

OPEN MEETINGS ADVISORY OPINION NO. 2007-04

Issued On May 5, 2007 By The

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

OPINION SOUGHT

The McClellan District Volunteer Fire Department asks if it is subject to the requirements of the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The McClellan District Volunteer Fire Department (MDVFD) is incorporated as a non-profit private organization. Members are citizens of McClellan District in Doddridge County who apply for membership and whose application is accepted by a vote of the existing membership.

MDVFD receives funds from the state as well as the county whose citizens have approved a fire rescue levy. MDVFD also conducts auctions and dinners to raise funds and receives voluntary donations from residents and local businesses. MDVFD does not otherwise exercise any executive or legislative authority.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

The Open Meetings Act applies to "public agencies" defined 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-2(6).

ADVISORY OPINION

The Open Meetings Act applies only to public agencies. The Act defines a "public agency" as "any administrative 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."

In Open Meetings Advisory Opinion 99-03 this Committee concluded that a volunteer fire department which was established under a municipal ordinance was a public agency subject to the Act.¹ However, MDVFD was not created as a public entity. It was initially formed as a not-for-profit corporation years before the Act became law in this state.

¹The West Virginia Supreme Court has previously concluded that a volunteer fire department established by a municipality and receiving public funds is a quasi-public agency. Shepherdstown Vol. Fire Dept. v. W. Va. Human Rights Comm'n., 172 W. Va. 627, 309 S.E.2d 342 (W. Va. 1983).

Accordingly, if MDVFD is to be included in the Act's definition of a "public agency" it must be as a "public corporation." In Open Meetings Advisory Opinion 99-13, this Committee determined that a public corporation is a corporation created by state or local authority to carry out a governmental function. This Committee further noted that the Act does not look at an organization's receipt of state or local funds as a factor in determining whether the organization is a public corporation.

MDVFD is not a corporation created by state or local authority to carry out a governmental function. It exists independent of state authorization, and this Committee concludes that it is not a public agency within the meaning and intent of the Open Meetings Act. Therefore, MDVFD is not subject to 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.


James E. Shepherd II, Chairman