

OPEN MEETINGS ADVISORY OPINION NO. 2014-03

Issued On March 6, 2014 by

THE WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The **West Virginia Department of Agriculture** asks if the Auctioneer Board of Review is required to comply with the Open Meetings Act, and, more specifically, if it is required to file a meeting notice with the Secretary of State's office.

FACTS RELIED UPON BY THE COMMITTEE

The Auctioneer Board of Review (Board) is established by, and derives its authority from, W. Va. Code § 19-2C-6a and 61 W. Va. C.S.R. § 11B-15. W. Va. Code § 19-2C-6a states, in relevant part that:

The department of agriculture may . . . investigate the actions of any auctioneer . . . if the complaint, together with other evidence presented in connection with it, establishes probable cause. Upon verification of the complaint, the department shall present the complaint to the board of review. The board of review shall consider all the facts of the complaint and recommend a course of action to the commissioner.

61 W. Va. C.S.R. § 11B-15 further details the role of the Auctioneer Board of Review:

The Board of Review shall meet at the call of the Commissioner or his or her designee to review the findings of an investigation resulting from a verified complaint received by the Department or an investigation initiated by the Department's own actions.

The Board of Review shall review these findings, all of the material related to the investigation, and any other material considered by the Board to be appropriate. The Board of review shall make a recommendation, in writing, to the Commissioner as to the course of action for the Commissioner on the complaint. Board decisions shall be majority decisions of those members present. A quorum of two (2) members is required for Board action.

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 deliberate toward a decision on any matter which results in an official action . . . The term meeting does not include:

(A) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or Court of Claims proceeding.

W. Va. Code § 6-9A-2(7) states, in relevant part:

“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.

W. Va. Code § 6-9A-3(e) states, in relevant part:

(e) Each governing body of the executive branch of the state shall electronically file a notice of each meeting with the Secretary of State for publication on the Secretary of State's website.

(1) Each notice shall state the date, time, place and purpose of the meeting.

(2) Each notice of a special meeting or a regular meeting shall be filed in a manner to allow each notice to appear on the Secretary of State's website at least five business days prior to the date of the meeting.

ADVISORY OPINION

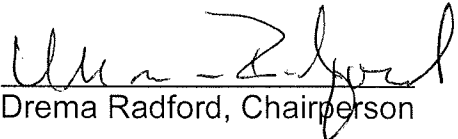
Under the Open Meetings Act, governing bodies of public agencies are required to hold their meetings in public, and give appropriate notice of the date, time, place and agenda or purpose for that meeting. Additionally, governing bodies of the state executive branch are required to electronically file a notice of each meeting with the Secretary of State under W. Va. Code § 6-9A-3(e). There are, however, exceptions to this rule; W. Va. Code § 6-9A-2(5) excludes some gatherings from the definition of “meeting” in order to exempt them from the strictures of the Act. One type of gathering the Act explicitly

excludes is “[a]ny meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or Court of Claims proceeding.” W. Va. Code § 6-9A-2(5)(A).

This Committee has, in turn, consistently advised agencies that specific administrative proceedings, grievance hearings, and similar gatherings are exempt from Open Meetings Requirements. In Open Meetings Advisory Opinion 2002-15, this Committee exempted the Nicholas County Deputy Civil Service Commission’s grievance proceedings from the Act, since the proceedings were a “quasi-judicial meeting that falls within one of the stated exemptions of the Open Meetings Act.” Similarly, in Open Meetings Advisory Opinion 2008-15, this Committee found the Permanent Total Disability Reviewing Board, an office within the West Virginia Insurance Commissioner, to be exempt from the Act when it met to evaluate disability claims since the gatherings were merely an “adjudicatory session.” Finally, in Open Meetings Advisory Opinion 2008-08, this Committee determined, regarding the Board of Funeral Service Examiners, that “hearings to find facts and make determinations whether someone should be denied a license or certificate of registration, or have such a license or certificate suspended or revoked, are not meetings subject to the notice requirements of the Act.”

The Board’s processes are, similarly, correctly defined as an adjudicatory session. The Board “consider[s] all of the facts of the complaint and recommend[s] a course of action to the commissioner.” W. Va. Code § 19-2C-6a. The Board does not consider general public policy. Instead, it makes determinations whether someone should have their auctioneer’s license suspended or revoked, exactly like the situation in Open Meetings Advisory Opinion 2008-08. Therefore, meetings of the Auctioneer Board of Review are not meetings subject to the requirements of the Open Meetings Act, and are therefore not required to file a meeting notice with the Secretary of State.

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