

OPEN MEETINGS ADVISORY OPINION NO. 2006-10

Issued On September 7, 2006 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

William Fox, a member of the City Council in Padon City, seeks guidance on when certain committees are required to give notice of their meetings.

FACTS RELIED UPON BY THE COMMITTEE

The City Council in Padon City includes six Council Members, a Mayor and Recorder. Council Members have been appointed by the Mayor to serve on various three-member committees.

Councilman Fox briefly explained the operation of some of these committees. For example, the Street Committee's responsibilities include making recommendations regarding approving permits to remove street curbs. Thus, if a citizen submits a request to take out a curb to facilitate installing a driveway leading to a new garage he is building, the committee may visit the property to verify that the information in the request is accurate.

In another example, the Building and Grounds Committee, which enforces the building code, may get together to inspect municipal records to determine who is the property owner of record for enforcement purposes. Additionally, that committee may visit property which is the subject of a complaint to visually observe the specific conditions which are present at that particular location. These activities will normally involve all three committee members.

A final example involves members of the Street Committee meeting with one or more employees of the Street Department to obtain information regarding their working conditions and working relationships. The committee members believe they could more easily resolve certain work-related disputes if they could meet informally with the employees involved.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-2, *Definitions*, provides in pertinent part:

(4) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means. The term meeting does not include:

(B) Any on-site inspection of any project or program;

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(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or

(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.

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(6) "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. . . .

ADVISORY OPINION

The Open Meetings Act is intended to guarantee that the public has an opportunity to attend meetings at which government agencies conduct their business, and that they are given reasonable advance notice of when and where those meetings will be held, as well as the matters that will be considered. Standing committees of a City Council, consisting of two or more members, the purpose of which is to formulate recommendations to the Council as a whole, such as the two committees described here, are governing bodies of public agencies within the meaning of the Act, and each committee must conduct its meetings in compliance with the Act.

Nonetheless, the Act provides that certain gatherings of a governing body, including on-site inspections of projects or programs, are not considered business meetings of a governing body, and are therefore exempt from the requirements in the Act. This particular exemption is consistent with the Legislature's express intent set forth in part of W. Va. Code § 6-9A-1:

The Legislature finds, however, that openness, public access to information and a desire to improve the operation of government do not require nor permit every meeting to be a public meeting. The Legislature finds that it would be unrealistic, if not impossible, to carry on the business of government should every meeting, every contact and every discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting.

Accordingly, this Committee concludes that when a quorum of the Street Committee or Building and Grounds Committee conducts on-site inspections of properties which are subject to their authority, those gatherings are not "meetings" as defined by the Act. Further, when a quorum of the Building and Grounds Committee inspects municipal records to determine the property holder of record, this activity does not constitute a "meeting" which is subject to the Act. However, if a quorum of a committee wishes to meet with a city employee to discuss matters relating to the terms or conditions of his or her employment, this gathering would ordinarily be considered a meeting, not an exempt "site visit."

It should be noted that after a committee has conducted one or more site visits, any deliberation or discussion on the merits of any recommended decision or official action to be approved or proposed, should take place at a public meeting which is noticed and conducted in accordance with the requirements of the Act.

This advisory opinion is limited to questions arising under the Open Governmental Proceedings Act, W. Va. Code §§ 6-9A-1, *et seq.*, and does not purport to interpret other laws or rules. Pursuant to W. Va. Code § 6-9A-11, a governing body or member thereof that acts in good faith reliance on this advisory opinion has an absolute defense to any civil suit or criminal prosecution for any action

taken based upon this opinion, so long as the underlying facts and circumstances surrounding the action are the same or substantially the same as those being addressed in this opinion, unless and until it is amended or revoked.

Signed by: James E. Shepherd, II September 7, 2010 Chairman _____