

Open Meetings Advisory Opinion No. 2024-03

Issued on September 5, 2024, by

The West Virginia Ethics Commission
Committee on Open Governmental Meetings

Opinion Sought

A **Vienna City Council member** asks whether the Open Meetings Act will apply to a steering committee it creates to help guide an engineering firm in creating a master plan for a city park and to make recommendations to city council on the final approval of the plan.

Facts Relied Upon by the Committee

A Vienna City Council member (“Council Person” or “Requester”) is one of five members of the City Council for Vienna, WV. The City Council meets approximately twice per month, and the City is also governed by a full-time Mayor, who is entitled to vote on matters that come before the City Council, and a City Recorder, who is likewise a voting member.

The City of Vienna has four properties alongside the Ohio River. Located within this area is a park known as Spencer’s Landing. The City would like to develop a “master plan” for these properties, called the “Spencer’s Landing Amphitheater Master Plan Project” (hereinafter the “Project”). Besides the development of an amphitheater, the Project may include such things as walking and biking trails, a boat launch, a concession area, restroom facilities, and associated infrastructure.¹

To accomplish this Project, the City sought out qualified engineering firms and ultimately decided on the Thrasher Group (hereinafter “Thrasher”). At the July 25, 2024, council meeting, the City of Vienna approved Thrasher’s proposal by adopting a resolution for the Project. The Thrasher contract anticipates and welcomes input from the public. Thrasher's contract envisions the City creating a steering committee that will meet with the engineers and design team to give them feedback and recommendations on the Project, which Thrasher will then use to revise and make a master plan. The final version of the Project master plan will require approval by the Vienna City Council.

¹ W. Va. Code § 8-12-5(36) provides, in relevant part, that a municipality is authorized to “establish, construct, acquire, provide, equip, maintain and operate recreational parks, playgrounds and other recreational facilities for public use and in this connection also to proceed in accordance with the provisions of article two, chapter ten of this code”

The steering committee will be involved in each planning step of the Project. The steps are as follows: Thrasher will begin with an “inventory and analysis” stage, including going onsite to assess conditions and opportunities for the Project and also preparing a web-based survey for renovations to Spencer’s Park and possible uses for other properties nearby.

The next step is the “planning” stage. Thrasher will submit an initial preliminary concept for the Project to the steering committee for feedback and to, “incorporate any necessary revisions into the proposed plans.” The initial concept will specifically address features such as the amphitheater, parking, walking and biking paths, boat launch, green room, concessions and associated infrastructure, etc.

Then, a public open house will be held where a formal presentation of the plan will be presented followed by Q&A and then a breakout session where community members can interact with city officials and the design team to give feedback. Notes will be taken and shared with the steering committee after this public open house. The engineers and the steering committee will then meet to review the feedback and determine the elements most liked from any various alternatives. Then, once “the master plan has been developed it will be reviewed with the project steering committee to receive a final round of feedback prior to finalizing the plan.” Finally, once a final Project master plan is in place, the engineers propose to work with the steering committee to break the project into different phases of construction based on available funds. Notably, the Project, “will depend heavily on meetings for public engagement and steering committee engagement to be scheduled in a timely manner so that feedback . . . can be incorporated by the design team.”

As noted above, Vienna City Council passed a resolution at its July 25, 2024, meeting accepting the Thrasher Group’s proposal. Immediately following the adoption of the resolution, council took up a resolution to create the steering committee envisioned under the contract. The resolution proposed having the steering committee consist of 10 proposed members including, the mayor, three employees of the City of Vienna, two City Council members, the executive director of the Wood County Development Authority as well as three Vienna residents (one named individual and the two others to be determined). After debate about the make-up of the membership of the steering committee, and a failed attempted amendment to the resolution, the motion to adopt the resolution to create the steering committee failed. Nonetheless, discussion and the resolutions from the Vienna City Council meeting show that the steering committee may be established either by a future resolution or by the mayor.²

² In addition to authority to develop and maintain parks under Code Section 8-12-35(36), the City of Vienna is further authorized by subparagraph (43) of the same section, to establish, construct, require, maintain and operate instrumentalities . . . for enlightenment, improvement, entertainment, recreation and welfare of city residents. Further, the City of Vienna Codified Ordinance Part Nine, Chapter 5, Article 951, sets forth comprehensive regulations for city parks.

Code Provisions Relied Upon by the Committee

W. Va. Code § 6-9A-2(4) states:

“Governing body” means the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members; for the purposes of this article, a governing body of the Legislature is any standing, select or special committee, except the commission on special investigations, as determined by the rules of the respective houses of the Legislature.

W. Va. Code § 6-9A-2(5) states, in relevant part:

(5) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means. The term meeting does not include:

.....

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or

(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.

W. Va. Code § 6-9A-2(7) states:

"Public agency" means 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. The term "public agency" does not include courts created by article eight of the West Virginia Constitution or the system of family law masters created by article four, chapter forty-eight-a of this code.

W. Va. Code § 6-9A-3(a) states:

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.

