

Open Meetings Advisory Opinion No. 2019-01

Issued on January 3, 2019, by

**The West Virginia Ethics Commission
Committee on Open Governmental Meetings**

Opinion Sought

The **Superintendent of Brooke County Schools** asks whether out-of-calendar days and days outside the school environment are counted when computing time periods for providing notice of meetings under the Open Governmental Proceedings Act.

Facts Relied Upon by the Committee

County boards of education are required to provide 20 noninstructional days within a school term, six of which must be outside the school environment (“OSE”) days. W. Va. Code § 18-5-45(c)(3). In full, the 20 noninstructional days are required to be comprised of seven paid holidays; election day; six OSE days; one day for preparation for opening school; one day for preparation for closing school; and the remaining days are to be designated for curriculum development, professional development, teacher-pupil-parent conferences and professional meetings, etc. *Id.* Boards of education must also designate out-of-calendar (“OC”) days that are to be used for instructional days in the event school is cancelled for any reason. W. Va. Code § 18-5-45(c)(4).

All employees are paid for, but do not work on, OSE days. With regard to OC days, 200-day employees (e.g., teachers) do not report to work and are not paid unless the OC day is converted into an instructional day. 261-day employees (year-round employees including, e.g., central office staff), however, are required to work on OC days.

Code Provisions Relied Upon by the Committee

W. Va. Code § 6-9A-3 reads as follows:

(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.

Advisory Opinion

The Open Meetings Act requires governing bodies of public agencies to timely post a meeting notice which notifies the public when and where a public meeting will be held and to make available an agenda which notifies the public of the items of business which will be addressed at the meeting. W. Va. Code § 6-9A-3.

The Act does not specifically establish when meeting notices or meeting agendas for local governing bodies¹, such as county boards of education, must be made available to the public. As the Act does not provide specific guidance for local governing bodies, in accordance with its authority to interpret the Open Meetings Act, this Committee has established time frames in prior Open Meetings Advisory Opinions in which local governing bodies may post meeting notices and make agendas available.

For a governing body which meets on a regular basis, the Committee has established that posting notices and making agendas available at least three business days before each regularly scheduled meeting complies with the Act. Open Meetings Advisory Opinions 2006-11 and 2006-15.² A Board may make an agenda available by "posting its meeting agenda for each regularly scheduled meeting in a public place at its central office, as well as having copies of the agenda available to be picked up at the same location during regular business hours. In addition, the Board, in its discretion, may distribute agendas to the news media by mail, telephone facsimile or E-mail, or the agenda may be posted on an Internet website, if the Board has established a presence on the Internet." Open Meetings Advisory Opinion 2006-15.

The School Superintendent asks whether OC days and OSE days are counted when computing time periods under the Act. **When counting business days under the Act, the day of the meeting, Saturdays, Sundays and legal holidays are excluded.** Open Meetings Act Advisory Opinions 2006-15 and 2012-01. Accordingly, OC and OSE days are to be counted unless they occur on the day of the meeting, Saturday, Sunday or are considered a legal holiday.

Whether OSE and OC days are considered legal holidays can be ascertained by reviewing West Virginia's statutes governing school calendars and legal school holidays. The school calendar statute treats OSE and OC days separate and distinct from paid holidays. W. Va. Code § 18-5-45(c). The statute provides that noninstructional days shall include, among others, seven paid holidays *and* six OSE days. W. Va. Code § 18-5-45(c)(3). The statute additionally states that the school term shall include OC days to be used for instructional days in the event school is cancelled. W. Va. Code § 18-5-45(c)(4). Furthermore, OSE and OC days are not among the designated legal school holidays. W.

¹ The Act provides that state agencies must file a notice in a manner to allow each notice to appear on the Secretary of State's website at least five business days prior to the date of the meeting. W. Va. Code § 6-9A-3(e).

² Local governing bodies that meet once a week may post notices and make agendas available for regular meetings two business days before the meeting. See Open Meetings Advisory Opinion 2007-09.

Va. Code § 18A-5-2(a) (designating legal school holidays as Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King's birthday, Memorial Day and West Virginia Day).³

The Committee on Open Governmental Meetings therefore holds that OSE days and OC days are not considered legal holidays and are thus counted for purposes of computing time periods under the Open Governmental Proceedings Act. The Committee notes that proper notice and agenda requirements must continue to be met during OC and OSE days.

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.



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³ The statute additionally provides that schools shall be closed “on any day appointed and set apart by the president or the Governor as a holiday of special observance by the people of the state.” W. Va. Code § 18A-5-2(a).