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Issued On May 3, 2001 By The

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

OPINION SOUGHT

Walter Schmidlen, Randolph County Commissioner, asks whether two or more County Commissioners getting together with municipal officials to encourage participation in a project, or giving a presentation to obtain state support for a project, would involve meetings which must be convened in accordance with the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

After deciding at a public meeting to encourage municipal participation in a sewer project, and sending correspondence to the municipality communicating their position, the County Commissioners have been invited to meet with the Mayor and one or more City Council Members to discuss the project.

The Commissioners, consistent with their previous public actions, intend to provide information to the municipal officials regarding the project. The Commissioners do not plan to use the meeting to discuss any further official action they would be taking on the project.

In addition, two Commissioners will be making a presentation in Charleston seeking support for the sewer project. The Commissioners likewise want to know if participation in such a gathering is subject to the requirements for conducting an open public meeting.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

“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. The term meeting does not include:

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action . . . W. Va. Code § 6-9A-2(4).

“Official action” means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held. W. Va. Code § 6-9A-2(5).

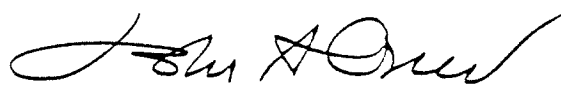
ADVISORY OPINION

Describing the purpose of the Open Meetings Act, the Legislature noted “it would be unrealistic, if not impossible, to carry on the business of government [if] every meeting, every contact and every discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting.” W. Va. Code § 6-9A-1. Accordingly, the Act provides that “general discussions among members of a governing body,” even when held in a planned setting with a quorum present, do not involve a meeting governed by the Act, **so long as there is no intention for the discussion to lead to an official action.**

The Committee has previously observed that it would defeat the purpose of the Open Meetings Act to permit the members of a governing body to get together privately and discuss the merits of matters they will later be called to vote upon in an open meeting. Such a subterfuge was likewise condemned by the West Virginia Supreme Court of Appeals in McComas v. Board of Education, 197 W. Va. 188, 475 S.E.2d 280 (1996).

In considering this request, the Committee relies on the representations of the requester that the Commissioners do not intend to meet with other officials as a guise for discussing the merits of a pending matter, or any matter they should reasonably expect to come before them for official action. Therefore, a gathering of Commissioners for the purpose of presenting their position to officials of a municipality in their county, or advocating their position before a state or regional agency, regarding a matter which they have already considered and acted upon, would not be a meeting of the County Commission subject to the Act.

The Commissioners are cautioned that whenever a presentation unexpectedly leads to new issues on which they will be required to take official action, they must defer any discussion on the merits of such matter until it can be placed on the agenda of a scheduled meeting. It should also be noted that this opinion is not intended to indicate whether the municipality or other agency has an obligation to notify the public of its meeting with the Commissioners, as such issues must be raised by the affected governing body, or one of its members.



Chairman