to ensure compliance with State Rules.

The Requester asks whether the meetings of the CEFP Committee should be open to the public, pursuant to the Open Meetings Act.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

The Open Meetings Act applies to “public agencies” defined as:

any 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.

W. Va. Code § 6-9A-2(6). The Act requires meetings of a governing body of a public agency to be open.

ADVISORY OPINION

The Open Meetings Act applies to governing bodies of public agencies that exercise executive or legislative power. Previously, this Committee was asked whether a Local School Improvement Council (LSIC) was a governing body of a public agency subject to the Open Meetings Act. An advisory group composed of three teachers, three parents, two service employees, the principal, two at-large members appointed by the principal, and one student from a school enrolling students in grade seven or higher, the LSIC focuses on improving the education program and operation of the school.

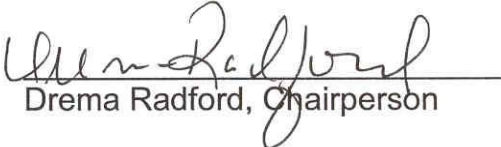
In Open Meetings Advisory Opinion 2000-13 and in Open Meetings Advisory Opinion 2008-06, this Committee concluded that a LSIC is a governing body of a public agency subject to the Open Meetings Act. The Committee noted: “Although the authority of an LSIC to exercise executive or legislative powers may be limited, policy proposals and guidelines properly adopted by an LSIC nonetheless involve exercise of governmental authority within a given school.”

Here, the Committee must determine whether a CEFP Committee exercises some portion of executive or legislative authority. As noted above, County BOEs are required to create CEFP Committees to prepare the CEFP for their---and ultimately the State Board’s---approval. Similar to an LSIC, a CEFP Committee functions as more than merely an advisory body. Indeed, a CEFP Committee plays an integral role in the development of a County BOE’s Plan, and may not be supplanted or eliminated from

the process. The CEFP Committee must submit a proposed plan to the County BOE; the County BOE must take official action on such proposed plan.

Therefore, this Committee finds that a CEFP Committee established in accordance with W. Va. Code §18-9D-2 and related Legislative Rule 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.


Drema Radford, Chairperson