

OPEN MEETINGS ADVISORY OPINION NO. 2002-06

Issued On March 7, 2002 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Ritchie County Development Authority (RCDA) wants to know if it can meet in executive session to discuss certain matters.

FACTS RELIED UPON BY THE COMMITTEE

There are three matters that RCDA is considering discussing in executive session:

(1) A developer proposes to develop a large site for commercial and industrial purposes. The developer needs RCDA assistance in securing property for an access road (through exercise of condemnation authority, if required) and in obtaining Division of Highways approval to fund and construct the access road. As part of this proposal, RCDA anticipates receiving several acres of land which it will be able to independently market for development. The developer is concerned that premature publicity from publicly discussing these plans will jeopardize this development.

(2) A company is considering locating a new facility in Ritchie County. The company wants RCDA to assist in locating and acquiring a suitable site. In order to provide the assistance required, the Board President must appoint a prospect-handling team to work with this company. The company, for competitive reasons, insists that their plans be maintained in confidence.

(3) An individual seeks assistance from RCDA in finding financing to purchase an existing business in Ritchie County. No official RCDA action is required until an application is initially approved and the Board must accept responsibility to administer the project loans. The Board President wants to inform his fellow Board members about this prospective business activity, but the purchaser wants the matter to remain confidential until the loan and purchase negotiations are complete.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-4 provides in pertinent part:

(b) . . . A public agency may hold an executive session and exclude the public only when a closed session is required for one of the following actions:

(9) To consider matters involving or affecting the **purchase, sale or lease of property, advance construction planning**, the investment of public funds or other matters involving commercial competition, **which if made public, might adversely affect the financial or other interest** of the state or any political subdivision

W. Va. Code § 7-12-2, describes the purposes of county or municipal economic development authorities as follows:

The purposes for which the authority is created are to promote, develop and advance the business prosperity and economic welfare of the municipality or county for which it is created, its citizens and its industrial complex; to encourage and assist through loans, investments or other business transactions in the locating of new business and industry within the municipality or county and to rehabilitate and assist existing businesses and industries therein; to stimulate and promote the expansion of all kinds of business and industrial activity which will tend to advance business and industrial development and maintain the economic stability of the municipality or county, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of the county; to cooperate and act in conjunction with other organizations, federal, state, or local, in the promotion and advancement of industrial, commercial, agricultural and recreational developments within the municipality or county; and to furnish money and credit, land and industrial sites, technical assistance and such other aid as may be deemed requisite to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity within the municipality or county.

ADVISORY OPINION

The Open Governmental Proceedings Act permits governing bodies to hold an executive session and exclude the public only when a closed session is required for one of several actions specified in W. Va. Code § 6-9A-4. Given the broad responsibilities assigned to county economic development authorities under W. Va. Code § 7-12-2, premature disclosure of private commercial plans might adversely affect RCDA's interests in promoting and facilitating development in the county. Therefore, upon a majority vote of RCDA's members, the Board may go into executive session to discuss each of the situations described. However, any required official action by the Board must be voted upon in open session.



Chairman