

OPEN MEETINGS ADVISORY OPINION NO. 2000-12

Issued On September 7, 2000 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

Tammy R. Titchenell, a Member of the Preston County Board of Education, asks on behalf of the Board if the personnel agenda they are presently providing the public at their meetings complies with the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The requester advises that the Board of Education presently provides the public attending a board meeting with a personnel agenda to follow during the meeting that provides information on such matters as hiring, transfer, resignation, and retirement in the following format:

Example A: "1. **Recommendation:** Approve **Educational Leave of Absence** for _____, Teacher at North Side School, effective 2000-2001 school term."

At the same time the public has access to Example A, the board members are provided with a parallel agenda in the following format:

Example B: "1. **Recommendation:** Approve **Educational Leave of Absence** for **John Smith**, Teacher at North Side School, effective 2000-2001 school term."

The Board votes on the matter in the examples by reference to the numbered agenda item without reference to Mr. Smith as the person involved. The names of the persons involved in such decisions are not revealed until after the meeting has concluded.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-8(a) provides:

Except as otherwise expressly provided by law, the members of a public agency may not deliberate, vote, or otherwise take official action upon any matter by reference to a letter, number or other designated or other secret devise or method, which may render it difficult for persons attending a meeting of the public agency to understand what is being deliberated, voted or acted upon. However, this subsection does not prohibit a public agency from deliberating, voting or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted or acted upon, are available for public inspection at the meeting.

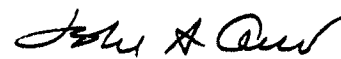
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The Open Governmental Proceedings Act specifically prohibits voting by reference to a letter, number, or any other designation, unless (1) expressly provided by law; or (2) the public has access to an agenda “sufficiently worded to enable the public to understand what is being deliberated, voted or acted upon.”

In the case of personnel matters, the Committee is not aware of any statutory provision which would preclude the public from knowing the identity of the person the Superintendent is recommending to the county board for hire, transfer, grant of a leave of absence, or acceptance of a resignation or application to retire.

In order to comply with the Open Meetings Act, the Board should either publish an agenda which substantially follows the format in Example B, or continue to publish an agenda in the format of Example A, while announcing the name of the person or persons involved in each personnel action, in addition to the reference number or letter in the agenda, at the time the matter is presented to the board for action.

In the case of a disciplinary matter, such as dismissal or suspension for cause, which may be discussed in executive session as provided in W. Va. Code § 6-9A-4(b), the meeting agenda provided the public may exclude the person’s name, as in Example A, unless the employee requests an open meeting. However, the Open Meetings Act requires that, following any discussion in executive session, the name of the person being considered for discipline must be announced in open session before the board takes action to impose discipline.



Chairman