

**OPEN MEETINGS ADVISORY OPINION NO. 2010-02** Plus attachment A

**Issued On October 7, 2010 By The**

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

**OPINION SOUGHT**

The Mineral County Commission seeks approval of its procedural rules, including the provisions relating to notice requirements, meeting room size and the adoption of Robert's Rules of Order.

**FACTS RELIED UPON BY THE COMMITTEE**

The Mineral County Commission is in the process of adopting procedural rules in order to ensure compliance with the Open Meetings Act. The Open Meetings Committee has reviewed the proposed rules in their entirety.

The Open Meetings Act does not require the Committee to recite each provision of the rule in rendering an opinion as to whether they comply with the Open Meetings Act. However, the Committee elects to provide comment in regard to the following provisions in the rule: (1) Notice requirements; (2) Grounds for determining which citizens may attend when the room size may not be able to accommodate all members of the public who seek to observe the meeting; and, (3) Adoption of Robert's Rules of Order.

A complete copy of the Mineral County Commission's proposed rules is attached to this advisory opinion as Appendix A.

**CODE PROVISIONS RELIED UPON BY THE COMMITTEE**

W. Va. Code § 6-9A-3 provides:

Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public. Any governing body may make and enforce reasonable rules for attendance and presentation at any meeting where there is not room enough for all members of the public who wish to attend. This article does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised: Provided, that persons who desire to address the governing body may not be required to register to address the body more than fifteen minutes prior to time the scheduled meeting is to commence.

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 generally requires governing bodies of public agencies to promulgate rules setting forth the notice and agenda requirements for regular and special meetings. W.Va. Code § 6-9A-3. In addition to rules relating to notice and agendas provisions, governing bodies may elect to adopt other rules governing meeting procedures so long as the provisions are not in conflict with the Open Meetings Act.

Consistent with its legislative mandate to determine whether any proposed course of action would violate any provision in the Act, this Committee will review such additional provisions. However, the Committee's opinion, and any immunity which flows from the opinion, will be limited to whether any provision in the proposed rules is inconsistent with the Act. The opinion will not address discretionary application of a rule to a specific situation, unless the requester provides a proposed set of facts describing that situation.

The Committee finds that the majority of the rules comply with the Open Meeting Act. However, it finds that certain provisions in the rules should be modified. These include:

#### **Time for posting of Agendas for Regular and Special Meetings**

The rule contained in numbered paragraph seven (7) provides that for a regular meeting a meeting agenda shall be posted at or near the front entrance of the courthouse and a copy sent to newspapers of general circulation three business days before the meeting. In regard to Special Meetings, the rule provides that the time, place and purpose of all special meetings shall be posted and sent to the media two business days before the meeting. See numbered paragraph eight (8).

The Committee finds that the proposed rule should contain a provision which states that when counting days, the day of the meeting, Saturdays, Sundays and legal holidays are excluded. See O.M.A.O. 2006-15. Further, to comply with the posting deadline, the agenda must be posted by close of the business day.

The Open Meetings Act does not require a governing body to provide additional notice to the media by sending a notice or agenda to the media. However, this practice is encouraged and nothing in the Open Meetings Act prohibits the Mineral County Commission from including this requirement in its rules. O.M.A.O. 2006-15.

## Meeting Room Size

The proposed rule contained in numbered paragraph two (2) reads:

The attendance within the meeting room shall be limited by applicable rules and regulations of the Fire Marshal and of the Commission, and the Commission may limit the number of persons in attendance on a first come first serve basis or upon such other basis as the Commission may from time to time select.

The Open Meetings Act states “Any governing body may make and enforce reasonable rules for attendance and presentation at any meeting where there is not room enough for all members of the public who wish to attend.” This provision appears to recognize that it would be impossible to require a room large enough to allow all citizens in the county to attend a particular meeting.

