

OPEN MEETINGS ADVISORY OPINION NO. 2002-02

Issued On February 7, 2002 By The

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

OPINION SOUGHT

The Raleigh County Emergency Services Authority (RCESA) asks whether governing bodies are required to prepare minutes for executive sessions, whether executive sessions need to be recorded, and whether there are any circumstances where a discussion that takes place in an executive session would become public.

FACTS RELIED UPON BY THE COMMITTEE

RCESA conducts executive sessions from time to time under one or more of the exceptions provided in the Open Meetings Act. Votes are not taken during an executive session. RCESA seeks guidance concerning making a formal record of the discussion that occurs in those sessions.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

The Act defines "executive session" to mean "any meeting or part of a meeting of a governing body which is closed to the public." W. Va. Code § 6-9A-2(2).

W. Va. Code § 6-9A-5 provides, in pertinent part:

Each governing body shall provide for the preparation of written minutes of all its meetings. Subject to the exceptions set forth in section four of this article, minutes of all meetings except executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting

ADVISORY OPINION

This Committee previously determined in Open Meetings Advisory Opinion 2000-15 that the Act grants governing bodies of public agencies discretion to determine whether minutes of executive sessions are taken. Governing bodies have similar discretion to decide whether their executive sessions are recorded. The Act neither requires that minutes of executive sessions be prepared nor that executive sessions be recorded.

W. Va. Code § 6-9A-4(b)(9) provides that information relied on during the course of deliberations in executive session on matters involving commercial competition are exempt from disclosure only

until the commercial competition has been finalized and completed. There are no other provisions in the Act that describe any particular circumstances under which a discussion held in a properly convened executive session may become public.

However, the West Virginia Supreme Court of Appeals determined in Peters v. County Commission, 205 W.Va. 481, 519 S.E.2d 179 (1999), that a Circuit Court considering a legal action challenging an executive session should conduct an *in camera* hearing, a private meeting in the judge's chambers or other private place, to determine whether the discussion that occurred in a closed session falls under one of the Act's exemptions.



Chairman