

**OPEN MEETINGS ADVISORY OPINION NO. 2016-03**

**Issued on November 3, 2016, by**

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

**OPINION SOUGHT**

The **Pocahontas County Commission** seeks to verify whether its revised policy relating to posting agendas complies with the Open Governmental Proceedings Act.

**FACTS RELIED UPON BY THE COMMITTEE**

On September 1, 2016, this Committee issued Open Meetings Advisory Opinion 2016-02, which generally approved of the Pocahontas County Commission's proposed policy and procedures ("policy") for the issuance of meeting agendas for all regular, special and emergency meetings. The Opinion noted, however, that the policy needed to be revised to exclude the day of the meeting from the regular and special meeting notice period calculation. The Opinion also found that the policy needed to be revised to provide that a governing body shall post an emergency meeting as soon as practicable prior to the meeting, and that the agenda for an emergency meeting needed to explain the facts and circumstances of the emergency in addition to the date, time, place and purpose of the emergency meeting.

The Pocahontas County Commission has since revised its policy pursuant to this Committee's direction in Open Meetings Advisory Opinion 2016-02. The Committee has reviewed the revised policy in its entirety. A complete copy of the policy is attached to this Advisory Opinion as Appendix A.

**CODE PROVISIONS RELIED UPON BY THE COMMITTEE**

W.Va. Code § 6-9A-2(2) reads as follows:

"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.

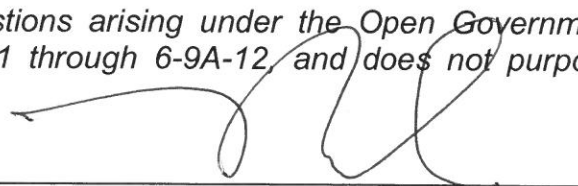
W.Va. Code § 6-9A-3 reads in relevant part:

- (a) Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public  
...
- (d) 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.  
...
- (h) In the event of an emergency a governing body may call an emergency meeting.
  - (1) The governing body of a state executive branch agency shall electronically file a notice for an emergency meeting with the Secretary of State, as soon as practicable prior to the meeting. Any other governing body shall notice an emergency meeting in a manner which is consistent with this article and the Ethics Commission Committee on Open Governmental Meeting's opinions issued pursuant to the authority of section ten of this article, as soon as practicable prior to the meeting.
  - (2) The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

### **ADVISORY OPINION**

**The Committee finds that the Pocahontas County Commission's revised policy for the issuance of meeting agendas for all regular, special and emergency meetings is consistent with the provisions of the Open Governmental Proceedings Act.** The Committee notes that this Opinion, and any immunity which the governing body receives, will be limited to whether the revised policy is inconsistent with the Act. The Opinion does not address discretionary application of the revised policy to a specific situation.

*This Advisory Opinion is limited to questions arising under the Open Governmental Proceedings Act, W.Va. Code §§ 6-9A-1 through 6-9A-12, and does not purport to interpret other laws or rules.*



Lawrence J. Tweel, Chairperson  
Open Governmental Meetings Committee  
West Virginia Ethics Commission

# APPENDIX A

## POCAHONTAS COUNTY COMMISSION AGENDA POLICY AND PROCEDURES

The Pocahontas County Commission will hold its regularly scheduled meetings on the first (1<sup>st</sup>) and third (3<sup>rd</sup>) Tuesdays of each month at the County Commission Office located in the Pocahontas County Courthouse, 900 Tenth Avenue, Marlinton, West Virginia 24954 as follows: The first (1<sup>st</sup>) Tuesday meeting of each month shall begin at 8:30 am. and the third (3<sup>rd</sup>) Tuesday meeting of each month shall begin at 5:30 pm. Agendas for the Commission's regularly scheduled meetings, stating the date, time, and place of the meeting, shall be posted at the Pocahontas County Courthouse and also made available in the County Commission Office, no later than three (3) business days prior to the meeting, excluding the day of the meeting, by 4:30 pm. of the first day, except for emergency situations to be determined by the County Commission. Saturdays, Sundays and legal holidays, or pre-scheduled days for closing the Courthouse are not considered business days for purposes of posting agendas. Should a legal holiday or a pre-scheduled day for closing the Courthouse fall on one of the three (3) days as outlined above, then the agenda shall be posted one (1) day earlier by 4:30 pm. for each holiday or pre-scheduled closing of the Courthouse. When a meeting agenda has been issued three (3) or more business days in advance of a meeting, it may be amended up to two (2) business days before the meeting. Agendas may only be amended at the request of a County Commissioner, and once amended, will be posted in the same manner as the original agenda. Reasonable effort will be made to provide notice of all meetings to the local media as soon after posting as practical.

Agendas for special meetings, stating the date, time, place, and purpose of the meeting, shall be posted at the Pocahontas County Courthouse and also made available in the County Commission Office no later than two (2) business days prior to the meeting, excluding the day of the meeting, by 4:30 pm. of the first day. Saturdays, Sundays and legal holidays, or pre-scheduled days for closing the Courthouse are not considered business days for purposes of posting agendas. Should a legal holiday or a pre-scheduled day for closing the Courthouse fall on one of the two (2) days as outlined above, then the agenda shall be posted one (1) day earlier by 4:30 pm. for each holiday or pre-scheduled closing of the Courthouse. Reasonable effort will be made to provide notice of all special meetings to the local media as soon after posting as practical.

Agendas for emergency situations as determined by the County Commission, explaining the facts and circumstances of the emergency, and the date, time, place, and purpose of the meeting, shall be posted at the Pocahontas County Courthouse and made available in the County Commission Office as soon as possible after an emergency meeting has been declared, and prior to the meeting, and reasonable effort will be made to provide notice of any such meeting to the local media as soon after posting as practical.

**All requests to be added to any County Commission agenda should be made by contacting the County Commission's Office not later than 4:00 pm. at least one (1) business day prior to the first (1<sup>st</sup>) day of posting, to allow sufficient time for approval by the Commission.**

Adopted by the Pocahontas County Commission on September 20, 2016