

OPEN MEETINGS ADVISORY OPINION NO. 2008-03

Issued On February 7, 2008 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Mayor of Dunbar asks if the Boards of Trustees of the Municipal Police and Fire Pension Boards on which he serves are subject to the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

In accordance with W. Va. Code § 8-22-16, the City of Dunbar has established a Board of Trustees for the Policeman's Pension and Relief Fund of Dunbar (Policemen's Fund) and a Board of Trustees for the Firemen's Pension and Relief Fund of Dunbar (Firemen's Fund). W. Va. Code § 8-22-18 provides that the membership of the Policemen's Fund shall consist of the Mayor and four members of the municipal police department, elected by the membership of the police department. Similarly, the Firemen's Fund consists of the Mayor and four fire fighters, elected by the membership of the fire department. The Mayor of the municipality is required to serve as the presiding officer for both Funds.

W. Va Code § 8-22-17 provides that each such Board of Trustees will be a "public corporation." These Boards are entrusted with the administration of their respective funds.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-2(3) defines "governing body" as "[T]he members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members. . . ."

W. Va. Code § 6-9A-2(6) defines "public agency" as "[A]ny 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 applies to governing bodies of public agencies which exercise executive or legislative power. The Board of Trustees of the Policemen's Pension and Relief Fund of Dunbar and the Board of Trustees of the Firemen's Pension and Relief Fund of Dunbar are public corporations authorized to administer public funds in accordance with state law. Therefore, they are governing bodies of public agencies subject to the requirements of the Open Meetings 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