

OPEN MEETINGS ADVISORY OPINION NO. 2004-15

Issued On December 2, 2004 By The

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

OPINION SOUGHT

The Workforce Investment Board of Kanawha County (WIBKC) asks if the Open Meetings Act applies to its meetings and, if so, must the Board publish notice of its meetings in the State Register.

FACTS RELIED UPON BY THE COMMITTEE

WIBKC was established pursuant to provisions in the federal Workforce Investment Act (WIA) of 1998, 29 U.S.C. § 2801, *et seq.*, which requires establishment of a local workforce investment board to oversee and set policy for the workforce investment system in a geographic region. As authorized in the WIA, the Governor has designated WIBKC as the responsible agency for setting policy for the workforce investment system in one of seven geographic regions in West Virginia (Region III). Based upon specific membership criteria contained in the WIA, local elected officials in the region, including Mayors and County Commissioners, appoint the members who serve on WIBKC.

WIBKC is incorporated as a non-profit, non-stock corporation. WIBKC routinely publishes notice of its meetings in the local newspaper in accordance with a "Sunshine Provision" contained in Section 117 of the WIA.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

The Open Meetings Act applies to "public agencies" which are defined in W. Va. Code § 6-9A-2(6) as:

any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing authorized by law to exercise some portion of executive or legislative power.

W. Va. Code 6-9A-3 provides in pertinent part:

Each governing body of the executive branch of the state shall file a notice of any meeting with the secretary of state for publication in the state register. Each notice shall state the date, time, place and purpose of the meeting. Each notice shall be filed in a manner to allow each notice to appear in the state register at least five days prior to the date of the meeting.

ADVISORY OPINION

The Open Meetings Act applies only to public agencies. The Act says that “public agency means any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power.”

The Committee has previously concluded that an organization’s receipt of government funds is not a controlling factor in determining whether the organization is a public corporation. However, in Open Meetings Advisory Opinion 99-13, the Committee concluded that a non-profit corporation could be subject to the Open Meetings Act if it was “created by state or local authority to carry out a governmental function.”

Section 117 of the WIA authorizes the Governor, in partnership with the West Virginia Workforce Investment Council, to “establish criteria for use by chief elected officials in the local areas for appointment of members to the local boards” consistent with certain minimum criteria set forth in the WIA. Moreover, W. Va. Code § 5B-2B-1, *et seq.*, provides for coordination of local workforce investment board activities by the West Virginia Development Office, as well as review of strategic plans submitted by local workforce investment boards. Based upon this substantial government involvement, the Committee concludes that WIBKC is a public corporation subject to the requirements of the Open Meetings Act, in addition to any specific open meetings requirements set forth in the WIA.

WIBKC also asks if it is required to publish notice of its meetings in the State Register. W. Va. Code § 6-9A-3 establishes this specific publication requirement for “each governing body of the executive branch.” The Committee has previously concluded that this requirement does not apply to local governing bodies, such as municipal and county agencies, or even a regional airport authority. Similarly, the Committee finds that WIBKC, a local workforce investment board with regional responsibilities, should give reasonable advance notice of its meetings, but is not obligated to publish notice in the State Register at least five calendar days in advance of a regular or special meeting.



Chairman