

OPEN MEETINGS ADVISORY OPINION NO. 2001-13

COPY

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WEST VIRGINIA ETHICS COMMISSION  
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

**OPINION SOUGHT**

The Upshur County Commission inquires on several issues, including the deadline for issuing a meeting agenda, the specificity required in an agenda, and taking official action on matters raised by individuals who appear and address the Commission during a public comment period.

**FACTS RELIED UPON BY THE COMMITTEE**

The Upshur County Commission meets weekly each Thursday at 9:00 A.M. The Commission makes its meeting agenda available to the media and the public at 9:00 A.M. on Wednesday, the day before the meeting.

Each week, the Commission agenda contains certain generic listings, such as:

Personnel — WV Code 6-9A-4 — Matters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee, or prospective public officer or employee unless the public officer or employee requests an open meeting.

The Commission asks if the foregoing listing would be sufficient to approve a specific personnel matter, such as employment of an individual being hired by an elected county official.

The Commission provides an open comment period for citizens to address their concerns each week. The Commission seeks to determine if it can make a decision or take action on a matter that is raised by a citizen during this comment period, when that particular matter did not appear in the agenda.

**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 governing bodies of public agencies to notify the public when and where a meeting will be held. In addition, an agenda listing the matters which will be dealt with at the meeting must be made available to the public in advance of the meeting. The statute does not set a specific deadline for making an agenda available to the public.

The Committee has previously concluded that the agenda must be made available within a "reasonable time" in advance of the meeting. How far in advance of a meeting gives "reasonable" notice will vary with the circumstances peculiar to each agency. Therefore, this question must be addressed on a case-by-case basis.

In a prior Open Meetings Advisory Opinion (OMAO), 2001-04, the Committee found that a County Commission meeting twice a month would comply with the Act by making its agenda available at least three days in advance of its regularly scheduled meetings. The Upshur County Commission meets weekly and seeks to provide 24 hours advance notice of its agenda.

The Committee believes that 24 hours is insufficient advance notice, and finds that the Upshur County Commission, when meeting weekly, would comply with the requirements of the Act, if it made its agenda available to the public and news media at least two days prior to the meeting.

In a related opinion issued today, OMAO 2001-10, the Committee addressed a question from the Kanawha County Commission regarding how this notice period is counted. The Committee explained in that opinion that, 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. Accordingly, the Upshur County Commission, when meeting weekly on Thursday, would comply with the Act by issuing its agenda during normal business hours on the preceding Tuesday, absent an intervening holiday.

The Commission's question regarding specificity in the agenda illustrates the tension in the Act between allowing "government to function and the public to participate in a meaningful manner in public agency decision making." The Committee has previously concluded that the Act requires reasonable advance notice to the public of all agenda items which require a decision or deliberation towards a decision.

A generic description, such as "personnel matters," or the more detailed but nonetheless generic language proposed here, is insufficient to meet this requirement. Compliance can be achieved by such listings as "hiring Jane Doe to fill a vacant Clerk-Typist position in the Assessor's Office" or "hiring John Law to fill a newly created Deputy Sheriff position in the Sheriff's Department."

The Commission notes that members of the public, during a public comment portion of a meeting, may raise a significant issue which is not included in the agenda. The Commission asks if it may proceed to take official action on this matter during the same meeting.

Except in emergency situations, the Commission may not take official action on an issue raised in the public comment period. If official action by the Commission is required, the item will need to be placed on the agenda and addressed at a subsequent meeting.



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Chairman