

OPEN MEETINGS ADVISORY OPINION NO. 99-13

ISSUED BY THE WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS ON DECEMBER 2, 1999

GOVERNMENTAL BODY/MEMBER SEEKING OPINION

Edward D. Brown, Vice President of the Humane Society of Morgan County

OPINION SOUGHT

Do the monthly committee and Board of Directors meetings of the Humane Society of Morgan County fall under the Open Governmental Proceedings Act?

FACTS RELIED UPON BY THE COMMITTEE

The Humane Society of Morgan County (Society) is a nonprofit corporation which maintains a small animal shelter in Morgan County. State statute and county ordinance make the Morgan County Commission (County Commission) responsible for animal control and dog warden functions within the county. The County Commission has contracted with the Society to provide these functions and associated services.

The Society is paid a sum equal to \$3 per county resident to provide a dog warden and humane officer and to carry out the County Commission's obligation to receive, impound and house small animals. The contract requires the Society to make periodic reports to the County Commission of services provided and expenditures and costs incurred. The contract says that the Society's employees, volunteers and members are not to be considered employees or agents of the County Commission.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

WV Code §6-9A-2(6) "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...

ADVISORY OPINION

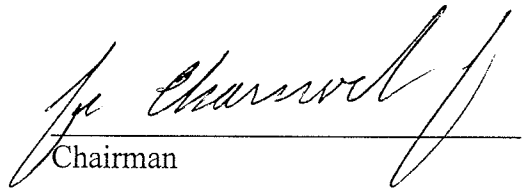
The Open Governmental Proceedings Act (Act) applies only to public agencies. The Act says that "Public agency" means any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, **public corporation**, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power."

If the Humane Society of Morgan County is to fit into the Act's definition of a public agency, it must be as a "public corporation", which the Committee believes is a corporation created by state or local authority to carry out a governmental function. This is the view expressed in the Freedom of Information Act which lists specific governmental entities to which it applies and ends by including "any other body which is created by state or local authority or which is primarily funded by the state or local authority." WV Code 29B-1-2.

The Freedom of Information Act would apply to non-profit corporations only if : (1) they were created by state or local authority [which would make them "public corporations"] or (2) they were primarily funded by the state or local authority. The Open Governmental Proceedings Act makes no suggestion that funding is a consideration in finding whether an entity is a public agency.

The Society is a non-profit corporation which exists independent of state or local authorization. Its operation is governed by its own rules and policies administered by volunteer officers selected by, and accountable to, its own membership. While its contract with the county commission provides about a third of its income, its obligations under that contract account for a substantial part of its expenses. Its core financial support comes from private memberships and fund-raising activities.

The Committee finds that the Humane Society of Morgan County is not a public corporation and, therefore, is not subject to the Open Governmental Proceedings Act.



Chairman