Previously this Committee, in reviewing Rules for the City of Oak Hill, ruled:

This Committee finds that there is no provision in the Open Meetings Act which mandates that a governing body of a public agency change the location of a meeting whenever it either finds or reasonably expects that its regular meeting place will not be able to accommodate all those wishing to attend. However, consistent with the purposes behind the enactment of the Open Meetings Act, this Committee strongly encourages any governing body which encounters such a situation to make every reasonable effort to accommodate the attendees, if this can be accomplished without undue hardship to the governing body or interfering with its ability to conduct an efficient public meeting. The rule proposed by Oak Hill is consistent with this approach and provides reasonable notice of a change of venue to accommodate public attendance.

O.M.A.O. 2008-15.

The Commission’s proposed rule provides that one ground for limiting attendance is “upon such basis as the Commission may from time to time select.” The Committee finds that this broad language may lend itself to arbitrary and capricious decision-making in regard to who may attend meetings.

The Committee therefore declines to approve this provision of the rule in its present form. However, it finds that a provision which reads the same or substantially the same as the following would be acceptable:

The attendance within the meeting room shall be limited by applicable rules and regulations of the Fire Marshall. The Commission, when practicable, may change the venue for a meeting in the event that the meeting room is not large enough to accommodate the number of people wishing to attend or speak at the meeting. The change in meeting location shall be posted as soon as practicable

in the same location as the meeting notice and agenda, and shall also be posted on the meeting room door. The start of the meeting may be delayed up to 30 minutes to accommodate the relocation effort. When it is not practicable to move the meeting, the attendance shall be permitted on a first come, first serve basis. If it is necessary to allow other persons in the room for purposes of hearing oral presentations or public comments, then the Commission shall ask for volunteers to leave the room. If there are no volunteers, then the Presiding Officer may request that designated persons leave the room so long as the Presiding Officer has a rational basis for this decision and states the basis on the record and directs that it be noted in the meeting minutes.

### **Adoption of Robert's Rules of Order**

Paragraph twelve (12) of the proposed rule states that the Commission hereby adopts Robert's Rules of Order. There is nothing in the Open Meetings Act which requires a governing body to adopt a particular rule of parliamentary procedure. Most governing bodies in West Virginia appear to have adopted, formally or informally, Robert's Rules.

To avoid any potential for conflict between provisions in Robert's Rules and other applicable rules, the Committee finds that the Commission should incorporate a provision similar in substance as to that adopted by the City of Glendale which reads:

Except as otherwise provided in the Constitution of the United States and the State of West Virginia, the laws of the State of West Virginia or the Charter of the City of Glen Dale, all questions of order, the methods of organization and the conduct of business of the municipal council shall be governed by Roberts Rules of Order in all cases to which they are applicable, and in which they are not inconsistent with the governing rules of council.

The Open Meetings Committee approved Glen Dale's rules in O.M.A.O. 2003-06.

### **Conclusion**

Consistent with its limited authority to review additional provisions as previously discussed, this Committee finds that none of the provisions contained in the proposed rule, other than those addressed above, are inconsistent with the Open Meetings Act. In regard to the changes which must be made for purposes of complying with this ruling, the Committee directs the Commission's attorney or designee to submit the amended rules to the Executive Director of the West Virginia Ethics Commission for her approval. If the Executive Director finds that the revised rule complies with this opinion, then she shall append the revised rule and her letter approving the same to this opinion. If necessary, the Executive Director or Commission may submit the revised rule to the Open Meetings Committee for further review.

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.

S/S Drema Radford  
Drema Radford, Chairperson

**POLICY OF THE MINERAL COUNTY COMMISSION  
FOR IMPLEMENTATION OF AND REGULATION UNDER  
THE "OPEN GOVERNMENTAL PROCEEDINGS" ACT  
(WEST VIRGINIA CODE §6-9A-1, ET SEQ).**

**DECLARATION OF INTENT**

The Mineral County Commission (hereinafter "Commission") hereby declares that the Commission is a governmental entity and serves to represent the citizens of Mineral County, West Virginia and it is, therefore, in the best interest of the people of said county for the proceedings of the Commission to be conducted in an open and public manner. The purposes of these policies and regulations are to implement said open governmental proceedings act and to provide for the orderly conduct of meetings of this body in a manner so as to allow for public observation and input and still provide for the orderly conduction of business by the Commission.