Advisory Opinion

The Open Meetings Act requires a governing body of a public agency to hold public meetings, subject to exceptions. "Public agency" means any administrative or legislative unit of . . . 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(7). (emphasis added).

The first issue is whether the steering committee is a "public agency." The steering committee will be taking an active role in developing city property for recreational use by working closely with an engineering firm hired by the City to seek public input on park amenities and features and develop, revise, and then finalize a proposed master plan for City Council approval. The steering committee will have significant influence and discretion on the final recreation features and accompanying infrastructure of Spencer's Landing Park. The goal of the Project is to improve the quality of life for City residents and promote overall growth of the community. The steering committee will also work with Thrasher on the actual construction phases of the final project based on funding, thus giving the steering committee significant power over what Project features may get priority. Therefore, this Committee holds that the steering committee exercises some portion of the City's executive power, per W. Va. Code § 6-9A-2(7), and qualifies as a public agency under the Open Meetings Act.

Next, this Committee must determine whether the steering committee is a governing body of the Vienna City Council and, therefore, subject to the Open Meetings Act requirements. "Governing body" means "the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members" This Committee has previously addressed whether committees are governing bodies of public agencies. In [Open Meetings Advisory Opinion 2002-13](#), this Committee held that a standing committee, consisting of two or more members of a public agency, whose purpose is to make recommendations to the public agency as a whole, is a governing body of a public agency, and must conduct its meetings in compliance with the Open Meetings Act. See also [Open Meetings Advisory Opinion 2005-05](#). In [Open Meetings Advisory Opinion 2014-02](#), this Committee held that committees that are merely tasked with "collation of data or preliminary research, however, are not subject to the Act as long as they are not tasked with making recommendations about that data to the Council or otherwise exercise executive or legislative power."

Whether a committee is a “governing body” for purposes of the Open Meetings Act depends upon the authority delegated to the committee by the public agency that created it. For example, in [Open Meetings Advisory Opinion 2009-07](#), this Committee held that a comprehensive education facilities plan committee is a governing body under the Open Meetings Act because the committee had an integral role in the development of a county board of education facilities plan. Here, the proposed responsibilities of the steering committee as set forth in the Thrasher proposal are a significant delegation of responsibility by the City of Vienna for the envisioned project, and the steering committee will have considerable say in the final details of the Project. Whether council members are appointed to serve on the steering committee is not determinative.³

This Committee finds that since the Vienna City Council is delegating authority to the steering committee to work with a city-hired consultant to make recommendations to the City Council on policy or administration, including initial, revised, and proposed designs and features of the park Project, then the steering committee is a governing body under the Open Meetings Act.

The Requester has also asked this Committee to address which gatherings of the steering committee are subject to the notice, agenda, minutes, and other public meeting requirements under the Open Meetings Act. W. Va. Code § 6-9A-3. A “meeting” under the Act is “the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action.” W. Va. Code § 6-9A-2(5) (defining meeting and acts excluded from the definition). Not every gathering of a governing body is a public meeting. *Id.*

In [Open Meetings Advisory Opinion 2018-01](#), this Committee concluded that county commissioners may meet with other county officials and their staff members regarding concerns the staff members had about performing their work so long as the meetings would simply serve as an educational tool for the commissioners to learn about the functions of other county elected officials and their staffs.⁴ Conversely, in [Open Meetings Advisory Opinion 2019-03](#), this Committee held that a quorum of civil service commissioners may not meet outside of a public meeting to discuss staff job duties, staff performance, appropriate office conduct, or approving expenditures because such activities go beyond simply serving as an educational tool for commissioners.

³ In [Open Meetings Advisory Opinion 2007-07](#), this Committee found that a group appointed by resolution of two municipalities to study water quality in the area and to report back to each municipality was a governing body subject to the Open Meetings Act. The Opinion noted that normally one or more of the members of the water quality study group were also elected members of the town councils which formed the group, but the Opinion did not make the presence or absence of town council members on the water quality study group a determinative factor in finding that it was subject to the Act.

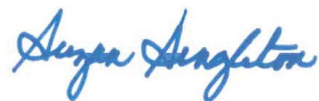
⁴ Nonetheless, to avoid any possibility of contravening the Act, this Committee still recommended that only one member of the county commission attend the meetings and report back to the full commission during a properly noticed meeting where this item has been placed on the agenda.

This Committee holds that when the steering committee meets with the public, the engineers, or the city council, or any combination thereof, to facilitate the exchange of information or to educate these groups about the Project, these meetings may be held in private because the gatherings fall under the exception in the Act for educational meetings.

When the steering committee meets to deliberate or vote on recommendations to City Council or Thrasher on policy or administration, such as the final Project contents and features, or financing matters (including costs and acquiring grants or other budgeting considerations), then a quorum of those steering committee members may not meet outside of a properly noticed public meeting.

The steering committee must determine prior to each meeting, based upon the purpose of the meeting, whether it must notice and hold a public meeting or whether the gathering is one that does not require a public meeting under the Open Meetings Act. For a gathering not subject to the Open Meetings Act public meeting requirements, the committee participants must ensure that they do not stray into discussing matters that must be considered at properly noticed public meetings.

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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