

OPEN MEETINGS ADVISORY OPINION NO. 2001-10

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WEST VIRGINIA ETHICS COMMISSION  
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

COPY

OPINION SOUGHT

The Kanawha County Commission asks for guidance on when meeting agendas must be made available to the media and public, and how specific the agenda listings must be.

FACTS RELIED UPON BY THE COMMITTEE

The Kanawha County Commission usually meets every other week on Thursday at 5:00 P.M. During certain times of the year, the Commission meets weekly, and for one month, when acting as a Board of Equalization and Review, the Commission meets twice weekly, on Tuesday mornings and Thursday evenings.

The Commission prepares a detailed agenda for each meeting and seeks to verify when this agenda should be made available to the public and the media, and when an amended agenda is permitted.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code 6-9A-3 provides in pertinent part:

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

ADVISORY OPINION

The Open Meetings Act requires public agencies to inform the public of (1) the time, date, place and purpose of their meetings and (2) what will be dealt with at the meetings. This means agencies must (1) give "meeting notice," telling the public when and where the meeting will be held, and (2) provide a "meeting agenda," telling the public the items of business with which the meeting will deal.

Meeting notices and meeting agendas may be separate documents or may be combined in a single document. More often than not, agencies will treat them as separate documents and post or publish the meeting notice prior to making the meeting agenda available to the public.

This opinion deals with the Kanawha County Commission's question of how far in advance of its meetings the meeting agendas must be made available to the public. This opinion does not deal with the question of how far in advance meeting notice must be given.

The Act does not deal comprehensively with how and when meeting information, either meeting notices or meeting agendas, are to be made available to the public. The Committee must decide, on a case-by-case basis, whether an agency's rules providing advance notice of meetings and availability of agendas are "reasonable".

In Open Meetings Advisory Opinion 2001-04 the Committee ruled that the Braxton County Commission, which meets twice a month, the first and third Thursday of each month at 9:00 A.M., would comply with the requirements of the Act, if it made its agenda available to the public and news media at least three days prior to its regularly scheduled meeting.

Here the Committee finds that the Kanawha County Commission, when meeting every other Thursday evening, would comply with the requirements of the Act, if it made its agenda available to the public and news media at least three days prior to the meeting. When the Commission meets weekly on Thursday evening, or twice a week on Tuesday morning and Thursday evening, it would comply with the Act, if it made its agenda available to the public and news media at least two days prior to the meeting.

For purposes of calculating the number of days in the notice period, the day of the meeting is not counted. Further, Saturdays, Sundays and legal holidays must be excluded, as government offices are generally not open for business on such days, and there would be no one available to respond to questions from the public or news media regarding the agenda.

When the Commission has made its agenda available three days or more in advance of the meeting, it could, at its option, amend the agenda to add additional items of business - items not known at the time the original agenda was prepared and made available to the public. Consistent with the forgoing guidance on calculating the notice period, amendments may be made as late as two days before the meeting, and made available to the public in the same manner as the original agenda.

No amendment of the agenda may be made less than two days before a meeting, unless it is to deal with an emergency matter. Routine matters that come up after the deadline for issuing an amendment has passed must be held over to the next meeting. If an agenda is amended to accommodate action on an emergency matter, both the meeting agenda and the meeting minutes must explain the facts and circumstances of the emergency.

The Commission provided a copy of a prior meeting agenda and inquired whether it should be made less specific and more generic. The Committee finds that the Act requires more than generic descriptions of the business to be conducted and that categorical listing such as "personnel matters" are generally insufficient. The agenda supplied by the Commission provides a meaningful agenda. Its current practices in this regard are both commendable and in full compliance with the Act.



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Chairman