**RULES AND REGULATIONS**

The Commission hereby adopts the following rules of conduct:

1. All meetings of the Commission shall be open to the public.
2. The attendance within the meeting room shall be limited by applicable rules and regulations of the Fire Marshall and of the Commission, and the Commission may limit the number of persons in attendance on a first come first serve basis or upon such other basis as the Commission may from time to time select.
3. The Commission, upon the direction of its presiding officer, may remove any member of the public from the meeting who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised.
4. No persons shall have a right to address the Commission unless and until recognized.
5. The Commission may establish a particular time for persons who wish to make comments to the Commission to address the Commission in public session.
6. Any person who wishes to address the Commission must first register with the County Clerk or his or her designee not less than fifteen

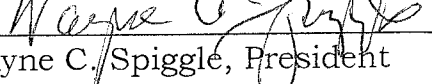
minutes prior to the time that the scheduled meeting is to commence.

7. The Commission shall establish regularly scheduled meetings and the time and place of the regularly scheduled meetings shall be posted and provided to the newspapers of general circulation within the county on an annual basis. An agenda for each meeting shall be posted at or near the front entrance of the courthouse and a copy shall be sent to the newspapers of general circulation three (3) business days prior to the date of said meeting. The public may review or request a copy of the agenda by contacting the County Clerk during normal business hours.
8. The time, place and purpose of all special meetings shall likewise be posted as aforesaid and be sent to said newspapers at least two business days prior to the date of said meeting, except in the event of an emergency requiring immediate official action.
9. Although the Commission is desirous of public comment and input, it shall not be required to respond to any public questions at any such meeting of the Commission.
10. The Commission may go into and hold an executive session during any regular, special or emergency meeting after the presiding officer has identified the authorization under Chapter 6, Article 9A, Section 4 of the West Virginia Code for which the holding of executive session is permitted and shall present such declaration to the Commission and the general public; however, no decision of the Commission or official action shall be taken in such executive session. An executive session may be held only upon majority affirmative vote of the members of the Commission and for the purposes set forth in §6-9A-4 of the West Virginia Code.
11. The Commission shall provide for the preparation of written minutes of all meetings. Such meetings shall be recorded or minutes taken by the County Clerk or his or her designee or in their absence, any person designated by the presiding officer to take said minutes. A draft version of all such minutes shall, within a reasonable time after the meeting, be available to the public. Official minutes will be available to the public after adoption of the draft minutes by the Commission at the next scheduled meeting of the Commission. Said minutes shall contain the following:
  - a. The date, time and place of the meeting;

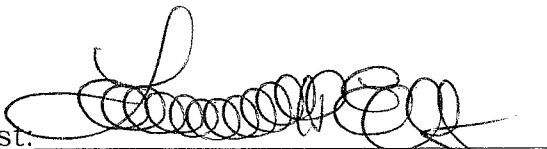
- b. The name of each member of the Commission present and absent;
  - c. All motions, proposals, resolutions, orders, ordinances, and measures proposed, the name of the person proposing the same and their disposition;
  - d. The results of all votes and, upon the request of a member, the vote of each member by name; and
  - e. Minutes of any executive session, if any are taken, called in compliance with WV Code 6-9A-4, shall not be made available to the public.
12. The Commission hereby adopts Robert's Rules of Order as its method of operation except that the Commission may suspend said Rules if it deems it is in the best interest of the Commission and no member of the Commission objects thereto. The presiding officer of the Commission shall be the person hereby designated to determine the propriety of proceedings under Robert's Rules of Order and may designate a parliamentarian to assist him in regard thereto. Any ruling of the presiding officer in regard to proceedings under Robert's Rules of Order may be placed to a vote of the Commission in the event of a disagreement with the ruling of the chair in regard thereto.
13. The Commission may adopt such additional and further rules and regulations as it deems necessary or beneficial to assist it in the conduct of its business.

Adopted this the 24<sup>th</sup> day of August, 2010.

Mineral County Commission

By:   
Wayne C. Spiggle, President

Attest.



Lauren T. P. Ellifritz, Clerk