

Open Meetings Advisory Opinion No. 2025-02

Issued on February 6, 2025, by

The West Virginia Ethics Commission
Committee on Open Governmental Meetings

Opinion Sought

A **Hampshire County Commissioner** asks whether using generic descriptions on its agenda, such as "Personnel," satisfies the Open Meetings Act and whether receiving general legal advice and discussing general personnel matters in executive session is permissible.

Facts Relied Upon by the Committee

The Hampshire County Commission ("County Commission") holds meetings regularly and on special occasions. The County Commission makes an agenda available to the public for each meeting. First, the Requester asks whether the following agenda items, particularly the item referencing "Personnel," would be sufficiently specific and descriptive to satisfy the requirements of the Open Meetings Act:

- "Board appointments or resignations"
- "Grant applications, contracts, resolutions and draw downs"
- "Budget revisions"
- "Personnel"
- "Budgetary/fund actions"
- "Election matters"

Second, the Requester asks whether the County Commission may receive general legal advice in executive sessions, such as an explanation of contract terms and statutory interpretations, or whether the justification is limited to matters tied to specific ongoing or pending legal actions.

Third, the Requester asks whether the County Commission may discuss matters adjacent to personnel in executive session, such as the creation or removal of positions, group raises, or budget issues affecting payroll, or whether the "personnel" justification for executive session is limited to matters pertaining to an individual and identifiable employee.

Code Provisions Relied Upon by the Committee

[W. Va. Code § 6-9A-3](#) states, in relevant part:

(a) 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....

(d) Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media.

[W. Va. Code § 6-9A-4](#) states, in relevant 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 session 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; 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;...

(11) Nothing in this article permits a public agency to close a meeting that otherwise would be open, merely because an agency attorney is a participant. If the public agency has approved or considered a settlement in closed session, and the terms of the settlement allow disclosure, the terms of that settlement shall be reported by the public agency and entered into its minutes within a reasonable time after the settlement is concluded;

(12) To discuss any matter which, by express provision of federal law or state statute or rule of court is rendered confidential, or which is not considered a public record within the meaning of the freedom of information act as set forth in article one, chapter twenty-nine-b of this code.

Advisory Opinion

The Open Meetings Act requires the governing bodies of public agencies, including county agencies, to provide notice of and an agenda for its public meetings in advance of a meeting. W. Va. Code § 6-9A-3(d). Further, the Act requires meetings to be conducted in public unless a particular item falls into one of the twelve exceptions that permit discussion in executive session. W. Va. Code § 6-9A-4(1)-(12). The Requester has asked the Committee to address the applicability of the Act in three particular areas.

Requirement that agenda items be specific

The Committee has long held that generic descriptions, such as “personnel matters,” are insufficient.¹ In [Open Meetings Advisory Opinion 2006-14](#), for example, the Committee stated that “items must be stated in a manner that makes the public aware of the particular matters to be dealt with at the meeting.” In [Open Meetings Advisory Opinion 2001-13](#), the Committee held that simply reciting statutory language from the personnel exception found at W. Va. Code § 6-9A-4 as an agenda item is insufficient to satisfy the Open Meetings Act. The Committee suggested using more specific language as an agenda item, such as: “hiring Jane Doe to fill a vacant Clerk-Typist position in the

¹See [Open Meetings Advisory Opinion 2001-34](#) (holding that the agenda item “Recognition of public officials” does not provide notice to the public that the county commission may take official actions upon requests of officials for funding for additional staffing and equipment needs); [Open Meetings Advisory Opinion 2009-02](#) (holding that a proposed agenda item which reads “Combining of Positions” should instead state, “Consider whether part-time positions of [insert name of two affected positions here] should be combined into one full-time position” and a proposed agenda item stating “Furloughs” should instead read, “Consider whether certain employees should be furloughed as a cost reduction measure”); [Open Meetings Advisory Opinion 2009-04](#) (holding that an agenda item “The Outside Delegations: Jane Roe and John Doe Company” is insufficient notice to authorize Council to vote to approve a contract with the company); [Open Meetings Advisory Opinion 2012-04](#) (holding the agenda must include each invoice and amount to be approved for payment, or state on agenda that a list of invoices, or the invoices themselves, are available for public review.) Also See Generally [Open Meetings Advisory Opinion 2001-23](#); [Open Meetings Advisory Opinion 2007-10](#); [Open Meetings Advisory Opinion 2008-17](#).

Assessor's Office" or "hiring John Law to fill a newly created Deputy Sheriff position in the Sheriff's Department." The suggestions provided by the Committee in the quoted advisory opinion would be sufficient replacements for the item "Personnel" and demonstrate the specificity necessary for such agenda items.

