

OPEN MEETINGS ADVISORY OPINION NO. 2008-16

Issued On December 4, 2008 By The WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Co-Chair of the West Virginia Board of Education/West Virginia School Board Association Board Member Training Standards Review Committee asks if this entity is subject to the requirements of the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The West Virginia School Board Association (Association) is incorporated as a private, nonprofit organization. The State Board of Education (State Board) is a public corporation created pursuant to W. Va. Code § 18-2-1. The State Board consists of 12 members, 9 of whom are appointed by the Governor with the advice and consent of the State Senate. The 3 remaining members serve *ex officio* and without a vote.

W. Va. Code § 18-5-4(g) explicitly authorizes county boards of education to join the Association and to pay, with school funds, dues and expenses related to membership and attending Association meetings. All newly elected County School Board Members are required to complete certain training before taking office pursuant to W. Va. Code § 18-5-1a(e). In addition, as provided in W. Va. Code § 18-5-1a(f), all County School Board Members are required to attend annual training on certain matters. This statute further specifies that "Such orientation and training shall be approved by the state board and conducted by the West Virginia school board association or other organization or organizations approved by the state board."

In accordance with W. Va. Code § 18-5-1a(f), failure to attend and complete a required orientation or training course constitutes neglect of duty, unless excused for good cause under State Board rules. Moreover, W. Va. Code § 18-2E-4(e) requires that information regarding County Board Members' completion of required training be included in "school report cards" prepared to comply with better schools accountability standards.

Since 1990, a West Virginia Board of Education/West Virginia School Board Association Board Member Training Standards Review Committee (Training Committee) has advised the Board on matters related to fulfilling these orientation and training requirements for County Board Members. Current operating procedures for the Training Committee state that it will consist of three State Board Members designated by the State Board's President and other members appointed by the State Board. The State Board gives "due consideration" to recommendations of the Association's Executive Board in making these appointments. At least 3 County Board Members and 2 County School Superintendents must be included among these "other members." The State Board also has authority to designate the Training Committee's officers and may remove any member for repeated failure to attend meetings without good cause, or for other good cause.

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(6) defines "public agency" as "[A]ny 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 generally requires governing bodies of public agencies to make decisions on matters requiring official action in a public meeting that is open to the public and the media. The Act defines a "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." Further, the Act 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 ...** " This definition further provides: "[T]he membership of a governing body consists of **two or more members** "

The Open Meetings Act applies to governing bodies of "public agencies" which are defined to include units of state, county and municipal government as well as "public corporations." The West Virginia School Board Association was created as a private, non-profit corporation. Therefore, it does not fall into any of the categories subject to the Open Meetings Act.

The Training Committee at issue here constitutes an entity that is more than an outgrowth of the Association. Indeed, the Training Committee is inextricably intertwined with the State Board's administration of the statutory training requirements in W. Va. Code§ 18-5-1a.

In Open Meetings Advisory Opinion 2008-05, concerning the West Virginia Board of Optometry, this Committee found that a joint committee formed between the Board of Optometry and a private organization, the West Virginia Optometry Association, would involve a governing body of a public agency subject to the Act, if two or more members of the joint committee were appointed by the Board of Optometry. Here, the membership of the Training Committee ordinarily includes 3 State Board Members, with the remaining members appointed by the State Board, all of whom are responsible for advising the State Board on complying with W. Va. Code§ 18-5-1a and related requirements. Accordingly, consistent with our ruling in Open Meetings Advisory Opinion 2008-05, this Committee finds that the Training Committee is a governing body of a public agency subject to the requirements 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