

OPEN MEETINGS ADVISORY OPINION NO. 2005-05

Issued On April 7, 2005 By The

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

OPINION SOUGHT

The Tygarts Valley Conservation District (TVCD) asks if its standing committees are subject to the requirements of the Open Meetings Act and, if so, what meeting notice requirements should these committees follow.

FACTS RELIED UPON BY THE COMMITTEE

TVCD has eight standing committees that meet from time to time as necessary to address various issues. These committees have fact-finding authority but otherwise are limited to making recommendations to the TVCD at its regular meetings. The eight standing committees are: (1) Budget; (2) Building and Finance; (3) Equipment; (4) Education, Publicity, Exhibit; (5) Legislative; (6); Grassland; (7) Safety; and (8) District Operations/Expansion.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-2(6) defines a “public agency” as: “[a]ny 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 shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings . . . are made available, in advance, to the public and news media. . . .”

ADVISORY OPINION

This Committee has previously determined that a standing committee or subcommittee of a public agency, consisting of two or more members, the purpose of which is to formulate recommendations to the agency as a whole, is a governing body of a public agency, and each committee or subcommittee must conduct its meetings in compliance with the Act. Therefore, standing committees established by TVCD must comply with the Open Meetings Act.

The Open Meetings Act specifies that all public agencies must make the date, time, place and agendas of their regularly scheduled meetings, and the date, time, place and purpose of their special meetings, available to the public and news media in advance of the meeting. However, the Act does not specify how public agencies, such as TVCD and its subordinate committees, provide this

advance notice. This Committee has concluded that “reasonable” notice, as determined on a case-by-case basis, must be provided.

Meeting Notice - Regular Meetings A TVCD committee which meets in accordance with a fixed schedule 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 TVCD office.

Meeting Notice - Special Meetings Meetings of TVCD committees which do not follow a regular schedule are considered special meetings. Such TVCD committees will comply with the Open Meetings Act if they post notice of each 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 TVCD office.

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, a TVCD committee 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 Tuesday.

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 A TVCD committee which meets no more frequently than every two weeks 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 TVCD office, in addition to having copies of the agenda available to be picked up in that same building during normal business hours.

When a TVCD committee 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.

If committee meetings are routinely covered by the news media, providing such media organizations a copy of the regular meeting agenda or a special meeting notice and agenda (when applicable), at the time the notice or agenda is posted, by telephone facsimile, is encouraged, but not required. Any governing body may, in its discretion, publicize the date, time and place of a meeting or a meeting agenda through a newspaper advertisement or broadcast media announcement. However, the Open Meetings Act does not mandate any such publication or announcement to supplement the notice provisions previously explained in this opinion.



Chairman