

## OPEN MEETINGS ADVISORY OPINION NO. 2008-14

### Issued On November 13, 2008 By The WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

#### **OPINION SOUGHT**

The Unemployment Compensation Solutions Task Force asks if it is subject to the requirements of the Open Meetings Act.

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

The Unemployment Compensation Solutions Task Force ("Task Force") was created pursuant to an Executive Order of the Governor. The work of the Task Force is generally related to the operation of the Division of Unemployment Compensation which is part of Workforce West Virginia, a state agency established pursuant to W. Va. Code § 21A-1-4.

The Task Force is charged with examining possible solutions to a particular identified problem regarding the current failure of the Unemployment Compensation Trust Fund to meet the United States Department of Labor's suggested solvency rate. More specifically, the Task Force is required to determine costs which will be associated with increasing the solvency rate to meet federal standards in regard to the State, employers and workers, as well as to identify statutory and regulatory changes necessary to effectuate all proposed solutions. The Task Force is required to submit a written report on these proposed solutions to the Governor.

The Task Force consists of seven members appointed by the Governor to serve at his will and pleasure. The Executive Order specifies the members of the Task Force as: (1) one member representing the West Virginia business community; (2) one member representing organized labor; (3) one member that is a qualified actuary; (4) one member that is an academician holding an advanced degree from an accredited college or university in business, finance, insurance, or economics; (5) one member that is an attorney experienced in employment law; (6) the Secretary of Commerce or her designee; and (7) The Executive Director of Workforce West Virginia.

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

W. Va. Code § 6-9A-2(3) defines "governing body" as "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(4) defines "meeting" as "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. The term meeting does not include:

(A) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court of claims proceeding;

(B) Any on-site inspection of any project or program;

(C) Any political party caucus;

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or

(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.

W. Va. Code § 6-9A-2(6) defines "public agency" as "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 Meetings Act applies to governing bodies of public agencies which exercise executive or legislative power. This Committee has not previously determined whether a task force appointed to make recommendations constitutes an entity subject to the requirements of the Act. However, this Committee concludes that the Legislature intended the Act to apply to an entity such as this Task Force.

The Open Meeting Act broadly defines "public agency" to include "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." Similarly, a "governing body" is defined as "the members of any public agency **having the authority to make** decisions for or **recommendations** to a public agency **on policy or administration.**"

Although the statute does not specifically mention a "task force," such an entity may properly be included under the phrase "any other agency or subunit." Moreover, the statute specifically encompasses an entity with authority to "make ... recommendations to a public agency on policy or administration."

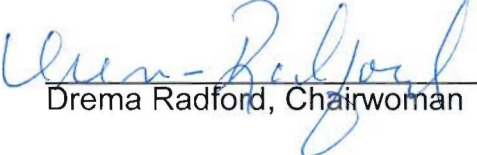
The Task Force has been created by an Executive Order. It has expressly been given authority to make recommendations on specific matters relating to administration of the unemployment compensation fund. Therefore, this Committee finds that it falls within the category of subunits having authority to make recommendations on policy or administration.

The Act provides that certain activities, such as quasi-judicial determinations and on-site inspections, are excluded from the definition of "meeting" covered by the Act. However, the activities of the Task Force do not fall under any of the exclusions created in the Act. Indeed, the principle activity of the Task Force is included in the definition of "governing body" which specifically references making recommendations on matters of policy or administration.

Accordingly, this Committee concludes that the Unemployment Compensation Solutions Task Force constitutes a governing body of a public agency within the meaning of the Open Meetings Act.

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

  
Drema Radford, Chairwoman