

OPEN MEETINGS ADVISORY OPINION NO. 2012-03

Issued On June 28, 2012 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The **Martinsburg-Berkeley County Convention and Visitors Bureau** asks whether it is subject to the Open Governmental Proceedings Act.

FACTS RELIED UPON BY THE COMMITTEE

The statute defines a Convention and Visitors Bureau as follows:

[A] nonstock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the municipality, county or region in which such convention and visitor's bureau...is located...

W.Va. Code § 7-18-4(d)(1).

According to the West Virginia Secretary of State's website, the Requester is organized as a non-profit corporation. The Requester notes that in Open Meetings Advisory Opinion (O.M.A.O. 2008-07), this Committee ruled that Convention and Visitors Bureaus are not subject to the Open Meetings Act. The Requester seeks confirmation that, in accordance with the holding in O.M.A.O. 2008-08, it is not subject to the Open Meetings Act.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W.Va. Code § 6-9A-2

(6) "Public agency" means 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. The term "public agency" does not include courts created by article eight of the West Virginia constitution or the system of family law masters created by article four, chapter forty-eight-a of this code.

ADVISORY OPINION

In O.M.A.O. 2008-07 the Parkersburg/Wood County Convention and Visitors Bureau asked whether it was subject to the Open Meetings Act. This Committee extensively analyzed the question presented, and concluded that, as the enabling legislation for Convention and Visitor Centers expressly states that they are to be organized as non-profit organizations, in turn, they were not subject to the Open Meetings Act since they do not fall within the statutory definition of public agency. W.Va. Code § 6-9A-2

This Committee has reviewed the enabling legislation for convention and visitors bureaus, W.Va. Code § 7-18-4(d)(1), to determine whether there have been any changes to the law which affect its analysis and holding in O.M.A.O. 2008-07. While there have been changes to this provision, none of the changes relate to the question before this Committee. Instead, the statute still specifically states that they shall be organized as non-profit organizations.

The Martinsburg-Berkeley County Convention and Visitors Bureau is organized as a non-profit corporation. As the Requester is a non-profit organization, and as the enabling legislation governing the organizational structure of convention and visitors bureaus has not materially changed since the Committee issued O.M.A.O. 2008-07, the Committee reaffirms its prior holding and finds that the Requester is not subject to the Open Meetings Act. The legal analysis and holding in O.M.A.O. 2008-07 are incorporated herein by reference. See *also* O.M.A.O. 2010-01 wherein this Committee ruled that a non-profit corporation is not subject to 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.

s/s Drema Radford
Drema Radford, Chairperson