

OPEN MEETINGS ADVISORY OPINION NO. 2010-01

Issued On April 1, 2010 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

Stephen Detrick, a member of the Morgan County Rescue Service, Inc. (MCRS) asks if the MCRS is a public agency subject to the provisions of the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The Morgan County Rescue Service, Inc. (MCRS) was incorporated as a non-profit private organization in 1969.¹ Pursuant to the Articles of Incorporation, initially, the original seven board members were appointed by the County Court (now County Commission); thereafter, only three of the seven are appointed by the County Commission from the active members, and the remaining board members are elected by the active members in good standing.

According to its Articles of Incorporation, MCRS does not exercise any executive or legislative power. Instead, its role is to “render immediate temporary aid and ambulance service to the sick and injured; to provide transportation for them when needed”, and to otherwise act in furtherance of those two goals.

The Emergency Ambulance Service Act of 1975 requires all county commissions to provide ambulance services for their citizens. “The county commission may provide the service directly through its agents, servants and employees; or through private enterprise; or by its designees; or by contracting with individuals, groups, associations, corporations or otherwise....” W. Va. Code § 7-15-4.

Morgan County recently adopted Special Emergency Ambulance Service Fee Ordinance, establishing an ambulance fee and recognizing the MCRS and the Paw Paw Volunteer Fire Department as Emergency Medical Services (EMS) Agencies. Pursuant to the Ordinance, each EMS Agency must submit its annual budget to the County Commission for formal approval of use of collected fees. The Ordinance further provides:

The Morgan County Commission shall review and approve EMS Agencies’ Budgets during the general county budget process. The EMS Agencies shall submit an annual financial report of expenditures to the Morgan County Commission by August 1st of each year.

Section Two, Page 3.

¹ According to the Secretary of State’s Office, the State Tax Department recently revoked MCRS’s charter. That fact, however, is immaterial to our analysis and the ultimate outcome herein.

The Morgan County Commission and MCRS have a written contract, pursuant to the Ordinance, outlining the County Commission's obligation to render certain funds in exchange for MCRS providing certain services.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-2(6), 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.

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."

MCRS 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.

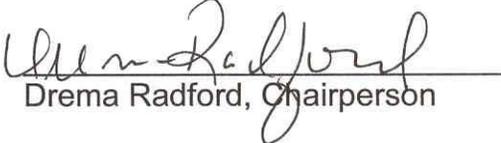
Accordingly, if MCRS is to be included in the Act's definition of a "public agency" it must be as a "public corporation." In Open Meetings Advisory Opinion 99-13, this Committee determined that a public corporation is a corporation created by state or local authority to carry out a governmental function. 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.²

In Open Meetings Advisory Opinion 2007-04, this Committee determined that a private volunteer fire department was not a public entity subject to the Act. In Open Meetings Advisory Opinion 2008-07, this Committee, in a lengthy analysis of the term "public corporation" determined that a County Convention and Visitors Bureau was not a public entity subject to the Act.

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

² The Committee noted, however, that under the Freedom of Information Act—over which neither this Committee nor the Ethics Commission has jurisdiction—governing body includes "any other body which is created by state or local authority **or which is primarily funded by the state or local authority.**" W. Va. Code § 29B-1-2. (emphasis supplied)

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.


Drema Radford, Chairperson