

**OPEN MEETINGS ADVISORY OPINION NO. 2000-14**

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

**OPINION SOUGHT**

James D. Williams, Chairman of the West Virginia Infrastructure and Jobs Development Council (Council) asks whether the procedures the Council currently follows in reviewing funding applications comply with the Open Meetings Act.

**FACTS RELIED UPON BY THE COMMITTEE**

The Council coordinates the review and approval of all applications for State related funding for water, wastewater and economic development projects in the State. Seven of the Council's eleven voting members are *ex officio* representatives of State agencies, and the remaining four are appointed by the Governor to represent the general public. The Council, which has only two employees, relies on the staff of the State agencies represented on the Council to perform much of its work.

The Council meets monthly to review committee reports and make final recommendations to project sponsors. All Council meetings and all meetings of the Council's standing committees are treated as public meetings and noticed with the Secretary of State's office.

One of the Council's two Technical Review Committees reviews each application to determine the project's technical feasibility and cost effectiveness. Committee members review applications independent from the other members and give the Committee Chair written comments. Generally, the Committee Chair prepares the Committee's recommendation for further action without a Committee meeting, based on the Committee members' written comments. If the Committee Chair felt a meeting were necessary, the meeting would be noticed with the Secretary of State's office.

The Council's Funding Committee meets monthly to review each application and recommend to Council appropriate funding sources. Prior to each Funding Committee meeting, the Council's staff and some Funding Committee members and others conduct a work session to collect information and clarify issues to be dealt with in the upcoming Committee meeting. This work session is also noticed with the Secretary of State's office and may, or may not, have a quorum of Funding Committee voting members present.

On occasion, there are additional, unscheduled, Funding Committee work sessions which do not include a quorum of voting members of the Funding Committee. These work sessions have not been treated as public meetings and no notice is given the Secretary of State's office.

## CODE PROVISIONS RELIED UPON BY THE COMMITTEE

“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. W. Va. Code § 6-9A-2(6).

“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. . . . W. Va. Code § 6-9A-2(3).

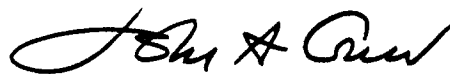
“Meeting” means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. W. Va. Code § 6-9A-2(4).

## ADVISORY OPINION

In Open Meetings Advisory Opinion (OMAO) 2000-07 this Committee held that the Open Meetings Act permits the members of a city planning commission to receive and independently review plans in advance of a scheduled open meeting. Here the Committee finds that the procedure used by the Council for independent review of applications by Technical Review Committee members is consistent with the Open Meetings Act.

Also in OMAO 2000-07, this Committee said that a gathering between two or more members of the city’s planning commission, to review and prepare for an upcoming meeting, would constitute a meeting under the Act, and must be a properly scheduled meeting open to the public. This Committee believes it defeats the purpose of the Open Meetings Act to allow two or more members of a governing body to get together privately, without notice to the public, and discuss the merits of matters they will later be called to vote upon in an open meeting.

The work sessions inevitably necessitate discussion of matters that will require official action by the Funding Committee. Accordingly, a work session in which two or more of the Funding Committee’s voting members participate must be treated as a public meeting and held in accordance with the Open Meetings Act.



Chairman