

Open Meetings Advisory Opinion No. 2025-03

Issued on August 7, 2025, by

The West Virginia Ethics Commission
Committee on Open Governmental Meetings

Opinion Sought

The **Pocahontas County Commission** (“Requester”) asks which county entity should interview candidates for the positions of 911/Office of Emergency Services Director and Emergency Medical Systems Director and whether the interviews may be done in executive session, by a hiring committee, or by one of the county commissioners in private.

Facts Relied Upon by the Committee

The Pocahontas County Commission wants to hire a new 911/Office of Emergency Services Director (“911/OES Director”) and an Emergency Medical Systems Director (“EMS Director”).

West Virginia Code § 7-1-3 provides that county commissions shall ... have the superintendence and administration of the internal police and fiscal affairs of their counties. . . . , including the establishment and regulation of roads, ways, streets, avenues, drives and the like, and the naming or renaming thereof, in cooperation with local postal authorities, the Division of Highways and the directors of county emergency communications centers, to assure uniform, nonduplicative conversion of all rural routes to city-type addressing on a permanent basis, bridges, public landings, ferries and mills, with authority to lay and disburse the county levies.

West Virginia Code § 7-7-3M provides that a county commission (formerly called a county court) has been “empowered to employ, fix compensation for and discharge such clerical, stenographic, technical, professional and other personnel, including specialists and consultants, as may from time to time be necessary to aid such courts [county commissions] in exercising their powers or discharging their duties as provided by law and including a county administrator, to coordinate the court's [county commission's] activities and to do such other things as the court may direct” See also W. Va. Code § 7-7-7.

911 Advisory Board

The Pocahontas County Commission, in 1993, established an emergency telephone system pursuant to W. Va. Code § 7-1-3cc and in accordance with W. Va. Code § 24-6-1, *et al.* All fees collected from the owners of each phonenumber that receives 911

service are deposited in a separate account, the Enhanced 911 Fund.¹ The bylaws of the E-911 Advisory Board state that the Board is to make recommendations to the county concerning the operation of the county's Public Safety Answering Point. The statute and bylaws do not confer hiring powers to the 911 Advisory Board. The only reference to employees in the bylaws is made under the Board's goals, stating: "3. To ensure that employees receive the required training associated with the system as mandated by law"

The 911 Advisory Board bylaws also mandate the Board to have six members. Only one member is selected by the County Commission. The other members are selected by the Pocahontas County Fire Board, Emergency Medical Services, County Emergency Management, law enforcement, and the 911 Director. The bylaws go on to state that the "Members of the Advisory Board will be appointed or reappointed by the Pocahontas County Commission, based on the recommendation of the Advisory Board"

Further, the Requester is considering forming a hiring committee to fill the 911-OES Director position. The hiring committee members would be one County Commissioner, two 911 employees, and two members of the 911 Advisory Board.

Emergency Medical Authority

The Commission also created the Pocahontas County Emergency Medical Authority ("EMS Authority"). The EMS Authority's bylaws require the County Commission to appoint five to 15 members who represent law enforcement, fire departments, and medical providers. And one of the members must be a County Commissioner or his or her representative. W. Va. Code § 7-15-10(d) gives EMS boards the power: "[t]o provide emergency ambulance service, maintain and operate such service, and employ, in its discretion, planning consultants, attorneys, accountants, superintendents, managers and such other employees and agents as may be necessary in its judgment and fix their compensation"

The same Pocahontas County Commissioner serves on both the 911 Advisory Board and the EMS Authority. County general funds will be used to pay for both positions, with the EMS Authority contributing to a portion of the salary of the EMS Director and the 911 Advisory Board contributing a portion of the salary of the 911/OEM Director.

Code Provisions Relied Upon by the Committee

W. Va. Code § 6-9A-2(4) states:

¹ The fee revenues may only be used solely and directly for the capital, installation, administration, operation and maintenance costs of the enhanced emergency telephone system and of the conversion to city-type addressing and including the reasonable costs associated with establishing, equipping, furnishing, operating or maintaining a county answering point.

