

## **OPEN MEETINGS ADVISORY OPINION NO. 2006-14**

**Issued On January 4, 2007 By The**

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

#### **OPINION SOUGHT**

Elizabeth Orndoff-Sayers, a Member of the Hardy County Rural Development Authority (hereinafter "Authority"), requests guidance on acting without a quorum and the specificity required in a meeting agenda.

#### **FACTS RELIED UPON BY THE COMMITTEE**

The requester is concerned that the Authority is taking official action at regularly scheduled meetings even though a quorum of the governing body is not present and participating in the meeting.

The requester is also concerned that official action is being taken on such matters as selling property in an Industrial Park for \$10,000 per acre, a approval of a \$500,000 grant application to the Appalachian Regional Commission and a resolution in support of the construction of a dam as a public water supply source at a meeting where the meeting agenda reads as follows:

1. Call to order
2. Minutes of Previous Meeting
3. Executive Director's Report
4. Old Business
5. New Business
6. Next Meeting
7. Adjourn

#### **CODE PROVISIONS RELIED UPON BY THE COMMITTEE**

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

(1) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at any meeting at which a quorum is present.

(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.

(7) "Quorum" means the gathering of a simple majority of the constituent membership of a governing body, unless applicable law provides for varying the required ratio.

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.

### **ADVISORY OPINION**

The Open Meetings Act is focused on open government, conducting official business in the “sunshine” where the actions of public officials may be observed by the public and the media. By definition, a gathering of less than a quorum of a governing body does not constitute a “meeting” within the meaning of the Act. Therefore, any actions purported to be taken in the course of such a gathering may be subject to legal challenge.

This Committee is authorized to provide guidance on the meaning and application of the Open Meetings Act and such official guidance conveys the benefit of specific legal immunity in the event of a civil action or criminal prosecution. This Committee declines to authorize actions taken by a governing body where less than the quorum required by statute participates in the meeting.

In 1999, the Open Meetings Act was amended to require that a meeting agenda be made available in advance of each regular meeting. A meeting agenda should list all items requiring official action by the governing body that it anticipates will be addressed in the course of a particular meeting. The Act does not establish how specifically these items of business must be listed on the meeting agenda but this Committee finds that items must be stated in a manner that makes the public aware of the particular matters to be dealt with at the meeting.

In this regard, although generic terms such as “Old Business” and “New Business” may be used to categorize matters listed on the agenda, these agenda headings are insufficient to put the public and the media on notice of any particular matters. However, “Minutes of Previous Meeting” is adequate notice on the agenda that the minutes from the previous meeting will be considered for approval.

By way of examples, either “consider resolution supporting construction of dam site 16 as a public water source” or “resolution in support of dam at Site 16” would be a reasonable agenda listing to support the action taken. Likewise, “consider sale of Lot #2 in the Wardensville Industrial Park” or “approve sale of acreage in Wardensville Industrial Park” are suggested agenda listings that would fairly describe the official action being considered at the meeting.

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 January 4, 2007

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Chairman

