

Open Meetings Advisory Opinion No. 2019-04

Issued on November 7, 2019, by

**The West Virginia Ethics Commission
Committee on Open Governmental Meetings**

Opinion Sought

The **City of Charleston** asks whether a Youth Council created by the Mayor is subject to the Open Meetings Act.

Facts Relied Upon by the Committee

The Mayor of the City of Charleston is creating a Youth Council. According to the City's website, the purpose of the Youth Council will be to "provide an invaluable opportunity for youth to develop confidence and leadership skills, in addition to promoting their understanding of city and local government and how it impacts their lives."

Interested candidates must submit a written application, which must include a parent or guardian's signature, to the Mayor's Office. To be eligible to serve, a person must be between the ages of 14 and 18, reside in City limits, and be a student. The City's website states that the Mayor and six members of Charleston City Council will select a minimum of seven but no more than 13 youth to serve on the Youth Council.

The Youth Council will consist only of the selected youth members. No members of City Council or the Mayor will serve on the Youth Council. The Mayor or her designee will attend the Youth Council meetings.

The Youth Council members shall serve without compensation and must attend a training program hosted by the Mayor's Office before assuming their duties. The duties of the Youth Council include drafting written recommendations to the Mayor on how to improve relationships between the City and its youth. The members must observe at least six City Council meetings and complete 20 hours of community service.

The members of the Youth Council must meet at least once each calendar quarter at a regularly scheduled time and place. The term of office is one year, and a member may not serve more than two terms of office.

The Youth Council has not been created by Executive Order or a City ordinance. It is, instead, an initiative of the Mayor's Office.

Code Provisions Relied Upon by the Committee

W. Va. Code § 6-9A-2(4) states:

“Governing body” means 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; for the purposes of this article, a governing body of the Legislature is any standing, select or special committee, except the commission on special investigations, as determined by the rules of the respective houses of the Legislature.

W. Va. Code § 6-9A-2(5) states:

“Meeting” means 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.

W. Va. Code § 6-9A-2(7) states:

“Public agency” means 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. The term “public agency” does not include courts created by article eight of the West Virginia Constitution or the system of family law masters created by article four, chapter forty-eight-a of this code.

W. Va. Code § 6-9A-3(a) states:

Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public.

Advisory Opinion

The Open Meetings Act requires meetings of a governing body of a public agency to be open to the public. W. Va. Code § 6-9A-2 and W. Va. Code § 6-9A-3. A governing body must also comply with the meeting notice and agenda requirements in the Act.

The Committee on Open Governmental Meetings (“Committee”) must decide whether the Youth Council is subject to the Open Meetings Act. To make this determination, it is necessary to analyze the Act’s definitions of “governing body” and “public agency.”

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.” W. Va. Code § 6-9A-2(4). The Act defines a public agency, in relevant part, as “any administrative or legislative unit of ... municipal government, including any ... board ... committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power.” W. Va. Code § 6-9A-2(7).

The general rule is that advisory committees are subject to the Open Meetings Act. For example, in Open Meetings Advisory Opinion 2014-02, the Committee found that *ad hoc* committees, whose members were comprised of citizens and council members, were subject to the Open Meetings Act. A town had created the *ad hoc* committees to study issues and make recommendations to the town.

In Open Meetings Advisory Opinion 2007-07, the Committee found that a group appointed by resolution of two municipalities to study water quality in the area and to report back to each municipality was a governing body subject to the Open Meetings Act.¹

In Open Meetings Advisory Opinion 2008-14, the Committee held that the Unemployment Compensation Solutions Task Force (“Task Force”), which the Governor created by Executive Order, was subject to the Open Meetings Act. The purpose of the Task Force was to study a problem faced by the Unemployment Compensation Trust Fund and to submit a written report to the Governor containing the Task Force’s proposed solutions to the problem.²

In the instant case, the Youth Council consists of members who are selected by the Mayor and six members of City Council. The members of the Youth Council must meet at least once each calendar quarter at a regularly scheduled time and place, and its

¹ The Opinion noted that normally one or more of the members of the water quality study group were also elected members of the town councils which formed the group, but the Opinion did not make the presence or absence of town council members on the water quality study group a determinative factor in finding that it was subject to the Act.

² In Open Meetings Advisory Opinion 2001-21, the Committee held that a committee appointed by a state agency to evaluate contractors was not subject to the Open Meetings Act because it only made non-binding recommendations. The Committee failed to analyze, however, whether making recommendations constitutes the exercise of some portion of executive or legislative authority. See *also* O.M.A.O. 2014-02 (discussing that in analyzing the scope of the Act it is necessary to consider that the definition of “governing body” includes committees which make recommendations). The Committee finds that making recommendations constitutes the exercise of some portion of legislative or executive power.

members have a fixed term of office. One responsibility of the Youth Council is to make recommendations to the Mayor and the City on how to improve relationships between the City of Charleston and its youth.

In conclusion, the Committee on Open Governmental Meetings finds that the Youth Council is a subunit which is subject to the Open Meetings Act. In making this determination, the Committee has considered that the Youth Council's members are appointed by the Mayor, have fixed terms of office, have regularly scheduled quarterly meetings and are responsible for making recommendations to the Mayor on policy matters. Based upon these factors, the Open Meetings Committee thereby concludes that the Youth Council is a subunit of the Mayor's Office authorized by law to exercise some portion of executive power.

The Youth Council must, therefore, comply with the Open Meetings Act when holding a meeting to discuss or vote on its recommendations to the Mayor or the City Council for improving relationships between the City of Charleston and its youth. The Youth Council does not have to notice meetings when it is engaging in community service activities, attending City Council meetings or attending training sessions because these activities do not constitute meetings of the Youth Council for purposes of the Open Meetings Act.

While some may believe this holding is overly restrictive due to the ages of the Youth Council members, the Open Meetings Committee is constrained by the plain language 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 through 6-9A-12, and does not purport to interpret other laws or rules.

/s/ Lawrence J. Tweel
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