

**OPEN MEETINGS ADVISORY OPINION NO. 2003-04**

**Issued On May 1, 2003 By The**

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

**OPINION SOUGHT**

The Raleigh County Commission asks that its procedural rules be reviewed for compliance with the Open Meetings Act.

**FACTS RELIED UPON BY THE COMMITTEE**

The Raleigh County Commission meets twice monthly on the first and third Tuesday of each month. The Commission has adopted procedural rules providing that a meeting agenda for all regular meetings will be posted and faxed to the local newspaper at least three days in advance, excluding Saturdays, Sundays, legal holidays and the day of the meeting. Notice of special meetings will be issued 48 hours in advance of the meeting. The rules also provide for holding "work sessions with staff" on certain days. A complete copy of the Commission's procedural rules is attached to this 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.

This Committee has previously determined that notice of the date, time, place, and purpose of any special meeting should be made available two days in advance. In calculating this two-day period, Saturdays, Sundays, legal holidays, and the day of the meeting are not counted. The Raleigh County Commission's procedural rules provide only 48 hours notice of a special meeting and do not specify that the purpose of the meeting, or a meeting agenda, will be included in the meeting notice. Section 2.1.2 of the rules should be revised accordingly.

The Open Meetings Act permits the governing body of a public agency to convene an emergency meeting and take official action on a matter requiring immediate official action without the normal advance notice required for a regular or special meeting. However, this Committee has determined that a governing body conducting an emergency meeting must nonetheless issue a meeting notice stating the date, time, place and purpose of the meeting, and explaining the facts and circumstances of the emergency which justify taking immediate action. This meeting notice should be publicly posted and distributed in the same manner as a meeting notice for a regular or special meeting. Section 2.1.3 of the rules should be revised to comply with this guidance.

Section 1.2 lists "W. Va. Code 6-9A-1.7" as authority for these procedural rules. "W. Va. Code § 6-9A-3," quoted earlier, provides the most pertinent authority for promulgating these rules.

Except as previously discussed, the provisions in the Commission's procedural rules governing meeting notices and meeting agendas are generally consistent with previous opinions from this Committee regarding these matters. Once these rules have been revised in accordance with the guidance in this opinion, they will satisfy 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.

Section 4.1.1 of the rules provide: "The Raleigh County Commission may hold work sessions with staff on Tuesdays at 9:00 AM at the office of the County Commission when a regularly scheduled meeting is not being held." This Committee has determined that any gathering of a quorum of the members of a governing body to discuss matters requiring official action, other than logistical and procedural arrangements for a future meeting, constitutes a "meeting" under the Act. Even if no official action is formally taken at such a session, the governing body is required to follow normal open meeting requirements, including providing advance public notice, an agenda of items that will ultimately require official action which will be discussed, and minutes prepared in accordance with W. Va. Code § 6-9A-5.

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



Chairman

**RALEIGH COUNTY COMMISSION  
RULES FOR CONDUCTING PUBLIC MEETINGS**

Section 1: General

- 1.1 Scope            This rule governs the public meetings of the Raleigh County Commission.
- 1.2 Authority        West Virginia Code 6-9A-1.7 and 7-1-2  
West Virginia Ethics Commission
- 1.3 Effective Date   January 7, 2003

Section 2: Sessions

- 2.1.1            The Raleigh County Commission shall meet on the 1<sup>st</sup> Tuesday of January each year to set the date, time and place of its regularly scheduled meetings except when the 1<sup>st</sup> Tuesday is a holiday then the meeting shall be the 2<sup>nd</sup> Tuesday of January. The public and the news media are to be notified of each such meeting.
- 2.1.2            In the event that a special meeting is necessary, the public and news media are to be notified at least forty-eight (48) hours prior to any such meeting.
- 2.1.3            In the event of an emergency that requires immediate official action, it will not be necessary to notify the public or the news media.
- 2.1.4            The Raleigh County Commission shall meet in regular session on the 1<sup>st</sup> and 3<sup>rd</sup> Tuesday of each month.

Section 3: Agenda

- 3.1.1            The Raleigh County Commission shall make available to the public and the news media an Agenda at least three (3) days in advance of a meeting.
- 3.1.2            This three (3) day notice period is calculated by excluding the day of meeting as well as any preceding day that falls on a holiday, Saturday or Sunday.
- 3.1.3            The Agenda shall be posted at the Courthouse and on the door of the Office of the County Commission at close of business on

Wednesday should the meeting be on a Tuesday and a copy faxed to the newspaper at the same time.

- 3.1.4 The Agenda may be amended up to two (2) days before the meeting. Any amended agenda will be made available to the public and news media in the same manner as the original agenda.
- 3.1.5 Matters that come up after the deadline for issuing an agenda has passed must be held over to the next meeting unless an emergency arises which requires immediate official action by the County Commission.
- 3.1.6 Except for emergencies, the County Commission may not take official action on a matter that is not on the meeting agenda. A matter raised in a public comment period that is not on the agenda, may be considered by the County Commission only to determine if it should be placed on the agenda of a subsequent meeting for official action.
- 3.1.7 Each agenda shall contain a period for public comment. Anyone wishing to address the County Commission must register fifteen minutes prior to the time of the scheduled meeting.

#### Section 4: Work Sessions

- 4.1.1 The Raleigh County Commission may hold work sessions with staff on Tuesdays at 9:00 AM at the office of the County Commission when a regularly scheduled meeting is not being held

#### Section 5: Conducting Meetings

- 5.1.1 The meetings of the Raleigh County Commission will be conducted in accordance with the Roberts Rule of Order.