

OPEN MEETINGS ADVISORY OPINION NO. 2014-01

Issued On February 6, 2014 by

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

OPINION SOUGHT

A member of the **Lincoln County Board of Education** asks if it is permissible for a quorum of County Board of Education members to attend partisan political action committee functions.

FACTS RELIED UPON BY THE COMMITTEE

The Requester states that any issues relating to the Board of Education (BOE) would not be discussed at the aforementioned committee functions. Further, the Requester states that these activities would primarily be in the context of political rallies or general political action committee (PAC) meetings.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-2(4) states in relevant part:

“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.

W. Va. Code § 6-9A-2(5) states, in relevant part:

“Meeting” means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means. The term meeting does not include:

...

(C) Any political party caucus;

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public

business is discussed but there is no intention for the discussion to lead to an official action.

ADVISORY OPINION

Nothing in the Open Meetings Act prohibits public officials from attending PAC gatherings together in their spare time. W. Va. Code § 6-9A-2(5) defines a meeting as, “the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action.”

Three or more BOE members attending a PAC meeting does constitute a quorum of the governing body. There is no indication, however, that any official action would be taken, discussed or otherwise deliberated toward at said events. Rather, the Respondent specifically states that “school board issues would not be discussed by the school board members at such activities.”

The Open Meetings Act does not restrict members of a governing body from associating with each other outside properly noticed public meetings. Rather, it ensures that “the proceedings of public agencies be conducted openly.” W. Va. Code § 6-9A-1. Under the Open Meetings Act, a group of BOE members attending a PAC meeting is not meaningfully different from those same officials attending a concert or movie together.

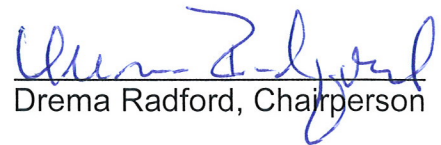
In Open Meetings Advisory Opinion 2001-08, this Committee stated that it is permissible for County Commissioners to meet with a Mayor and one or more City Council Members to discuss a sewer project, as long as no further action was discussed in that meeting. Further, in Open Meetings Advisory Opinion 2004-17, this Committee explained that two or more Council Members gathering to meet and discuss matters relating to town policy or administration, without deliberating towards a decision, is also permissible under the Act.

The question presented here is much simpler. The Requester explicitly states that “school board issues would not be discussed by the school board members at such activities.” As Open Meetings Advisory Opinion 2007-01 explains, “a gathering where the participants refrain from discussing matters requiring official action . . . would not involve a ‘meeting’ contemplated by the Act.”

Notably, this situation is different than one where a quorum of a governing body meets to discuss issues the body will eventually have to decide. Those gatherings are subject to the Open Meetings Act and must comply with all of the Act’s requirements. For example, this Committee has held that work sessions and other informal deliberative sessions fall within the scope of the Open Meetings Act. See Open Meetings Advisory Opinions 2008-09 and 2007-03.

As a result of the foregoing analysis, this Committee hereby finds that it is permissible for a quorum of Board of Education members to attend partisan PAC functions, so long as no deliberations toward a decision occur.

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