“Governing body” means 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(5) states, in relevant part:

"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.

...

W. Va. Code § 6-9A-2(6) states:

"Official action" means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.

W. Va. Code § 6-9A-2(7) states:

"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

W. Va. Code § 6-9A-3(a) states:

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.

W. Va. Code § 6-9A-4(b)(2) states:

(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; or

(B) For the purpose of conducting a hearing on a complaint, charge or grievance against a public officer or employee, unless the public officer or employee requests an open meeting. 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 Requester has asked a series of questions about how the West Virginia Open Governmental Proceedings Act (“Open Meetings Act” or “OMA”) applies to holding interviews and hiring the new county 911/OES and EMS Directors. The questions include:

Which county agency has the authority to interview candidates for and hire the 911/OES Director and the EMS Director positions?

The Open Meetings Act does not answer this question. Therefore, the Committee on Open Governmental Meetings (“this Committee”) does not have the authority to make this determination. The Requester should consult the county prosecutor for guidance. However, in order for this Committee to provide guidance on how to apply the OMA in this case, this Committee will consider the applicable laws and the bylaws of the county entities discussed above.

Based on this Committee’s reading of the statutes and bylaws mentioned above, this Committee will offer guidance to the Requester under the following assumptions: 1) The County Commission has the authority to employ county employees, including the 911/OES and EMS Directors, pursuant to W. Va. Code §§ 7-7-7 and 7-1-3M. 2) The 911 Advisory Board does not have the authority to hire employees under state law or its bylaws. 3) The EMS Authority has the power to hire employees as “may be deemed necessary in its judgment and to set employees’ compensation,” pursuant to W. Va. Code § 7-15-10(d).

Is the 911 Advisory Board or EMS Authority subject to the Open Meetings Act?

The Open Meetings Act requires a governing body of a public agency to take official action in public, subject to exceptions. ““Public agency” means any **administrative** or legislative **unit** of . . . **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.**” W. Va. Code § 6-9A-2(7). (Emphasis added)

The 911 Advisory Board and the EMS Authority are both public agencies because the County Commission created them pursuant to law and gave them the power to exercise some portion of the County’s executive or legislative power relating to county powers. See W. Va. Code § 7-15-10(d), § 7-1-3cc, and § 24-6-1, *et al.*

Therefore, the 911 Advisory Board and the Emergency Medical Systems Authority are public agencies whose governing bodies are subject to the Open Meetings Act.

Regardless of which governing body conducts the job interviews and makes the hiring decisions, the OMA applies when a governing body will be deliberating toward an official action. Official action is defined as “action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.” The County Commission, the 911 Advisory Board, and the EMS Authority, therefore, would be taking official action in hiring the Directors, which must be during a public meeting.

May the job interviews of candidates for the 911/OES and EMS Director positions take place in executive session during a public meeting?

The next question is whether job interviews and deliberations may occur in executive sessions. This Committee, in OMAO 2002-13, advised the New Martinsville City Council that it may conduct job interviews in executive session, unless an applicant requests an open meeting. This Committee also stated that the OMA does not control whether council members may attend executive sessions of a committee on which he does not serve. This Committee, in OMAO 2025-02, explained that an:

[e]xecutive session to discuss personnel matters W. Va. Code § 6-9A-4(b)(2) permits a governing body to meet in executive session to discuss “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.” Similarly, an executive session may be held to conduct “a hearing on a complaint, charge or grievance against a public officer or employee.” However, the policy served by this exception is the privacy of the public official/employee in a matter that is personal to that individual, rather than shielding the transaction from public scrutiny. The official or the employee may choose to have the business conducted in open session.”

Likewise here, the exception in W. Va. Code § 6-9A-4(b)(2) permits the County Commission or other governing body to conduct job interviews and deliberations in executive session during a public meeting.

Would the OMA apply if only one county commissioner conducted the interviews and unilaterally selected the Directors?

