

OPEN MEETINGS ADVISORY OPINION NO. 2004-10

Issued On July 1, 2004 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

A Member of the Jackson County Board of Education asks for guidance on amendments to the meeting agenda.

FACTS RELIED UPON BY THE COMMITTEE

As a result of such matters as retirements, resignations, or illness it is common for an "addendum" or amendment containing additional personnel matters to be added to the Board of Education's regular meeting agenda, sometimes as late as the day of the Board meeting. The original agenda contains an item stating "other personnel matters to be presented at the meeting." The requester asks if this procedure complies with the Open Meetings Act.

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

This Committee has previously concluded that in addition to providing reasonable notice to the public of when and where a meeting is to be held, the Open Meetings Act requires a governing body of a public agency to make available to the public and media an agenda showing what matters will be addressed at the meeting. The Act does not contain a specific amount of time in advance of a meeting that this agenda must be made available. Therefore, this Committee has determined that the agenda should be available to the public and media a reasonable time in advance of the meeting.

After observing that some governing bodies subject to the Act meet more frequently than others, this Committee previously determined that a governing body which regularly meets twice each month, every two weeks, or less frequently, should make its agenda available at least three business days in advance of the meeting. Any governing body which meets more frequently than every two weeks, should make its agenda available at least two business days in advance of the meeting. A "business day" may include the day the agenda is made available, if this is accomplished during normal

business hours, but may not include Saturdays, Sundays, legal holidays or the day the meeting is held.

This Committee recognizes that some items requiring official action by a governing body may arise after an agenda is issued, particularly when the agenda is prepared three or more days in advance of a meeting. Therefore, a governing body may issue an amendment or addendum, adding additional agenda items, up to two business days in advance of the meeting, provided this addendum is disseminated in the same manner as the original agenda.

If an additional matter requiring official action arises before a meeting, but after the time limit for issuing an amendment to the agenda has passed, it should be held over for action at the next meeting, unless it involves an emergency requiring immediate official action. In such event, the emergency item may be included in an amended agenda, provided the facts and circumstances of the emergency situation overriding reasonable advance notice to the public is explained in the amended agenda. In addition, the nature of this emergency must also be stated in the meeting minutes.

A generic statement in an agenda indicating that "other personnel matters" may be presented at the meeting is insufficient to meaningfully comply with the notice requirements of the Act. Personnel matters should be described in a manner that tells the public what actions are going to be considered at the meeting. For example, "filling the Principal's position at Urban High School," "creating an itinerant music teacher position for the Rural attendance area," or "transferring a custodian to fill a long-term substitute position at Suburban Elementary" would be sufficient. It is not necessary to identify an affected employee by name in the agenda.



Chairman