

OPEN MEETINGS ADVISORY OPINION NO. 2003-14

Issued On January 8, 2004 By The

WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

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OPINION SOUGHT

The Barbour County Commission asks if it would be a violation of any provision in the Act to release a tape recording of a regular meeting or an executive session held during a meeting.

FACTS RELIED UPON BY THE COMMITTEE

The Barbour County Commission is concerned about releasing official tape recordings of its meetings, including executive sessions held during a meeting that is otherwise open to the public.

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

The Open Meetings Act requires a governing body to prepare minutes of each meeting and include certain specified information. Meeting minutes must be made available to the public within a reasonable time after each meeting.

No provision in the Open Meetings Act requires a governing body to record its meetings or to release a copy of a recording if it elects to make one. However, release of such a recording, if one has been made, may be required by the WV Freedom of Information (FOI) Act, § 29B-1-3. This Committee is without authority to advise the Commission on the meaning and application of the FOI law.

Under the Open Meetings Act, governing bodies of public agencies have discretion to decide whether minutes of executive sessions are taken. Governing bodies have similar discretion to determine whether their executive sessions are recorded. The Act neither requires that minutes of executive sessions be prepared nor that executive sessions be recorded.

Should a governing body elect to record an executive session, no provision in the Act either compels or prohibits release of such a recording. Recordings of executive session discussions may be exempt from release under the WV FOI, but this Committee does not have authority to make that determination. The Committee further notes that releasing information considered in an executive session which is required by law to remain confidential could violate the Ethics Act.



Chairman

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