

OPEN MEETINGS ADVISORY OPINION NO. 2007-05

Issued On May 3, 2007 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Mayor of the City of Dunbar seeks guidance on when an emergency matter may be added to the meeting agenda and what constitutes an emergency for purposes of holding an emergency meeting.

FACTS RELIED UPON BY THE COMMITTEE

From time to time, in the course of a regular City Council meeting, a Council Member may make a motion to add an "emergency" item to the meeting agenda. As an example, the Council may wish to contract for the services of an independent attorney to advise the Finance Committee and review municipal finance records to identify unauthorized expenses.

If the Mayor determines that this is not in order and adjourns the meeting, the City Council, in accordance with established procedures, may elect to reconvene by calling an "emergency" meeting and proceed to address the subject.¹

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-2 provides the following definitions which may be pertinent to this inquiry:

- (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.
- (5) "Official action" means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.
- (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.

¹The requester also asks whether a meeting may be adjourned without debate in accordance with a municipal ordinance. This involves a matter that is governed by the state's municipal code and local ordinance rather than the Open Meetings Act. This Committee has no authority to rule on that question.

Each governing body of the executive branch of the state shall file a notice of any meeting with the secretary of state for publication in the state register. Each notice shall state the date, time, place and purpose of the meeting. Each notice shall be filed in a manner to allow each notice to appear in the state register at least five days prior to the date of the meeting.

In the event of an emergency requiring immediate official action, any governing body of the executive branch of the state may file an emergency meeting notice at any time prior to the meeting. The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

ADVISORY OPINION

The Open Meetings Act was amended in 1999 to mandate that governing bodies of public agencies make available certain information to the media and the public in advance of a meeting. In addition to providing notice of the date, time and place of a meeting, governing bodies are required to provide an agenda for each regular meeting and, in the case of a special meeting, identify the purpose or purposes of the meeting. Prior to these 1999 amendments governing bodies were generally free to address any matter of their choosing in the course of a properly noticed public meeting.

This Committee has previously recognized that these notice requirements were intended to increase public input and participation in government. Consistent with that intent, we have concluded that 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.

Although the Act does not explain how specifically these items of business must be listed on the meeting agenda, we have further found that each agenda item must be stated in a manner that makes the public aware of the particular matters that will be dealt with at the meeting. Accordingly, agenda listings that contain nothing more than generic descriptions such as "old business," "new business," "personnel matters," and "such other matters as the governing body may determine," are insufficient to provide the specific advance notice to which the public and media are entitled.

The Act provides only one circumstance when a governing body of a public agency, such as the Dunbar City Council, may meet and decide a matter which was not on the meeting agenda in advance, and that is when the matter involves "an emergency requiring immediate official action." This Committee has previously clarified this exemption, directing governing bodies that wish to add emergency matters to their meeting agenda to not only post an amended agenda including the emergency item, but also explain the facts and circumstances which warrant adding the emergency item to the agenda less than two business days in advance of the meeting, and to include this same explanation of the nature of the emergency in the minutes for that meeting. Similarly, we have advised governing bodies that need to hold emergency meetings with little or no advance notice to issue an emergency meeting notice explaining the nature of the emergency and repeating this explanation in the minutes of such an emergency meeting.

The Act does not include a definition of "emergency" and this Committee has not previously been asked to determine what matters qualify for consideration under this exemption. Ordinarily, an "emergency" involves an unexpected situation or sudden occurrence of a serious nature, such as an event that threatens public health and safety. In order to satisfy the terms of the exemption, not only must a matter involve an emergency, the governing body must be required to take immediate official action in response to the situation. For example, if a flood were to contaminate the town's water supply, the council would be required to approve various actions to protect public health and restore the system to safe operation.

The example of a possible emergency provided in this inquiry, approving the employment of an attorney or other professional to assist the Council Members in examining the town's financial records, does not describe an "emergency requiring immediate official action" within the meaning of the Act. Absent a bona fide emergency requiring immediate official action, a governing body may neither add an item to the meeting agenda in the course of a public meeting, nor convene an emergency meeting including a quorum of the governing body to take official action on a matter that does not require immediate official action.

Absent some more specific restriction contained in the charter, ordinance or other rules adopted by the governing body, the Act permits the City Council to convene a special meeting by posting a notice in a public place, such as a bulletin board at the City Hall, stating the date, time, place and purpose of the meeting at least two business days in advance. In calculating this two business day time period, Saturdays, Sundays, legal holidays, and the day of the meeting are not counted. As noted earlier in this opinion, the purpose or purposes of any special meeting should be stated in a manner that makes the public and the media aware of the particular matters that will be dealt with at the meeting. (For additional guidance on this subject, see Open Meetings Advisory Opinion 2006-14, issued on January 4, 2007.)

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