

OPEN MEETINGS ADVISORY OPINION NO. 2001-16

Issued On July 12, 2001 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Cabell County Commission asks if its procedure for issuing meeting agendas complies with the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The Cabell County Commission presently meets at 10:00 A.M. every other Tuesday. Ordinarily, the meeting agenda is posted at the Courthouse and distributed to the media before the close of business on the Thursday prior to the meeting. In the event of an intervening legal holiday, the agenda is similarly posted and distributed on the Wednesday prior to the meeting.

The Commission is considering holding its regular meetings every other Thursday at 10:00 A.M. In that case, absent an intervening legal holiday, the meeting agenda would be posted and distributed on the Monday preceding the meeting. In the event of an intervening legal holiday, the agenda would be made available before the close of business on the Friday preceding the meeting.

The Commission notes that, in either situation, it might add items to the agenda, provided that the revised agenda could be posted and distributed in the same manner as the original agenda, two days prior to the meeting.

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 a reasonable time 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 Cabell County Commission, which meets every other Tuesday, is currently issuing its agenda three days in advance of a regular meeting.

In a related opinion, OMAO 2001-10, the Committee explained 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. The procedures for issuing regular meeting agendas, as described in the Commission's request, fully comply with this guidance.

When the Commission has made its agenda available three days or more in advance of the meeting, it may, 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. 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.

However, 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.



Chairman