

OPEN MEETINGS ADVISORY OPINION NO. 99-03

**ISSUED BY THE WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS
ON AUGUST 5, 1999**

GOVERNMENTAL BODY/MEMBER SEEKING OPINION

James T. Jarrell, Chairman of the City Council, Town of Whitesville.

OPINION SOUGHT

Whether a volunteer fire department created by town ordinance is a public agency subject to the Open Governmental Proceedings Act?

FACTS RELIED UPON BY THE COMMITTEE

The Whitesville Fire Department is established by town ordinance, Chapter 3, Section 6-301 *et seq.* The municipality funds the department by a levy and owns the equipment. The Mayor appoints the Chief upon approval by City Council, and the Chief provides a monthly report and an annual report to the Mayor. The Chief appoints subordinate officers and firefighters. All personnel receive "such compensation for their services as the [city council] may from time to time prescribe," although it is presently run on a volunteer basis. The Chief may recommend to the City Council modifications in the fire code as applied to a particular land owner or lessee.

There is a Board of Directors of the fire department composed of firefighters and lay members appointed by the Chief. The Board sets general policy, handles personnel matters and discusses investigations.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMITTEE

The Open Governmental Meetings 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.

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

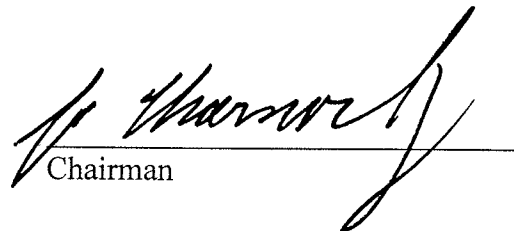
A governing body is defined in pertinent part as:

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(3).

ADVISORY OPINION

The Volunteer Fire Department is a public agency as a department or subunit of city council which exercises executive authority by enforcing the fire prevention code, recommending modifications in individual cases and providing firefighting service to the public. The Board of Directors meets the definition of a governing body because a quorum of its members is required to take official action. Therefore, its meetings are subject to the Open Governmental Proceedings Act. When discussing criminal investigations, however, the Board may hold an executive session pursuant to West Virginia Code § 6-9A-4(a) *et seq.*


Chairman