

OPEN MEETINGS ADVISORY OPINION NO. 99-02

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

GOVERNMENTAL BODY/MEMBER SEEKING OPINION

Darrell E. Hagley, President of the Mason County Board of Education.

OPINION SOUGHT

Whether the annual performance evaluation of the Superintendent of the Mason County Schools must be conducted in open session?

FACTS RELIED UPON BY THE COMMITTEE

Each year the Mason County Board of Education conducts a performance evaluation for the County Superintendent of Schools.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code §6-9A-3 provides in pertinent part that. . . Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public. . . .

West Virginia Code §6-9A-4 provides in pertinent part:

(a) The governing body of a public agency may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the governing body shall identify the authorization under this section for holding the executive sessions and present it to the governing body and to the general public, but no decision may be made in the executive session.

(b) An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public agency. A public agency may hold an executive session and exclude the public only when a closed session is required for any of the following actions: . . .

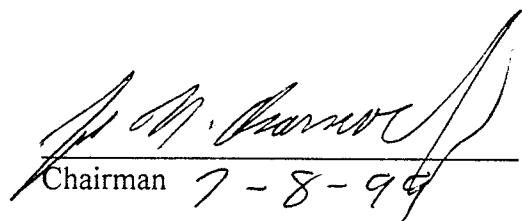
(2) To consider:

(A) Matters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee, or prospective public officer or employee unless the public officer or employee or prospective public officer or employee requests an open meeting;

(B) . . . General personnel policy issues may not be discussed or considered in a closed meeting. Final action by a public agency having authority for the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of an individual shall be taken in an open meeting.

ADVISORY OPINION

The annual personnel evaluation of the Superintendent is the type of employment matter which the Open Governmental Proceedings Act permits to be discussed in an executive session, provided that a majority of the Board of Education members votes to hold an executive session and the Superintendent does not request that the evaluation be conducted publicly. If the evaluation results in any action being taken, such as a raise or changes in conditions of employment, the action must be taken in an open meeting.


Chairman 7-8-99