

OPEN MEETINGS ADVISORY OPINION NO. 2004-13

Issued On October 7, 2004 By The

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

OPINION SOUGHT

The Oceana Town Council seeks guidance on issuing notice of meetings and creating minutes for executive sessions.

FACTS RELIED UPON BY THE COMMITTEE

The Town Council ordinarily meets monthly on the second Thursday of each month. The Council makes audio recording of all meetings, including executive sessions. On occasion, meetings may also be recorded on video.

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.

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 public agencies to inform the public of: (1) the time, date, place and purpose of their meetings; and (2) what will be dealt with at the meetings. This means agencies must: (1) give "meeting notice," telling the public when and where the meeting will be held; and (2) provide a "meeting agenda," telling the public the items of business with which the meeting will deal.

Meeting notices and meeting agendas may be separate documents or may be combined in a single document. For most regular meetings, agencies will generate separate documents, posting or publishing the meeting notice prior to making the meeting agenda available to the public.

The Act does not deal comprehensively with how and when this information, either meeting notices or meeting agendas, are to be made available to the public. The Committee must provide guidance, on a case-by-case basis, explaining what is considered "reasonable" advance notice of meetings and availability of meeting agendas.

Meeting Notice - Regular Meetings A governing body which meets in accordance with a fixed schedule, as the Town Council does, may comply with the meeting notice requirement by posting notice of its meeting schedule annually, and keeping this notice posted throughout the year. The schedule should be posted in a public place which is accessible to the public during normal business hours, such as the Town Hall.

Meeting Notice - Special Meetings A Town Council will comply with the Open Meetings Act if it posts notice of a special meeting at least two days in advance of the meeting date. Notices of special meetings must include the date, time and place of the meeting and, unlike regular meeting notices, must explain the purpose of the meeting. At a minimum, this notice should be posted in a public place which is accessible to the public during normal business hours, such as the Town Hall. Governing bodies whose meetings are regularly covered by the media are encouraged, but not required, to send a copy of the meeting notice by telephone facsimile to news organizations that express an interest in receiving such notice.

In counting the number of days in any two or three-day notice period described in this opinion, the day of the meeting, as well as Saturdays, Sundays, and legal holidays, are excluded. For example, in the absence of an intervening legal holiday, the Town would comply with the Act by issuing notice of a special meeting to be held on Thursday at any time before the close of business on the preceding Monday.

Meeting Agenda - Special Meetings In the case of a special meeting, where only one or two matters will be addressed by the governing body, these matters may be described in the purpose statement within the meeting notice, and no separate agenda will be necessary. However, if the meeting will deal with several matters, a separate meeting agenda should be prepared and made available at the same time, and in the same manner, as the meeting notice.

Meeting Agenda - Regular Meetings The Town Council would comply with the Act if it makes its agenda available at least three days before each regularly scheduled meeting, by posting the agenda in an appropriate public space, such as the Town Hall, in addition to having copies of the agenda available to be picked up in that same building during normal business hours. If Council meetings are routinely covered by the news media, providing a copy to those media at the time the agenda is posted is encouraged.

When the Town Council has made its agenda available three days or more in advance of the meeting, it may, at its option, amend the agenda to add additional items of business - items not known at the time the original agenda was prepared and made available to the public. Amendments may be made as late as two days before the meeting, and made available to the public in the same manner as the original agenda.


However, no amendment of the agenda may be made less than two days before a meeting, unless it is to deal with an emergency matter. Routine matters that come up after the deadline for issuing an amendment has passed must be held over to the next meeting. If an agenda is amended to accommodate action on an emergency matter, both the meeting agenda and the meeting minutes must explain the facts and circumstances of the emergency.

Citizens or guests may be recognized to speak during a public meeting. Such individuals may address topics that are on the agenda, as well as new matters that have not been included on the agenda. However, in the absence of an emergency requiring immediate official action, the Council may not take official action on matters raised by the public, if the matter was not on the meeting agenda. The Council may consider whether the matter requires official action, and if it does, place the matter on the agenda of a subsequent meeting.

Emergency Meetings In addition to regularly scheduled meetings and special meetings, public agencies may hold emergency meetings, but only to deal with matters requiring immediate official action. Emergency meetings may be held with little or no advance notice. Any meeting notice issued, and the meeting minutes, must fully explain the purpose of the meeting and the facts and circumstances justifying an emergency meeting.

Meeting Minutes - Executive Sessions 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.

This Committee previously determined in Open Meetings Advisory Opinion 2000-15 that the Act gives discretion to governing bodies of public agencies to determine whether minutes of executive sessions are taken. Governing bodies have similar discretion to decide whether their executive sessions are recorded. The Act neither requires that minutes of executive sessions be prepared nor that executive sessions be recorded.



Chairman