

# Open Meetings Advisory Opinion No. 2024-01

Issued on March 7, 2024, by

**The West Virginia Ethics Commission  
Committee on Open Governmental Meetings**

## Opinion Sought

The **Jefferson County Commission** asks whether the Jefferson County Planning Commission's committees must notice and hold public meetings when performing certain actions.

## Facts Relied Upon by the Committee

The Jefferson County Commission ("County Commission"), as authorized by W. Va. Code § 8A-2-1(a), created the Jefferson County Planning Commission ("Planning Commission"). A county commission is charged with appointing the members of a county planning commission and providing the planning commission office space and funding. W. Va. Code §§ 8A-2-4(i) and 8A-2-10. One member of a county commission, or its designee, must serve as a member of the county's planning commission. W. Va. Code § 8A-2-4(d). The Planning Commission oversees the administration of the county zoning ordinance, the county supervision ordinance, other matters related to land use in Jefferson County, and its own fiscal affairs pursuant to W. Va. Code § 8A-2-11.

The Requester has requested a formal advisory opinion to determine whether the Planning Commission is conducting its committee meetings in accordance with the Open Governmental Meetings Act, at W. Va. Code §§ 6-9A-1 through 12.<sup>1</sup> Ethics Commission staff informally advised the County Commission that most likely the Committee on Open Governmental Meetings ("Committee") would find that the County Commission did not have standing to submit an advisory opinion request on behalf of another governing body. Subsequent to the County Commission submitting this request and receiving staff advice on standing, the Planning Commission voted to join in the request for an advisory opinion. To provide guidance to the County Commission and other governing bodies, this Committee will address in this opinion whether the County Commission has standing to request an opinion on behalf of another governing body. The questions relating to Planning Commission committees will be addressed in another opinion.

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<sup>1</sup> The Committee recognizes that one of the County Commission members serves on the Planning Commission and voted in favor of submitting this advisory opinion request about the acts or proposed acts of the Planning Commission. The vote of the County Commissioner, who serves as a member of the Planning Commission, does not change the analysis or holding because he was acting in his capacity as a County Commissioner when voting on a County Commission agenda item.

## **Code Provisions Relied Upon by the Committee**

W. Va. Code § 6-9A-2(4) states:

“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; for the purposes of this article, a governing body of the Legislature is any standing, select or special committee, except the commission on special investigations, as determined by the rules of the respective houses of the Legislature.

W. Va. Code § 6-9A-11(a) states:

Any governing body or member thereof subject to the provisions of this article may seek advice and information from the executive director of the West Virginia ethics commission or request in writing an advisory opinion from the West Virginia ethics commission committee on open governmental meetings as to whether an action or proposed action violates the provisions of this article. The executive director may render oral advice and information upon request. The committee shall respond in writing and in an expeditious manner to a request for an advisory opinion. The opinion shall be binding on the parties requesting the opinion.

### **Advisory Opinion**

The Open Governmental Meeting Act, at W. Va. Code § 6-9A-11(a), authorizes and, in fact, requires this Committee to issue written advisory opinions to a governing body on whether an action or proposed action of a governing body violates the provisions of the Act. Implicit in the mandate is the rule of law that this Committee only has the authority to issue advisory opinions to persons or entities with legal standing to request an opinion. In Open Meetings Advisory Opinion 2006-03, this Committee held that a citizen does not have standing to request an advisory opinion regarding the actions of a planning commission. In its holding, this Committee reasoned that the citizen was not a member of the governing body, nor had the governing body authorized him to submit a request on its behalf.

Although the County Commission has created the Planning Commission, the Planning Commission is a separate public agency with its own governing body. Because the County Commission and the Planning Commission are separate public agencies with separate governing bodies, this Committee must determine whether the County Commission has standing to request an advisory opinion on behalf of the Planning Commission. In doing so, this Committee will apply the applicable rules of statutory construction.

The West Virginia Supreme Court has held that “[t]he primary rule of statutory construction is to ascertain and give effect to the intention of the Legislature.” Syl. Pt. 4, *Kanawha Cnty. Bd. of Educ. v. Hall*, 249 W. Va. 161, 895 S.E.2d 16 (2023). One rule of statutory construction is that “[w]hen a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute.” Syl. pt. 5, *State v. Gen. Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 107 S.E.2d 353 (1959). The West Virginia Supreme Court has also held, however, that “[w]here a particular construction of a statute would result in an absurdity, some other reasonable construction, which will not produce such absurdity, will be made.” *Kanawha Cnty. Bd. of Educ.* at Syl. Pt. 6.

Although the County Commission is a governing body subject to the Open Meetings Act, applying the plain language of the statute to conclude that it was the legislature’s intent for W. Va. Code § 6-9A-11(a) to allow a governing body to request an opinion regarding the acts or proposed acts of a separate governing body would lead to absurd results. For example, a city in the eastern panhandle could submit a request regarding the acts of a county commission in southern West Virginia. In this example, the city would have no greater interest in the outcome of the request than the citizen did in OMAO 2006-03, who lacked standing to request an advisory opinion about a planning commission’s conduct or proposed conduct.

Further, the Open Meetings Act, at W. Va. Code § 6-9A-6, provides a separate and distinct avenue for anyone, including a citizen or another public agency, to challenge the acts of any governing body by filing a complaint in circuit court. The Commission believes that the intent of W. Va. Code § 6-9A-11(a) is to help public agencies comply with the Open Meetings Act by allowing them to get official advice from this Committee. This Committee does not believe the legislature intended to give citizens and other entities a second avenue to adjudicate a possible violation of the Act in addition to the jurisdiction it gave to the circuit courts to enforce it. The Committee believes that its interpretation is reasonable and that allowing a person or entity to request an advisory opinion about the actions of another separate governing body would result in absurdity.

**Therefore, this Committee finds that W. Va. Code § 6-9A-11 does not permit a governing body to request an advisory opinion regarding an action or proposed action of a different governing body. The County Commission’s creation of and funding to the Planning Commission does not change this finding because the Planning Commission is a separate public agency with its own governing body for purposes of the Open Meetings Act. The Committee holds that the County Commission does not have standing to request an advisory opinion regarding the actions or proposed actions of the Planning Commission.**

Because the Planning Commission submitted a request to join in this opinion request, the specific issues raised in the request regarding committees will be addressed by this Committee at a later meeting.

*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

Lynn Davis, Chairperson  
Open Governmental Meetings Committee  
West Virginia Ethics Commission