

**OPEN MEETINGS ADVISORY OPINION NO. 2000-16**

**Issued On December 7, 2000 By The**

**COPY**

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

**OPINION SOUGHT**

Susan B. Saxe, Legal Counsel for the Consolidated Public Retirement Board (Board), asks if the Board's Accounting and Investments Committee (Committee) can meet with its consultant in executive session to discuss certain investment issues.

**FACTS RELIED UPON BY THE COMMITTEE**

The Board is statutory trustee of the West Virginia Teachers Defined Contribution Plan (Plan), a retirement plan for public school teachers and employees. The Board has retained a financial consultant to review the Plan and advise the Committee on several issues, including whether to select new service or investment providers through a competitive bid process. The Board believes that public disclosure of its consultant's advice on various factors to be considered in selecting a new provider could benefit one potential provider over another and adversely affect the commercial competition of the bid process.

**CODE PROVISIONS RELIED UPON**

W. Va. Code 6-9A-4 provides in pertinent part:

(b) . . . A public agency may hold an executive session and exclude the public only when a closed session is required for one of the following actions:

(9) To consider matters involving or affecting . . . the investment of public funds or other matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the state or any political subdivision.

**ADVISORY OPINION**

The Open Governmental Proceedings Act permits governing bodies to hold an executive session and exclude the public only when a closed session is required for one of several reasons specified in W. Va. Code § 6-9A-4. Based on information provided by the Board, their financial consultant will be providing information to the Committee that involves or affects both the investment of public funds and an expected commercial competition. These are matters which the Open Meetings Act permits the Committee to discuss in an executive session. However, any decision on an action or recommendation must be made in an open meeting.



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Chairman