

**OPEN MEETINGS ADVISORY OPINION NO. 2013-04**

**Originally Issued on December 12, 2013 and**

**Ratified on January 21, 2014 by**

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

**OPINION SOUGHT**

The **Eastern West Virginia Regional Airport Authority** asks that its bylaws be reviewed for compliance with the Open Meetings Act.

**FACTS RELIED UPON BY THE COMMITTEE**

The Eastern West Virginia Regional Airport Authority (“Authority”) approved an amendment to its bylaws on October 1, 2013. The Authority has asked the Committee on Open Governmental Meetings to review the bylaws for compliance with the Open Meetings Act (the Act). Accordingly, the Open Meetings Committee has reviewed the proposed bylaws in their entirety.

The Act does not require this Committee to recite each provision of the bylaws in rendering an opinion as to whether they comply with the Act. Nevertheless, this Committee elects to provide comment on the provisions listed below which do not comply.

A complete copy of the Authority’s bylaws is attached to this advisory opinion.

**CODE PROVISIONS RELIED UPON BY THE COMMITTEE**

W. Va. Code § 6-9A-3 provides in relevant part:

Except as expressly and specifically otherwise provided by law . . . [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 when 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.

W. Va. Code § 6-9A-5 explains:

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 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 those requirements, governing bodies may elect to adopt other rules governing meeting procedures so long as the provisions are not in conflict with the 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. Nevertheless, the Committee's opinion, and any immunity which flows from this opinion, will be limited to whether any provision in the proposed bylaws is inconsistent with the Act.

The Committee finds that the majority of the bylaws comply with the Act, but some would benefit from modification or clarification in order to more clearly identify their compliance with the appropriate sections of the West Virginia Code. This review will list each part of the noncompliant bylaws in the order in which they appear, with any corrections listed afterwards.

### ***Article I***

#### ***Section 2.***

*The procedure for conducting all annual, regular and special meetings shall be based on Robert's Rules of Order.*

While seemingly innocuous, Open Meetings Advisory Opinion 2010-12 gives guidance on the formal adoption of Robert's Rules of Order. It states:

There is nothing in the Open Meetings Act which requires a governing body to adopt a particular rule of parliamentary procedure. . . . To avoid any potential for conflict between [Robert's Rules] and other applicable rules . . . the Committee finds that [the Requester should adopt] 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 Robert's Rules of Order in all cases to which they are applicable, and in which they are not inconsistent with the governing rules of council.

Accordingly, the Committee recommends that the Authority adopt a similar provision instead of the current blanket adoption of Robert's Rules of Order. For example, "[t]o the extent that there is a conflict between Robert's Rules of Order and the Open Meetings Act, the latter prevails," would meet the requirements of the Act.

## **Article II**

### *Section 1.*

*All annual meetings shall be held in July of each year. Regular meetings shall be held at stated intervals, to be fixed by the Authority in its minutes from time to time. Special meetings may be called by the Chairman at any time.*

### *Section 2.*

*Notice of all annual, regular and special meetings shall be given by the Secretary within a reasonable length of time prior to the meeting date.*

These Sections do not comply with the Act. The Act requires that governing bodies that have regularly scheduled meetings must post the schedule annually in a conspicuous place and update it throughout the year, as necessary. See Open Meetings Advisory Opinion 2006-15. The posting must also include the date, time and place of the meetings. If the meetings are held at irregular intervals, notice of regular meetings must be posted three business days in advance of the meeting. *Id.*

Similarly, notice must be posted for special meetings two business days in advance of the meeting. The reason the given sections do not comply with the Act is that they do not define "reasonable length of time." This problem may be remedied by adding the specific time periods specified by Open Meetings Advisory Opinion 2006-15, *i.e.*, three business days for regular meetings and two business days for special meetings.

### **Article III**

Article III, dealing with Authority officer duties, is generally outside the scope of the Act. Nevertheless, Section 4, in listing the Secretary's duties, states:

*The Secretary shall keep proper records of all proceedings, business and affairs of the Authority and shall have the custody and control of all records, documents, and instruments belonging to it. He shall give notice of all meetings in accordance with these by-laws and shall attend and keep a record of the minutes of all such meetings.*

The final sentence should state, "He shall give notice of all meetings in accordance with W. Va. Code § 6-9A-1, *et seq.* and these bylaws . . ." This addition ensures compliance with the Act as well as any rules promulgated by the Authority.

