

OPEN MEETINGS ADVISORY OPINION NO. 2002-12

Issued On August 1, 2002 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The West Virginia Education and State Employees Grievance Board (WVESEGB) asks that its procedural rules be reviewed for compliance with the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The WVESEGB has adopted procedures governing the issuance of meeting notice and meeting agendas. The rules provide for publishing notice of regular and special meetings at least five days prior to the date of the meeting in the State Register and making meeting agendas available to the public at least three days prior to the meeting. A complete copy of the Board's procedural rules is attached to this advisory opinion as Appendix A.

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 each governing body to promulgate certain procedural rules. As a minimum, these rules must state how and when the date, time, place and agenda of all regular meetings, as well as the date, time, place and purpose of all special meetings, will be made available to the public and news media.

The provisions in the Board's procedural rules governing meeting notice are consistent with the requirements for State executive branch governing bodies in W. Va. Code § 6-9A-3. Further, the provisions governing issuance of meeting agendas satisfy the Act's mandate for reasonable notice. These notice provisions collectively fulfill the minimum requirements of W. Va. Code § 6-9A-3.

In addition to describing meeting notice and agenda procedures, governing bodies may elect to include other provisions governing meeting procedures in their rules. Consistent with its legislative mandate to consider whether a proposed action violates any provision in the Act, this Committee will

review additional provisions in a governing body's procedural rules. However, the Committee's opinion, and any immunity which the governing body receives, will be limited to whether these additional rules are inconsistent with the Act. The opinion will not address discretionary application of a rule to a specific situation, unless the requester provides a proposed set of facts describing that situation.

Having noted the limited scope of its opinion, the Committee finds that no provisions in any additional meeting rules adopted by the WVESEGB are inconsistent with the Act.



Chairman

TITLE 156
PROCEDURAL RULES
WEST VIRGINIA EDUCATION AND STATE EMPLOYEES GRIEVANCE BOARD

SERIES 2
NOTICE AND CONDUCT OF MEETINGS

§156-2-1. General.

1.1. Scope -This procedural rule establishes requirements for notice of meetings and general rules for conduct of said meetings.

1.2. Authority -W. Va. Code §§ 6-9A-1, et seq., 18-29-5 and 29-6A-5.

1.3. Filing Date -

1.4. Effective Date -

§156-2-2. Preface.

2.1. The West Virginia Legislature has provided in Article 9A of Chapter 6 of the West Virginia Code that all regular and special meetings of governing bodies shall be open to the people of the State and that the people shall be given reasonable advance notice of the time, date and location of such meetings being convened: Provided, however, that governing bodies may hold executive sessions as part of duly convened regular, special or emergency meetings under certain circumstances as permitted by law;

2.2. The Legislature has provided in Section 3, Article 9A, Chapter 6, of the West Virginia Code that:

Each governing body shall promulgate rules by which the time, place and agenda of all regularly scheduled meetings and the 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 attention;

2.3. Section 5, Article 29, Chapter 18 of the West Virginia Code provides that the Education and State Employees Grievance Board "shall hold at least two meetings yearly at times and places as it may prescribe and may meet at other times as may be necessary ..."; and

2.4. Section 5, Article 6A, Chapter 29 of the West Virginia Code provides that the Board shall evaluate the level four grievance process on an annual basis, notifying

all employers, employees organizations, the director of the division of personnel and all grievants participating in level four grievances in the year for which evaluation is being made and shall provide for the submission of written comment or the hearing of testimony regarding the grievance process, or both.

§156-2-3. Notice of Meetings.

3.1. The Education and State Employees Grievance Board shall meet at the Board's offices at 808 Greenbrier Street, Charleston, West Virginia, or at such other locations as the Board may from time to time deem necessary.

3.2. Regular meetings --Notice of regularly scheduled meetings shall be provided through the State Register, administered by the West Virginia Secretary of State's office, and also shall be posted on the Board's website at www.state.wv.us/admin/grievanc/grievanc.htm. Meeting notices shall be published in the state register at least five days prior to the date of the meeting. Said notices shall contain the time, date, and location of the meeting. The agenda of the meeting shall be posted on the Board's website and made available in the Board's Charleston office at least three days prior to the date of the meeting. The three-day period will exclude the day of the meeting, along with Saturdays, Sundays and legal holidays.

3.3. Special and Emergency Meetings --The notice of any special or emergency meeting shall be published in the State Register, at least five days prior to the date of the meeting, and on the Board's website, and shall include the date, time, place and purpose of the meeting. Any notice of an emergency meeting shall state the facts and circumstances of the emergency.

3.4. The minutes of the Board will be open to the inspection of any member of the public at the Charleston office, as provided by West Virginia Code §6-9A-5.

156-2-4. Conduct of Meetings.

4.1. All meetings must be open to the public, although the Board may, either on its own initiative or upon the request of an interested party, hold an executive session during a meeting after its presiding officer has identified the authorization under Article 9A of Chapter 6 for the holding of such executive session and has presented it to the governing body and to the general public, as required by Section 4, Article 9A, Chapter 6 of the West Virginia Code. An executive session will only be held upon a majority affirmative vote of the Board members present.

4.2. Persons desiring to address the Board are encouraged to make arrangements in advance with the Board. However, advance arrangements are not necessary as such person may sign in prior to the scheduled commencement of any regular or special meeting. Any speaker shall provide his/her name, mailing address, telephone number and the subject to be addressed. Presentations shall be limited to five minutes, unless otherwise designated by the Board. Delegations are encouraged to use a spokesperson to present their concerns or proposals.

156-2-5. Meeting by Conference Call.

5.1. Occasions may arise when one or more Board members are not available to attend a meeting in person. On such occasions, members may attend and participate in the meeting by telephone or video teleconference to the same extent as if physically present. A speakerphone or other audio/video device shall be used at the meeting site to enable those present, including the public, to hear/see the members who are attending and participating by telephone or video teleconference.