The Committee also finds that agenda items referenced simply as "budgetary revisions" and "budgetary/fund actions" are insufficient. They should be replaced by something like "reallocation of funds from the county park maintenance budget to the snow removal budget."²

The general descriptions provided by the Requester simply do not provide the public with fair notice of what business the governing body intends to address. As a rule of thumb, the governing body should ask the following question when preparing an agenda: "Does the meeting agenda reasonably describe all matters requiring official action by the governing body that will be dealt with at the meeting or at a later meeting"?³

The Committee finds that the agenda items listed below are insufficient to satisfy the Open Meetings Act:

- **"Board appointments or resignations"**
- **"Grant applications, contracts, resolutions and draw downs"**
- **"Budget revisions"**
- **"Personnel"**
- **"Budgetary/fund actions"**
- **"Election matters"**

Executive session to receive legal advice

W. Va. Code § 6-9A-4(b)(11) makes it clear that the presence of an attorney does not, in and of itself, justify meeting in executive session. In addition, W. Va. Code § 6-9A-3(a) provides, "Except as... otherwise provided by law... all meetings of any governing body shall be open to the public."

In [*Peters v. County Com'n of Wood County, 205 W. Va. 481, 519 S.E.2d 179 \(1999\)*](#), the West Virginia Supreme Court of Appeals indicated that the common law right to attorney-client privilege met the description of "otherwise provided by law" in W. Va. Code § 6-9A-4(1), which justified an exception to the requirement that meetings be conducted in public. In [*HD Media Co. v. W. Va. University Board of Directors, No. 23-ICA-248 \(W. Va. 2024\)*](#), the West Virginia Intermediate Court of Appeals held that the attorney-client privilege permitted an executive session to discuss the necessity of amending the institution's regulations to comply with Title IX regulations. This finding

² More examples of specific and descriptive agenda items vs. generic and insufficient agenda items may be found in [WV Ethics News, Volume 19 October 2023](#)

³ See [Open Meetings Checklist](#)

was based on the fact that the attorney in question was acting in her role as general counsel for the institution and that both she and the institution, her client, intended the communications to be confidential.

The committee has recognized the attorney-client privilege as an exception to the requirement that governing bodies conduct all business in public. In [Open Meetings Advisory Opinion 2000-10](#), the Committee held that a governing body could meet in executive session with its attorney to discuss present and pending litigation in reliance on the holding in *Peters*. In [Open Meetings Advisory Opinion 2001-25](#), the Committee held that a governing body could meet in executive session to discuss the legality of the compensation that the members of the governing body received. The county commission may meet with its attorney to receive an explanation of contract terms and statutory interpretations so long as the attorney-client privilege applies, i.e., the attorney is acting in his capacity as counsel for the commission, and both the attorney and the county commission desire that the communications remain confidential.

The Committee reaffirms its previous holdings and finds that the County Commission may meet in executive session with its attorney to discuss matters to which the attorney-client privilege applies. The justification is not limited to matters that are tied to specific ongoing or pending legal actions.

Executive 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.

Matters that are not personal to the public official or public employee do not qualify for the exception provided by W. Va. Code § 6-9A-4(b)(2). This section states, in pertinent part, “General personnel policy issues may not be discussed or considered in a closed meeting.”

In [Open Meetings Advisory Opinion 2001-02](#), the Committee held that:

A job description generally sets forth the duties and responsibilities of an employment position. Although it may be specific to a position or group of positions, it is not personal to the individual who currently occupies the position.

The Committee finds that the creation or modification of a job description is a general personnel policy matter and may not be considered or discussed in executive session. This is true even if the job description is for a position in which an incumbent has worked for several months.

Similarly, in [Open Meetings Advisory Opinion 2006-13](#), the Committee affirmed that pursuant to the plain language of the Open Meetings Act, the personnel exception provided by W. Va. Code § 6-9A-4(b)(2) is limited to matters that are personal to an individual public official or public employee. The exception may not be relied upon for general personnel policy issues.

The Committee reaffirms its previous holding in Open Meetings Advisory Opinions 2001-02 and 2006-13 and holds that the County Commission may meet in executive session to discuss personnel issues that are personal to an individual public official or public employee, but may not meet in executive session to discuss issues of general personnel policy. Discussion of matters such as the creation or removal of positions, group raises, or budget issues affecting payroll are general personnel policy issues. Accordingly, the discussion of such matters must be conducted in public rather than 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/ Suzan Singleton
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