Additionally, it would be helpful to list what the Act requires to be contained in the minutes, either in this article or in a separate addition. As above, W. Va. Code § 6-9A-5 lists the following requirements for minutes:

- (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.

Although specific reference to the statutory requirements for minutes is not required in bylaws, they must be followed for all meetings. Therefore, it is recommended that the bylaws include them in some manner for ease of reference.

### **Article IV**

#### **Section 1.**

*The Authority may create an executive committee, which shall be selected from among members. The executive committee shall be assigned duties and powers as the*

*Authority may, in its minutes, fix and determine. It may also create any other committee selected from its members, agents or employees as it may from time to time, in its minutes, fix and determine.*

While this Section in itself is permissible, it is important to note that any prospective Executive Committee, as well as any other committee created, remains subject to the requirements of the Open Meetings Act.

Open Meetings Advisory Opinion 2007-01 explains:

[A]ny committee or subcommittee consisting of two or more Board Members, but less than a quorum of the Board, which is appointed to make recommendations to the Board as a whole on such matters as specific policies or administrative matters, or any other matters requiring official action by the Board, involves a “governing body” within the meaning and intent of the Act, and the meetings of any such committee or subcommittee should be conducted in compliance with the Act.

Therefore, it is recommended that the bylaws include the sentence, “Any and all committees shall conduct their meetings in compliance with W. Va. Code § 6-9A-1, *et seq.* and these bylaws.”

## **Article VI**

### *Section 1.*

*These By Laws may be amended at any regular meeting of the Authority or at any special meeting thereof, providing a written or oral statement of the proposed amendment is given to each member prior to said meeting.*

Here, as before, it is helpful, but not necessary, to provide the requirements for Open Meetings Act compliance. The final sentence is recommended to state, “The agenda for said meeting shall properly list and describe the proposed amendment, and be posted within an appropriate time, in accordance with W. Va. Code § 6-9A-1, *et seq.* and these bylaws.” This addition ensures compliance with the Act as well as any rules promulgated by the Authority.

## **CONCLUSION**

The Committee commends the Authority for submitting its bylaws for review. Consistent with its limited authority, this Committee finds that none of the provisions contained in the current bylaws, 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 Authority to submit the amended bylaws to the Executive Director of the West Virginia Ethics Commission for approval. If the Executive Director finds that the revised bylaws comply with this opinion, then she

shall append the revised bylaws and her letter approving the same to this opinion. If necessary, the Executive Director or Commission may submit the revised bylaws 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.

  
Drema Radford, Chairperson







Section 4. The Authority Members shall be empowered to employ a full-time, paid Airport Manager who shall conduct and direct the day to day operations of the EWWRA. The Airport Manager, with the advice and consent of the members of the Airport Authority, may hire such full time, part time, and seasonal employees as may be needed to conduct the operations of the airport, and will keep the Authority members advised of all matters related to the said operations.

Section 5. The Airport Authority shall annually, at a time convenient to each local funding body, report to such body upon all receipts and disbursements of the Board, the scope and location of its activities and such other information that the funding body may by resolution request and shall, at the same time, present a proposed budget showing projected receipts and disbursements, describing the programs and their anticipated costs, and giving such other information as any funding body shall by resolution request. Such annual report shall be a public record.

Section 6. All members of the Authority and the Airport Manager shall file annually with the Secretary/Treasurer, a Conflict of Interest Disclosure Form that would reveal any potential financial, familiar, or other forms of conflicts of interest that could arise during the conduct of the business of the Airport Authority.

## ARTICLE V Officers

Section 1. The Officers of this Authority shall be a Chairman, Vice Chairman, and Secretary/Treasurer. These officers shall hold office for one (1) calendar year.

Section 2. All Officers of the Authority shall be elected by majority vote during its regular June meeting. The term of office shall begin the first meeting in the month of July.

Section 3. All Officers of the Authority shall be provided a blanket surety bond and/or Director's Insurance by the Authority in an amount specified by state law.

## ARTICLE VI Duties of Officers

### Section 1. Chairman

The Chairman shall be the Chief Executive Officer of the Authority and shall perform and exercise all duties and authority which may be conferred upon him from time to time by the Authority. The duties of the Chairman shall be to preside at all meetings and have a working knowledge of the Bylaws of the Eastern WV Regional Airport Authority. He shall execute, acknowledge, and deliver deeds, contracts, agreements, and instruments of whatever character for and on behalf of the Authority. The Chairman shall appoint committees with the approval of the Board, authorize calls

for special meetings, see that all orders and resolutions of the Board are carried into effect and generally perform the duties pertaining to the office. The Chairman shall be an ex-officio member of all committees.

