

OPEN MEETINGS ADVISORY OPINION NO. 2005-07

Issued On April 7, 2005 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

A Preston County Board of Education Member seeks clarification regarding executive sessions. He asks if the Open Meetings Act requires that specific individuals who are being discussed in executive session, pursuant to the personnel exemption, be provided advance notice of the discussion.

FACTS RELIED UPON BY THE COMMITTEE

The requester seeks to determine whether the Act requires that, before a particular individual may be discussed in executive session under the personnel exemption, that person be given advance notice that the Board may go into executive session to discuss a matter involving them which is included in the meeting agenda.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-4 provides in pertinent part that “[a] public agency may hold an executive session and exclude the public only when a closed session is required for any of the following actions: . . . [t]o consider: . . . [m]atters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee, or prospective public officer or employee unless the public officer or employee or prospective public officer or employee requests an open meeting. . . .”

ADVISORY OPINION

The Open Meetings Act or “Sunshine Law” is focused on making available to the public and media notice of the date, time, place and agenda of all meetings by governing bodies of public agencies, including county boards of education. There is no provision in the Act that requires advance notice be given to an individual public officer or employee, or prospective public officer or employee, that a matter involving that person will or may be on the meeting agenda. Likewise, the Act does not compel notice to an individual that a personnel matter involving them may be discussed in executive session or may otherwise take place during a meeting.

The Committee notes that particular personnel actions may require individual notice be provided to comply with constitutional due process requirements and state laws specifically applicable to school employees and public personnel. These matters are outside the scope of the Committee's authority to render a definitive advisory opinion.


Chairman