

This opinion has been expressly over-ruled by OMAO 2011-03, May 5, 2011

OPEN MEETINGS ADVISORY OPINION NO. 2000-02

**ISSUED BY THE WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS
ON MARCH 2, 2000**

GOVERNMENTAL BODY/MEMBER SEEKING OPINION

Dr. Larry Parsons, Superintendent on behalf of the Mason County Board of Education.

OPINION SOUGHT

May the board of education go into executive session to discuss a matter that does not appear on the agenda presented for the meeting in session?

FACTS RELIED UPON BY THE COMMITTEE

There are times when a board of education wants to go into executive session to discuss a matter which has not specifically been listed on the agenda. This may occur because a member of the public wishes to address a topic required to be presented in executive session, such as misconduct of an employee. The superintendent, while giving a routine update, may touch on a confidential matter, such as the results or aftermath of a student disciplinary proceeding.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

§6-9A-4. Exceptions.

(a) The governing body of a public agency may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the governing body shall identify the authorization under this section for holding the executive session and present it to the governing body and to the general public, but no decision may be made in the executive session.

(b) An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public agency. A public agency may hold an executive session and exclude the public only when a closed session is required for [certain enumerated] actions...

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ADVISORY OPINION

The Open Governmental Proceedings Act permits certain enumerated subjects to be discussed and deliberated in a closed session. An executive session is merely a procedural device afforded to a governing body in order to maintain confidentiality when necessary.

Because executive sessions are the exception rather than the rule, the Act provides certain procedural safeguards to protect the public's right of scrutiny. Before a governing body may go into executive session, a motion must be made which identifies the portion of the Act authorizing closed proceedings on a particular topic. Except for student discipline, the governing body may not make a final decision in executive session. Also, the individual involved in a particular matter which may be considered in executive session has the right to request an open meeting.

It is the opinion of the Committee that the Act requires reasonable advance notice to the public of all agenda items which require a decision or deliberation towards a decision, whether they may be discussed in open or executive session. Although agenda items such as a student disciplinary matter may be listed in general terms to protect the student's confidentiality rights, there are practical reasons why advance notice is still necessary. Members of the public with personal knowledge about an issue may wish to address the board in its executive session. A majority of the governing body may vote against closing the meeting or the individual involved may request an open session.

Members of the public, during a public comment portion of a school board meeting, or the superintendent, during his report to the board, may raise a significant issue which is not specifically listed on the agenda. Except in emergency situations, the board may not take official action on this issue, if the decision is the type which requires a quorum of the members to be present. This is true whether the topic is one which may be discussed in executive session or must be presented in the open portion of the meeting. The board may discuss the matter to the extent necessary to determine whether official action will be needed. If so, the item will need to be rescheduled for another meeting. These limited discussions may occur in executive session if warranted by the exceptions listed in the Act upon proper motion.

_____S/S_____
Chairman