

## OPEN MEETINGS ADVISORY OPINION NO. 2002-09

Issued On April 4, 2002 By The

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

#### OPINION SOUGHT

The Clarksburg Water Board (Board) asks (1) if it can go into executive session to discuss a matter that was not listed on the meeting agenda and (2) what needs to be on the agenda when an executive session is contemplated.

#### FACTS RELIED UPON BY THE COMMITTEE

The Board seeks guidance on dealing with an item that was not on the agenda, but which is appropriate for discussion in executive session. If the issue can not be discussed at the meeting where it comes up, how should the matter be described on the agenda for the next meeting.

#### CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-3 provides that “[e]ach governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings . . . are made available, in advance, to the public and news media . . . .”

W. Va. Code § 6-9A-4 provides:

- (a) The governing body of a public agency may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the governing body shall identify the authorization under this section for holding the executive session and present it to the governing body and to the general public, but no decision may be made in the executive session.
- (b) An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public agency. A public agency may hold an executive session and exclude the public only when a closed session is required for [certain enumerated] actions...

## ADVISORY OPINION

(1) Except in emergency situations, a governing body of a public agency may not take official action on a matter that is not included in the meeting agenda. When a new issue comes up during a meeting, the governing body is limited to considering whether the matter requires official action, and if it does, placing the matter on the agenda of a subsequent meeting for official action.

Nevertheless, the Board may conduct this limited discussion to determine if official action is required in an executive session, provided two conditions are met: (1) the issue must be one which the Open Governmental Proceedings Act permits to be discussed during a session closed to the general public; and (2) the Board votes to go into executive session.

(2) The Board may indicate on the meeting agenda that a particular item may be addressed in an executive session. In addition, the agenda must provide meaningful notice to the public of each matter on which the governing body will be taking official action. If, for example, the Board is considering whether to suspend an employee for misconduct, the agenda should state: "employee disciplinary matter (proposed executive session)." An agenda listing that merely states "consideration of going into executive session" without generally describing the matter being considered would not be adequate.



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Chairman