

OPEN MEETINGS ADVISORY OPINION NO. 2008-05

Issued On March 6, 2008 By The

WEST VIRGINIA ETHICS COMMISSION

COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The West Virginia Board of Optometry asks whether a joint committee appointed to work with the West Virginia Optometric Association on a particular matter is subject to the requirements of the Open Meetings Act. The Board also asks if appointing a Board Member to attend meetings of the West Virginia Optometric Association would require the Association to follow the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The West Virginia Board of Optometry is considering setting up a committee to work with the West Virginia Optometric Association (Association) regarding the issue of continued competency. The Association is a private, non-profit corporation. It is anticipated that this joint committee, including members appointed by the Board of Optometry and the Association, will be proposing a policy on continued competency which will be presented to the Board of Optometry for official action at a public meeting.

The Board of Optometry is also considering appointing one of its members as a liaison to the Association. The Board Member would ordinarily attend the meetings of the Association and update the Association on the Board's activities.

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 a "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 Board of Optometry is considering appointing some of its members to serve on a joint committee with the West Virginia Optometric Association. Thus, part of the joint committee's membership would be provided by the Association.

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 Optometric 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.

Notwithstanding the participation of representatives of a private organization on the proposed committee, this Committee finds that if the West Virginia Board of Optometry appoints two or more members to the joint committee, and the committee is expected to make recommendations to the Board on policy, administration, or other matters requiring official action by the Board, then such joint committee constitutes a governing body of a public agency required to comply with the requirements of the Act.

However, simply appointing or designating a Board Member or other public official to attend the meetings of a private organization does not change the legal status of the organization. This Committee reached this same conclusion in Open Meetings Advisory Opinion 2005-09, involving Pocahontas Woods, Inc.

Therefore, appointment of a single Board Member as the West Virginia Board of Optometry's designated liaison with the West Virginia Optometric Association will not change the status of the Association or require its meetings to be conducted in accordance with 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/ James Shepherd, Chair



James E. Shepherd II, Chairman