

OPEN MEETINGS ADVISORY OPINION NO. 2011-01

Issued On May 5, 2011 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Wood County Commission asks what constitutes a reasonable period of time, to have minutes available after its meetings, for a governing body which meets two times a week.

FACTS RELIED UPON BY THE COMMITTEE

The County Commission meets two times a week. The meetings are held on Monday and Thursday.

In O.M.A.O. 2010-04, the Open Meetings Committee addressed the question of what constitutes a reasonable period of time for minutes to be made available after a meeting. The Committee found, in relevant part, that the Open Meetings Act does not require the release of draft minutes, although it encouraged governing bodies to release draft minutes. In regard to what constitutes a reasonable period of time for approved minutes to be made available, the Committee ruled:

The Committee finds that a reasonable period of time to make minutes available is immediately following the next regular meeting, but no later than close of business on the next business day following that meeting. If material changes are required to be made to the draft minutes reviewed by the body, then, in the absence of compelling circumstances, the minutes should be available for inspection no later than three business days following the meeting. In calculating days, the day of the meeting, Saturdays, Sundays and legal holidays are excluded.

The Requester asks about the application of this rule to its unique situation as most governing bodies do not meet twice a week. Hence, for governing bodies which meet this frequently, to comply with the ruling in O.M.A.O. 2010-04 may create a hardship.

In consultation with Ethics Commission staff, and until such time that this Committee issues a ruling on this matter, the Requester has imposed a policy upon itself wherein it approves the minutes from both meetings held the previous week at its Thursday meeting. It further makes available for review its audio recordings and draft minutes.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-5. Minutes.

Each governing body shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in section four of this article, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each member of the governing body present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- (4) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.

ADVISORY OPINION

The Open Meetings Committee finds that the time frames established in O.M.A.O. 2010-04 may impose a hardship upon governing bodies which meet twice a week. O.M.A.O. 2010-04 requires governing bodies to make approved minutes available immediately following the next regular meeting, but no later than close of business on the next business day following the meeting.¹

The Committee finds that a fair rule for governing bodies which meet twice a week is that the approved minutes from both meetings held the previous week be made available the next week, immediately following the governing body's second regular meeting, but no later than the close of business on the next business day following that meeting. If material changes are required to be made to the draft minutes reviewed by the body, then, in the absence of compelling circumstances, the minutes should be available for inspection no later than three business days following the second regular meeting. In calculating days, the day of the meeting, Saturdays, Sundays and legal holidays are excluded.

¹ As set forth in O.M.A.O. 2010-04, and as cited in the fact section of this opinion, an additional period of time is permitted if material changes/corrections to the minutes are required. This exception allows staff or the public official preparing the minutes adequate time to revise the minutes to accurately reflect the corrections made by the governing body.

The Committee commends the Requester for making its draft minutes available and encourages the County Commission to continue this practice.

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