

OPEN MEETINGS ADVISORY OPINION NO. 2011-07

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

OPINION SOUGHT

Elizabeth Tracy, a Webster Springs council member, asks whether the recorder and/or mayor count toward a quorum of the governing body.

FACTS RELIED UPON BY THE COMMITTEE

The municipal government of Webster Springs consists of five council members, the mayor and the recorder. All are elected officials.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

The Open Meetings Act, W. Va. Code § 6-9A-2, includes the following definitions:

- (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.

- (3) "Governing body" means the 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....

- (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.

The Municipal Code of West Virginia provides in relevant part:

§ 8-1-2(b) For the purpose of this chapter, unless the context clearly requires a different meaning:

- (1) "Governing body" shall mean the mayor and council together, the council, the board of directors, the commission, or other board or body of any municipality, by whatever name called, as the case may be, charged

with the responsibility of enacting ordinances and determining the public policy of such municipality; and in certain articles dealing with intergovernmental relations shall also mean the county court of any county or governing board of other units of government referred to in said articles;

- (2) "Councilmen" shall mean the members of a governing body, by whatever name such members may be called;
- (3) "Mayor" shall mean the individual called mayor....
- (4) "Recorder" shall mean the recorder, clerk or other municipal officer, by whatever name called, charged with the responsibility of keeping the journal of the proceedings of the governing body of the municipality and other municipal records....

§ 8-9-1. Unless otherwise provided by charter provision, the governing body of every municipality shall be presided over at its meetings by the mayor, or, in his absence, by the recorder, or, in the absence of both the mayor and the recorder, by one of its members selected by a majority of the members of the governing body present. A majority of the members of the governing body shall be necessary to constitute a quorum for the transaction of business....

§ 8-9-2. The mayor and recorder shall, unless otherwise provided by charter provision, have votes as members of the governing body, and, in case of a tie, the presiding officer at the time shall cast the tie-breaking vote, unless he has previously voted.

ADVISORY OPINION

The Open Meetings Act (OMA) requires governing bodies to have a quorum in order to have a meeting and conduct its business. Thus, it is imperative that a governing body is certain as to the make-up of its entity in order to determine what number constitutes a quorum. Unless applicable law provides for varying the required ratio, the OMA defines quorum as a simple majority of the constituent membership of a governing body. See *e.g.* 33 W. Va. Op. Atty. Gen. 87 (1929) (Attorney General compared and contrasted quorum requirements for municipalities, some of which were set by charter and others by general law.)

The OMA does not define what is meant by "constituent membership" nor is this term defined elsewhere in the Code. As a result, in OMA Advisory Opinion 2007-11, relying on precedent from the West Virginia Supreme Court of Appeals and the Office of the Attorney General, this Committee concluded that a majority of members in office at a

given time, regardless of vacancies is the basis for the determination of a quorum; a majority of the whole number elected to membership is not required.

Municipalities operate under the Municipal Code of West Virginia, W. Va. Code §§ 8-1-1 *et seq.* Both the OMA and the Municipal Code define "governing body". Although this Committee is not authorized to interpret the Municipal Code or any other statute, the OMA and the Municipal Code are *in pari materia* and must be read together, Statutes *in pari materia* must be interpreted in light of each other since they have a common purpose. The OMA defines "governing body" as the members of a public agency having the power to make decisions, and further defines "decisions" to include votes. The Municipal Code, although internally inconsistent in its definition of "governing body", expressly authorizes the recorder and the mayor to vote unless otherwise provided by charter provision.

Therefore, this Committee concludes that, for purposes of the OMA, the recorder is a member of the governing body of a municipality, as is the mayor. As a result, unless the charter provides that the recorder and the mayor are not permitted to vote, they are to be counted in determining a quorum. Thus, if the charter permits the recorder and mayor to vote, then the governing body of the municipality of Webster Springs is comprised of 7 members. Further, unless applicable law defines quorum as something other than a simple majority, then a quorum thereof is any of those 4 members.

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