

## **OPEN MEETINGS ADVISORY OPINION NO. 2008-12**

### **Issued On October 2, 2008 By The WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS**

#### **OPINION SOUGHT**

The West Virginia Board of Accountancy seeks guidance on preparing meeting minutes and maintaining recordings of public meetings.

#### **FACTS RELIED UPON BY THE COMMITTEE**

The Board of Accountancy does not presently record its public meetings. The Board is considering making a recording of each meeting, to be used in preparing the meeting minutes. Once the minutes have been prepared, the recording would either be erased and recorded over for another meeting, or destroyed. The Board wants to know whether the Open Meetings Act limits its discretion in regard to making or retaining such recordings.

#### **CODE PROVISIONS RELIED UPON BY THE COMMITTEE**

W. Va. Code§ 6-9A-5, *Minutes*, provides as follows:

Each governing body shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in section four of this article, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each member of the governing body present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- (4) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.

#### **ADVISORY OPINION**

There is no provision in the Open Meetings Act which requires a governing body of a public agency, such as the West Virginia Board of Accountancy, to record any portion of a public meeting. The governing body may, in its discretion, decide to have a recording made to assist in fulfilling its duty to prepare and make available written minutes containing the specific information required by the Act.

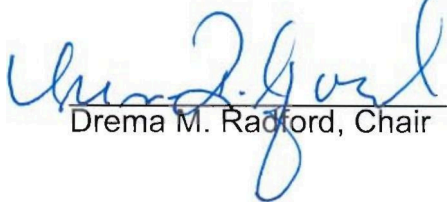
If the Board elects to record the public portion of its meetings, there is no requirement in the Open Meetings Act that any such recording be retained once the minutes for a recorded meeting have been approved, either as drafted or revised, in a subsequent

meeting. Thus, the Board would not violate the Act by erasing, taping over or destroying the recording after the recording has served the purpose for which it was made - to aid in the preparation of accurate meeting minutes required by the Act.

This Committee notes that an audio recording of a public meeting created in the regular course of the Board's business will likely constitute a "record" subject to the requirements of the State Records Management and Preservation of Essential Records Act, W. Va. Code § 5A-8-1, *et seq.* Although it does not appear that a recording of a meeting would need to be maintained once the minutes have been approved and it has served its purpose, this Committee is not authorized to provide a definitive interpretation of this statute. The Board may want to seek an opinion from its legal counsel or the Attorney General on the application of these Code provisions to an audio recording of a public meeting. In any event, the Board should consider adopting a written policy describing how long recordings of its public meetings will be retained.

This advisory opinion is limited to questions arising under the Open Governmental Proceedings Act, W. Va. Code § 6-9A-1, *et seq.*, and does not purport to interpret other laws or rules. Pursuant to W. Va. Code § 6-9A-11, a governing body or member thereof that acts in good faith reliance on this advisory opinion has an absolute defense to any civil suit or criminal prosecution for any action taken based upon this opinion, so long as the underlying facts and circumstances surrounding the action are the same or substantially the same as those being addressed in this opinion, unless and until it is amended or revoked.

/s/ Drema Radford, Chair



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Drema M. Radford, Chair