The power to hire county employees appears to have been vested with the County Commission. This Committee does not believe the Legislature has given this power to any one county commissioner. However, the OMA would not prohibit a county commission from properly delegating the authority to one commissioner to interview job candidates and choose the Director unilaterally or make recommendations to the

commission.² A single individual would not meet the definition of a governing body which must consist of two or more members. W. Va. Code § 6-9A-2(4). Therefore, this Commissioner would not need to conduct the interviews in an open meeting.

Therefore, if the County Commission delegates this power to one Commissioner, it should be done during a public meeting that meets the requirements of the OMA. Any recommendations made by the Commissioner who holds the interviews should be made to the County Commission as a whole during a public meeting. The recommendations and deliberations may occur in executive session as discussed above.

Would the OMA apply to a hiring committee formed by the County Commission to interview and recommend a candidate to the County Commission?

Next, the Requester is considering forming a hiring committee to fill the 911-OES Director position. The hiring committee members would be one county commissioner, two 911 employees, and two members of the 911 Advisory Board.

The question is whether the proposed 911 hiring committee would be a “public agency” or a “governing body” of a public agency [the County Commission] and therefore subject to the OMA requirements. “Governing body” means “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. . . .”

This Committee has previously addressed whether committees are public agencies (or governing bodies of public agencies) and therefore subject to the Open Meetings Act. In OMAO 2024-03, this Committee found that a steering committee created by the Vienna City Council to work with an engineering firm in developing a master plan for a local park was both a public entity and a governing body of the City of Vienna given the significant delegation of responsibility by the City of Vienna for the envisioned project, including considerable say in the final details of the project. Whether council members would be appointed to serve on the steering committee was not determinative.

Accordingly, the steering committee could only meet with the public, the engineers, or the city council or combination thereof in private (outside a properly noticed meeting) to facilitate exchanges of information or provide education on the project. However, any meeting by the steering committee involving deliberation or voting on recommendations to the engineer or city council, such as final project contents or financing matter would require a properly noticed meeting.

In OMAO 2007-07, this Committee found that a group appointed by resolution of two municipalities to study water quality in the area and to report back to each municipality was a governing body subject to the Open Meetings Act. The Opinion noted that normally one or more of the members of the water quality study group were also elected

² The Requester should consult with the county prosecutor to ensure compliance with other laws.

members of the town councils which formed the group, but the Opinion did not make the presence or absence of town council members on the water quality study group a determinative factor in finding that it was subject to the Act.

Conversely, in OMAO 2001-21, this Committee held that a committee appointed by a state agency to evaluate contractors was not subject to the Open Meetings Act because it only made non-binding recommendations. However, OMAO 2019-04, found that this Committee, in OMAO 2001-21, had failed to analyze whether making recommendations constitutes the exercise of some portion of executive or legislative authority. See also OMAO 2014-02 (discussing that in analyzing the scope of the Act it is necessary to consider that the definition of “governing body” includes committees which make recommendations). The Committee finds that making recommendations constitutes the exercise of some portion of legislative or executive power.

In OMAO 2002-13, this Committee held that a committee, consisting of two or more members of a public agency, whose purpose is to make recommendations to the public agency as a whole, is a governing body of a public agency, and must conduct its meetings in compliance with the Open Meetings Act. See *also* OMAO 2005-05.

Therefore, the proposed hiring committee formed by the County Commission created for the purpose of interviewing candidates and making recommendations to the County Commission would be a public agency and a governing body of a public agency, and therefore, subject to the OMA.

Who may attend and/or participate in an executive session?

The OMA does answer this question. In OMAO 2002-13, this Committee stated, “The Open Meetings Act does not specify whether a member of a parent governing body can attend an executive session of a committee or subcommittee to which he or she has not been appointed, or who may participate in a committee meeting in the absence of a designated member. Therefore, the appropriate governing body should determine these questions in accordance with other applicable laws or ordinances.” See also OMAO 2007-07, above.

Therefore, the governing body that conducts the interviews and/or engages in deliberations in executive sessions decides who is invited to attend or participate in the executive session.

This Advisory Opinion is limited to questions arising under the Open Governmental Proceedings Act, W. Va. Code §§ 6-9A-1 through 6-9A-12, and does not purport to interpret other laws or rules.

/s/ Lynn Davis
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