

OPEN MEETINGS ADVISORY OPINION NO. 99-06

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WEST VIRGINIA ETHICS COMMISSION

COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

GOVERNMENTAL BODY/MEMBER SEEKING OPINION

Paul V. Armstrong, Superintendent of the Braxton County Schools

OPINION SOUGHT

Whether the Board of Education members deliberate privately following a public hearing on a citizen's appeal?

FACTS RELIED UPON BY THE COMMITTEE

The State Board of Education has mandated that all county Boards of Education develop appeal procedures for citizens who allege that the school district is failing to provide high quality education or violating any other legal duty. This process specifically excludes appeals regarding the placement of exceptional children or personal complaints about a school employee. For example, the Braxton County Board of Education recently heard a complaint about the school district switching suppliers of soft drink vending machines.

For its appeal procedure the Braxton County Board has adopted almost in its entirety, State Board Policy 7211, which sets out model rules for a citizen's grievance procedure. A citizen may pursue a claim through four levels. An adverse decision by the Superintendent (Level II) may be appealed to the Board of Education (Level III). An adverse decision from the Board may be appealed to the State Superintendent (Level IV).

The policy provides that all meetings and hearings shall be conducted in private, except that hearings before the Board or the State Superintendent may be open at the request of either party. Hearings before the Board require proper notice, the opportunity to be represented by counsel and the opportunity to call witnesses or cross-examine adverse witnesses.

The Board must render a written decision within 25 business days after receiving the Level II appeal. As a practical matter, the members present for the hearing deliberate and vote at the conclusion of the hearing, although nothing prevents them from reconvening at a later date within the time period to render a decision.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMITTEE

§6-9A-2. Definitions.

As used in this article:

(1) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at any meeting at which a quorum is present.

(4) "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:

(A) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court of claims proceeding;

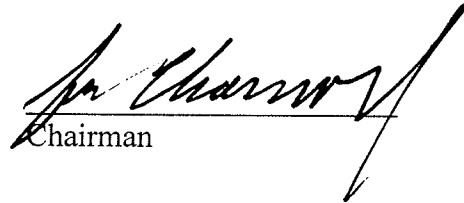
ADVISORY OPINION

The Open Governmental Proceedings Act only requires those meetings which fit within its definition of "meeting" to be open of the public. It excludes "[a]ny meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court of claims proceedings." The Act contains no other, more specific language which would pertain to a citizen's appeal, since this type of grievance does not include complaints against employees or the discipline of a student. See for example, § 6-9A-4(2)(B) & (3) which permits a governing body to go into executive session for these two types of proceedings, and Open Meetings Advisory Opinion 99-05.

A citizen's appeal before the Board at Level III is a quasi-judicial administrative proceeding because it includes the ability to call witnesses, to cross-examine adverse witnesses, to have legal representation and to receive notice of a hearing.

Although it is the right of a citizen, under the Board's policy, to have the hearing conducted in public, the deliberation and voting process is not necessarily considered a part of the hearing. Nothing in the policy requires the Board members to render a decision immediately following the hearing, as long as the 25 business day time limit is not exceeded. Many administrative agencies which are required to conduct hearings in public, such as the Lawyer Disciplinary Board and the Judicial Hearing Board, do not deliberate and vote in public. Instead, they issue public written decisions.

Therefore, when a citizen's Level III appeal has been held in public, Board members may meet to deliberate and decide the appeal privately without violating the Open Governmental Proceedings Act. The Committee wishes to make clear that the Board's deliberations are not being conducted in "executive session" under § 6-9A-4; they simply do not constitute a "meeting" under the Act.



Chairman