

OPEN MEETINGS ADVISORY OPINION NO. 2012-01

Issued On April 12, 2012 By The

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

OPINION SOUGHT

The **Raleigh County Commission** asks whether it must give notice of its meeting by publication thereof as a legal advertisement.

FACTS RELIED UPON BY THE COMMITTEE

The Raleigh County Commission holds its regular meetings on the first and third Tuesday of each month. At times, it also holds special or emergency meetings as needed.

The County Commission has adopted rules governing the posting of its agendas for regular, special and emergency meetings. These rules were previously approved by the Committee on Open Governmental Meetings. See O.M.A.O. 2003-04 wherein the Committee approved the rules with the condition that the County Commission make the directed changes.¹

In accordance with the Commission's rules, agendas for regular, special and emergency meetings are posted at the Courthouse and on the door of the office of the County Commission. Additionally, the Commission sends its meeting agendas by facsimile or electronic mail (email) to the local television and radio stations, and the newspaper. These media outlets may, in their discretion, publicize the notices/agenda; however, the Raleigh County Commission does not contract with these media outlets to advertise their meetings nor does it normally purchase legal advertisements in the newspaper.

The Requester states that recently a question has arisen as to whether it is required to purchase a legal advertisement for purposes of placing the public on notice of its meetings.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-3 provides in pertinent part:

Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media, except in the event of an emergency requiring immediate official action.

¹ Based upon information and belief, from time-to-time the County Commission has modified its rules; however, there is nothing in the Open Meetings Act which requires a governing body to have its procedural rules, or subsequent modifications thereto, approved by the Open Meetings Committee.

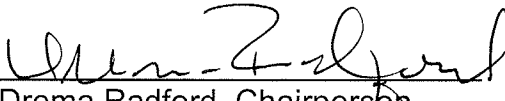
ADVISORY OPINION

The Open Meetings Committee has previously ruled that, while governing bodies of public agencies are encouraged to notify the media of regular, special or emergency meetings via telephone, mail, email or facsimile, the Open Meetings Act does **not** require direct notice to the media. See O.M.A.O.s 2005-05 and 2005-11. Instead, the Open Meetings Act only requires that meeting notices and agendas be posted in order that the public and media may have equal access to information which provides the date and time of the meeting, and items to be addressed. Copies of agendas must also be made available to the public and media at least three business days before regular meetings, and two days before special meetings. In counting days, the day of the meeting, as well as Saturdays, Sundays, and legal holidays, is excluded. See O.M.A.O. 2007-06

In regard to the question posed by the Requester, in accordance with this Committee's prior rulings and the plain language of the Open Meetings Act, the Committee finds that the Open Meetings Act does not require governing bodies to publish their meeting notices or agendas via legal advertisement. Nevertheless, the Open Meetings Committee cautions governing bodies that other statutory provisions may, at times, require that a meeting or hearing be legally advertised. For example, the West Virginia Code requires the clerk of the county commission to publish a notice via legal advertisement when the County Commission is sitting as the Board of Equalization and Review. W.Va. Code § 11-3-24. Additional requirements may also be imposed by a governing body's rules or regulations, including, in the case of municipalities, provisions in their charters or ordinances.

Governing bodies should ensure that they comply with the time requirements for posting regular, special and emergency meetings notices. These time requirements are set forth in numerous Open Meetings Committee Opinions and in the Ethics Commission's Guide to the West Virginia Open Governmental Proceedings Act. The opinions and Guide may be found at the Ethics Commission's website, www.ethics.wv.gov.

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