

OPEN MEETINGS ADVISORY OPINION NO. 2008-01

Issued On February 7, 2008 By The WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The West Virginia Investment Management Board requests a determination on whether certain subcommittees it has created are subject to the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The West Virginia Investment Management Board (Board) is generally responsible for overseeing the investment of various state pension funds and other long-term assets of the State. In 2007, the Legislature expanded the Board's authority to invest in certain alternative investments, beyond the categories of investments previously authorized by statute.

Consistent with its expanded statutory authority, the Board has engaged third party consultants to recommend specific alternative investments in three distinct categories chosen by the Board: hedge funds, private equities and real estate investments. In addition, the Board has established three alternative investment subcommittees, one for each of these categories.

Within specific parameters established by the Board, each subcommittee is authorized to consider and exercise decision-making authority on investment recommendations from the Board's consultants. This authority has been delegated by the Board to facilitate a timely response to investment opportunities identified by the Board's consultants in any of these particular categories.

Each of these three subcommittees, hedge funds, private equities and real estate investments, consist of three Board employees and two Board Members. These five-member subcommittees meet on an ad hoc basis in response to investment proposals recommended by the Board's consultants and staff. The Board seeks clarification as to whether the Open Meetings Act applies to these subcommittees.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-2(3) defines "governing body" as "[T]he 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 West Virginia Investment Management Board has found it necessary and prudent to delegate certain decision-making authority regarding the investment of public funds to each of three five-member subcommittees. This Committee finds that each of these subcommittees constitutes a "governing body" of a public agency within the meaning of the Act. Therefore, any meeting by one of these subcommittees should be conducted in accordance with the requirements of the 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/ James Shepherd II, Chair


James E. Shepherd II, Chairman