## Section 2. Vice Chairman

The Vice Chairman shall assist the Chairman as needed. The Vice Chairman shall perform the duties of the Chairman in his/her absence. The Vice Chairman shall also be an ex-officio member of all committees.

## Section 3. Secretary/Treasurer

The Secretary/Treasurer shall ensure that a record of attendance at meetings is kept, that minutes of the Board are properly recorded, and that the official records of all correspondence received and issued by the Eastern WV Regional Airport Authority are maintained. The Secretary/Treasurer shall ensure that a copy of the minutes of all Board meetings is provided to both the Board Members and each of the funding bodies. The minutes of the Airport Authority meetings will contain:

1. The date, time, and place of the meeting.
2. The name of each member of the Airport Authority present and absent.
3. All motions, proposals, resolutions, orders, ordinances, and measures proposed, the name of the person proposing the same, and their disposition.
4. The results of all votes and, upon request of a member, the votes of each member by name.

The Secretary/Treasurer shall be responsible for providing notice of all meetings in accordance with WV Code 6-9A-1, *et. seq.* and these Bylaws.

The Secretary/Treasurer shall also be the official custodian of all funds of the Eastern WV Regional Airport. The Secretary/Treasurer shall work with the administrative staff's Financial Officer to keep a full and accurate account of the receipts and obligations of the Authority and shall present financial statements at the regular meetings of the Eastern WV Regional Airport Authority. The Secretary/Treasurer shall ensure that a complete financial audit be conducted in accordance with state regulations by the State Auditor's Office, either by their staff or an approved private auditing firm. The Secretary/Treasurer will provide the results of such audits to all Board Members, with copies to each of the local funding bodies.

The Secretary/Treasurer shall ensure that all checks written by the Eastern WV Regional Airport Authority shall contain two (2) signatures. Any of the three (3) officers and the Airport Manager are eligible to sign Airport Authority checks; however, any expenditure over \$1500, not previously approved through either the budget or grant process, shall require approval of the majority of Board Members.

The minutes and records of the Airport Authority shall be the property of the Authority.

In the absence of the Chairman and Vice Chairman, the Secretary/Treasurer shall preside over the meetings of the Airport Authority.

ARTICLE VII  
Meetings

Section 1. Regular monthly meetings of the Airport Authority shall be held at a time, date, and location specified by the members of the Authority. The schedule of all regular meetings, along with the proposed agenda, shall be provided to the general public, as well as all local news media, at least one week in advance of those meetings. All meetings are open to the public and shall be conducted according to Roberts Rules of Order and will comply with the West Virginia State Ethics Commission regulations. To the extent that there is a conflict between Roberts Rules of Order and the Open Meetings Act, the latter shall prevail.

Section 2. Special meetings may be called by the Chairman, and/or by a majority of the Board Members. The calls for special meetings must be in writing, stating the purpose for the meeting and must be delivered to members at least 2 business days prior to the meeting time. The Special Meeting notice will also need to be posted to the public at least 2 business day prior to the meeting time. Official action may be taken only on items specified in the call.

Section 3. Notice of all regularly scheduled Airport Authority meetings will be posted annually in a conspicuous location in the airport terminal and will be updated throughout the year, as necessary.

Section 4. Any and all committee meetings shall conduct their meetings in compliance with WV Code 6-9A-1, *et. seq*, and these Bylaws.

Section 5. A majority of the appointed Board Members shall constitute a quorum at any meeting of the Airport Authority.

Section 6. At all meetings of the Airport Authority, each member present shall have one vote upon all the matters coming before the meeting for determination and all such matters shall be determined by the majority of the votes cast for or against the same.

ARTICLE VIII  
Amendments

These Bylaws may be amended at any regular meeting of the Eastern WV Regional Airport Authority by a two-thirds (2/3) vote of the entire membership of the Board; provided, notice was given at a previous meeting, and in accordance with WV Code 6-9A-1, *et. seq*.

ARTICLE IX  
Effective Date

This set of Bylaws shall supersede all previous versions and the effective date of these new Bylaws shall be July 1, 2014.