

## OPEN MEETINGS ADVISORY OPINION NO. 2013-02

Issued On July 11, 2013 By The

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

#### OPINION SOUGHT

The **Greenbrier County Commission** asks for guidance on whether its new Agenda Policy and Procedures comply with the requirements of the Open Meetings Act.

#### FACTS RELIED UPON BY THE COMMITTEE

In Open Meetings Advisory Opinion 2002-14, this Committee provided guidance and approved procedural rules that had been adopted by the Greenbrier County Commission to comply with the requirements of W. Va. Code § 6-9A-3. Since that time, the County Commission has changed its meeting schedule, and seeks this Committee's review for compliance with the open Meetings Act. The County Commission seeks to adopt the following policy:

The Greenbrier County Commission will hold its regular meetings on the second and fourth Tuesday of every month at the Greenbrier County Courthouse. The agenda for the same shall be posted at the front door of the Courthouse no later than three (3) business days before a meeting, excluding Saturdays, Sundays, legal holidays and the day of the meeting, by 4:30pm of the first day, except for emergency situations as defined by the Open Meetings Act. The only circumstance under which the agenda may be amended during a meeting is if a true emergency arises, as defined by the Open Meeting Act. Reasonable effort will be made to provide notice of meetings via email and/or fax to the local media by 4:30pm of the first day. Special meetings shall be similarly noticed no later than two (2) business days before a meeting, excluding Saturdays, Sundays, legal holidays, and the day of the meeting, by 4:30pm of the first day, and shall contain the date, time, place and purpose of the meeting.

#### 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.

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The Open Meetings Act requires public agencies to inform the public of (1) the time, date, place and purpose of their meetings and (2) what will be dealt with at the meetings. This means agencies must (1) give "meeting notice", telling the public when and where the meeting will be held, and (2) provide a "meeting agenda", telling the public the items of business with which the meeting will deal.

In Open Meetings Advisory Opinion 2001-19, this Committee wrote:

The statute does not set a specific deadline for making an agenda available to the public.

The Committee has previously concluded that the agenda must be made available within a "reasonable time" in advance of the meeting. How far in advance of a meeting gives "reasonable" notice will vary with the circumstances peculiar to each agency. Therefore, this question must be addressed on a case-by-case basis.

In Open Meetings Advisory Opinion 2001-04 this Committee ruled that the Braxton County Commission, when meeting twice a month, complies with the requirements of the Act by making its agenda available to the public and news media at least **three** days prior to its regularly scheduled meeting. By contrast, in Open Meetings Advisory Opinion 2001-10, the Committee found that the Kanawha County Commission, when meeting weekly, or twice a week, complies with the Act by making its agenda available to the public and news media at least **two** days prior to the meeting.

Here, the Greenbrier County Commission, like the Braxton County Commission, meets twice a month. Therefore, this Committee finds that the Greenbrier County Commission continues to comply with the Act by making its agenda available to the public and news media at least three business days prior to a regular meeting, and two business days in advance of a special meeting.

For purposes of calculating the number of days in the notice period, the day of the meeting is not counted. Further, Saturdays, Sundays and legal holidays must be excluded, as government offices are generally not open for business on such days, and there is usually no one available to respond to questions from the public or news media.

The Open Meetings Act permits a governing body to amend an agenda to add additional items of business - items not known at the time the original agenda was prepared and made available to the public, up to two business days before the meeting, and made available to the public in the same manner as the original agenda. Generally, no amendment of the agenda may be made less than two business days before a meeting, unless it is to deal with an emergency matter. Routine matters that come up after the deadline to amend an agenda must be held over to the next regular meeting or until the governing body calls a special meeting.

Finally, the proposed revision reads: "The only circumstance under which the agenda may be amended during a meeting is if a true emergency arises, as defined by the Open Meeting Act." During the 2013 Regular Session, the West Virginia State Legislature passed HB 2747 amending the Open Meetings Act in order to better define what situations constitute an emergency. W. Va. Code § 6-9A-2 now reads:

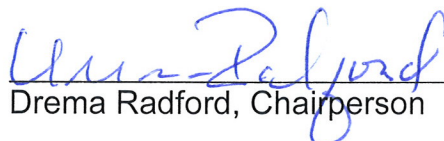
(2) "Emergency meeting" means any meeting called by a governing body for the purpose of addressing an unexpected event which requires immediate attention because it poses:

- (A) An imminent threat to public health or safety;
- (B) An imminent threat of damage to public or private property; or
- (C) An imminent material financial loss or other imminent substantial harm to a public agency, its employees or the members of the public which it serves.

Thus, this Committee hereby finds that a governing body may only amend an agenda during a meeting if the proposed agenda item meets the definition set forth above. If the issue can actually wait two business days for the governing body to take official action, then it is not a true emergency. Instead, the governing body may call a special meeting to address the issue.

In closing, the Greenbrier County Commission's new Agenda Policy and Procedures complies with the requirements of 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