

OPEN MEETINGS ADVISORY OPINION NO. 2000-09

Issued On August 3, 2000 By The

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

OPINION SOUGHT

Edgar Mason, a member of the Berkeley County Solid Waste Authority, asks if the Open Meetings Act contains specific requirements concerning amending the governing body's by-laws. He further asks to verify what constitutes a quorum, and whether Authority members may publicly discuss agenda items in the absence of a quorum.

FACTS RELIED UPON BY THE COMMITTEE

The Berkeley County Solid Waste Authority is a public agency established pursuant to authority contained in W. Va. Code § 22C-4-1, *et seq.*, with a board of directors consisting of five members. W. Va. Code § 22C-4-3(b). The Authority seeks to amend its by-laws, and wants to determine whether any special form of notice is required. The Authority also wants to verify what constitutes a quorum, and whether the members can discuss agenda items at a properly scheduled open meeting, in the event a quorum is not attained.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-3 provides:

Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings are made available, in advance, to the public and news media, except in the event of an emergency requiring immediate official action.

W. Va. Code § 6-9A-2 provides the following definitions:

As used in this article:

(4) "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 deliberate toward a decision on any matter which results in official action. . . .

(5) "Official action" means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.

(7) "Quorum" means the gathering of a simple majority of the constituent membership of a governing body, unless applicable law provides for varying the required ratio.

ADVISORY OPINION

The first question to be addressed involves giving notice of proposed changes in the Authority's by-laws. The Open Governmental Proceedings Act requires a governing body, consistent with its properly promulgated rules, to publish, in advance of a scheduled meeting, an agenda which includes all items that require official action to be taken at that meeting. A change in the governing by-laws is a matter which would require official action by the governing body. Therefore, any proposed change in the by-laws should be included in the agenda.

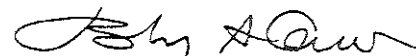
As a minimum, the agenda should indicate the article and section of the by-laws which is proposed for amendment, and generally describe the change being proposed. For example, "amend article III, Section C to change the term of office for Secretary from two years to three years" or, "revise Article IV, Section D(3) to increase the annual dues from \$25 to \$50."

The Act does not differentiate between notice for a proposed amendment to the Authority's by-laws and any other official action. However, more specific requirements may be included in the Authority's current by-laws, or the statutes under which the Authority has been established. Because this Committee is only authorized to give advice on the application of the Open Governmental Proceedings Act, any requirements in sources outside the Act are beyond the scope of this opinion.

The second issue involves applying the Act's definition of quorum to the Authority. The Act defines quorum as a "simple majority" of the constituent membership. In the absence of a specific requirement contained in the by-laws, or any law or statute specifically applicable to solid waste authorities, the Authority would have a quorum sufficient to conduct official business when three of the five members are present.

The third and final issue concerns whether two board members who appear for a regularly scheduled meeting, and find that a quorum is lacking, may nonetheless publicly discuss matters included in the agenda for that meeting. The Authority recognizes that, in the absence of a quorum, attending members have no authority to take official action on any matter on the agenda.

The Open Governmental Proceedings Act seeks to promote open government and public access to information. In the scenario presented by this inquiry, the notice requirements of the Act were met when the date, time and place of the meeting, and an agenda of items to be discussed at the meeting, were appropriately disseminated in advance of the meeting. The Committee finds that subsequent public discussion of matters on the meeting agenda by less than a quorum of the members who appear for a properly scheduled meeting would not violate the Open Governmental Proceedings Act.



Chairman