

OPEN MEETINGS ADVISORY OPINION NO. 99-01

**ISSUED BY THE WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS
ON JULY 8, 1999**

GOVERNMENTAL BODY/MEMBER SEEKING OPINION

Bruce Ray Walker, General Counsel to the State College and University Systems of West Virginia, at the direction of Dr. Clifford M. Trump, Chancellor of the State College System of West Virginia and Dr. Charles W. Manning, Chancellor of the University System of West Virginia.

OPINION SOUGHT

Are institutional advisory boards and advisory councils affiliated with state institutions of higher education public agencies required to comply with the Open Governmental Proceedings?

FACTS RELIED UPON BY THE COMMITTEE

West Virginia Code § 18B-6-1 establishes at each state institution of higher education a board of advisors, composed of an administrator appointed by the president, a faculty member, a student and a staff member elected by their peers, and seven lay citizens. The statute directs these boards to review all proposals by their institution's president concerning budget, academic programs, capital facilities and the school's mission, prior to the proposals being submitted to the appropriate governing body, which is either the Board of Directors of the State College System of West Virginia ("Board of Directors") or the University of West Virginia Board of Trustees ("Board of Trustees").

The board of advisors prepares written comments and recommendations which are sent with the proposals to the Board of Directors or Board of Trustees. These two bodies are directed to consider a board's recommendations when taking action on a proposal. The statute confers other responsibilities on the advisory boards, such as reviewing all proposals regarding institution-wide personnel policies, assisting the president in economic development matters and acting as a search and screening committee to fill the office of president.

Another section of the statute requires each college or university to elect one faculty member to serve on one of two state-wide advisory councils of faculty, § 18B-6-2. One council, composed of college faculty representatives, consults and advises the Board of Directors in matters of higher education in which faculty members have an interest. The other council, composed of university faculty representatives, similarly advises the Board of Trustees. Section 18B-6-3 creates two councils of

students and section 18B-6-4 establishes two councils of classified employees which operate in the same manner the faculty councils.

The three types of councils are required to prepare minutes of their meetings and make them available to their constituency, upon request. The Board of Directors and the Board of Trustees must provide secretarial services to the councils.

All four sections of the statute require certain regularly scheduled meetings and list various membership and voting requirements for each type of council and the boards of advisors. The boards of advisors and the councils are presently complying with the Open Governmental Proceedings Act as a precaution pending the Committee's ruling.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

The Open Governmental Proceedings Act applies to "public agencies" defined as:

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.¹

W. Va. Code § 6-9A-2(6). The Act requires meetings of a governing body of a public agency to be open.

ADVISORY OPINION

The key phrase in W. Va. Code § 6-9A-2(b) is whether an entity exercises "some portion of executive or legislative power." The stated purpose of the Act is to encourage public input which allows government agencies to gauge public preferences accurately and tailor their actions and policies more closely to public needs. The focus of the Committee's inquiry must be whether a body plays a specific role in an agency's decision making process and therefore should be accessible to the public. Not every entity created by statute does so.

West Virginia's public universities are operated by the Board of Trustees and its colleges are governed by the Board of Directors, both public corporations. The Legislature has created an institutional board of advisors for each public college or university to provide recommendations on proposals to these two bodies and to oversee the nomination process if there is a vacancy for the

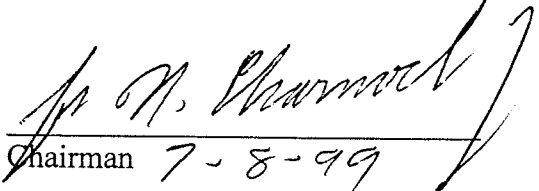
¹ The Act excludes courts and family law masters under the jurisdiction of the judicial branch.

office of president. These boards of advisors play an identifiable role in the decision making process for higher education and fall within the definition of subunits which have been authorized by law to exercise some portion of executive power subject to the Open Governmental Proceedings Act.

In contrast, the councils, while created by statute, exercise no power and are not mandated to take any specific action other than to hold annual meetings. They shall "consult and advise" the Board of Trustees and Board of Directors on matters in which the members "may have an interest." But the Boards are not directed to give consideration to such advice as they are the recommendations of the institutional advisory boards. Nor do the councils have independent responsibilities, such as nominating candidates for the office of president.

The councils' function is to advocate the interests of their particular constituents: faculty, students and classified employees. But they do not play a role in the decision making process. The statute creating the councils already provides accountability to those they represent by directing that the minutes be available to their constituents upon request, indicating an intent by the Legislative not to subject the councils to the broader requirements of the Open Governmental Proceedings Act.

The advisory councils established by W. Va. Code §§ 18B-6-2, -3 and -4, are not subunits of an administrative agency and therefore are not public agencies within the meaning of the Open Governmental Proceedings Act, and they need not comply with its provisions.


Chairman 7-8-99