

Open Meetings Advisory Opinion No. 2025-01

Issued on February 6, 2025, by
The West Virginia Ethics Commission
Committee on Open Governmental Meetings

Opinion Sought

The **Pocahontas County Clerk** asks whether a properly noticed regular meeting must be postponed if a state of emergency is declared on a day during the notice period.

Facts Relied Upon by the Committee

The Governor and the Legislature have the authority to declare a state of emergency or a state of preparedness under certain circumstances defined in the law and when the “health, safety, and welfare of the inhabitants of this state require the invocation of the provisions of this section.” [W. Va. Code § 15-5-6 \(b\)-\(c\)](#).

During a state of emergency or preparedness, the Governor has additional powers to “enforce all laws and rules relating to the provision of emergency services and to assume direct operational control of any or all emergency service entities and personnel in the state.” *Id.* at (g)(1). The Governor may also, among other things, “compel the evacuation of all or part of the population from any stricken or threatened area within the state. . . control ingress and egress into or out of a disaster area. . . suspend the provisions of any statute prescribing the procedures for the conduct of state business or the orders, or rules of any state agency, if strict compliance therewith would in any way prevent, hinder, or delay necessary action in coping with the emergency. . . [and] use available resources of the state and of its political subdivisions that are reasonably necessary to cope with the emergency or to prepare for the emergency. . . .” *Id.* at (g)(3)-(8).

The Pocahontas County Commission holds its regular meetings on the first and third Tuesdays of each month. The County has promulgated the “Pocahontas County Commission Agenda Policy and Procedures, September 20, 2016” in accordance with the Open Governmental Proceedings Act, specifying that notices of its regular meetings must be posted and agendas must be made available no later than three business days before a regularly scheduled meeting. The policy also states that Saturdays, Sundays, legal holidays, and pre-scheduled days for closing the courthouse are not considered business days for purposes of posting agendas. *Id.* The Requester’s policy further provides that agendas for regular and special meetings will be posted at the Pocahontas County courthouse and made available in the County Commission office by 4:30 p.m. on the first day of the required notice period.

The Pocahontas County Commission has also adopted an “Emergency Closing Policy and Procedure” dated 2015, which provides guidance for the closure of county offices due to weather and other emergency situations. The policy provides that county offices will be open during its established business office hours, and that “[t]he only exceptions will be during officially declared weather or emergency situations to be determined by the President of the Pocahontas Commission.”

The Requester asks whether a properly-noticed regular meeting must be postponed if a day during the notice period is declared an emergency by the Governor or Legislature or if the County’s offices are closed pursuant to the County’s Emergency Closing Policy and Procedure.

Code Provisions Relied Upon by the Committee

[W. Va. Code § 6-9A-3](#) states, in relevant part:

(a) 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. . . .

d) Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media.

(e) Each governing body of the executive branch of the state shall electronically file a notice of each meeting with the Secretary of State for publication on the Secretary of State's website.

(1) Each notice shall state the date, time, place and purpose of the meeting.

(2) Each notice of a special meeting or a regular meeting shall be filed in a manner to allow each notice to appear on the Secretary of State's website at least five business days prior to the date of the meeting.

(3) When calculating the days, the day of the meeting is not to be counted. If a meeting notice is filed anytime other than during the Secretary of State's regular business hours, the date of filing will be considered the next business day. . . .

Advisory Opinion

The Open Meetings Act requires governing bodies, including county agencies, to provide notice of and an agenda for its regular meetings “in advance” of a meeting. W. Va. Code § 6- 9A-3(d). The Act provides that the governing bodies of the state executive branch must file a meeting notice in a manner to allow each notice to appear on the Secretary of State's website at least five business days prior to the date of the meeting. W. Va. Code § 6- 9A-3(e).

The Act, however, does not specify how far in advance of a meeting the agenda for an executive branch meeting must be provided, or how far in advance the notice and agenda for meetings of local governing bodies must be provided. Therefore, in accordance with its authority to interpret the Open Meetings Act through its advisory opinions, W. Va. Code §§ 6-9A-10 through 11, this Committee has established that a governing body, that meets on a regular basis, will comply with the Act by posting notices and making agendas available at least three business days before each regularly scheduled meeting. [Open Meetings Advisory Opinions 2006-11](#) and [2006-15](#). This Committee has also established that when counting business days under the Act, the day of the meeting, Saturdays, Sundays, and legal holidays are excluded. [Open Meetings Act Opinions 2019-01](#) and 2006-15, and [2012-01](#). For example, “[i]n the absence of an intervening legal holiday, a governing body may issue notice of a regular meeting to be held on Tuesday no later than the close of business on the preceding Thursday.” Open Meeting Advisory Opinion 2006-15.

Nor does the Open Meetings Act specify how the public must receive the notice and agenda of a meeting. But the Committee, in Open Meetings Advisory Opinion 2006-11, provided the following guidance to the Fountain Public Service District:

If a governing body conducts its regular meetings at the same time and place on an established schedule, such as the first and third Monday of each month, annually posting a schedule of these meetings for the year in a public location, such as the front door or bulletin board of the District's offices, will provide reasonable notice of the date, time and place of the meeting to the public and media. . . . At a minimum, the meeting agenda for a regular meeting should either be posted in a public place, such as on the front door or bulletin board, or made available in the District's offices during regular business hours, at least three business days in advance of each regular meeting.

This Committee must decide whether the Act would require the Pocahontas County Commission to postpone its regular meeting if one or more of the days in the three-day notice period is declared an emergency. The Committee recognizes that governmental offices are not automatically closed to the public during a state of emergency or preparedness. The measures available to be taken during an emergency are varied.

Even if a public office is closed to the public during the notice period, the public may be better served by not postponing a well-established meeting schedule. This is especially true here because the Pocahontas County Commission holds its regular meetings on a regular schedule, e.g., the first and third Tuesdays of each month. Further, in [Open Meetings Act Opinion 2019-01](#), this Committee found that a board of education could count out of school environment “OSE” days as notice days because they are not legal holidays.¹ Days of a declared emergency are not legal holidays either.

The Committee holds that a properly noticed regular meeting does not have to be postponed if a state of emergency or preparedness is declared on a day during the notice period. A governing body must decide on a case-by-case basis how the public would best be served. Some factors to consider are the gravity and public interest in the matters on the agenda for the particular regular meeting and whether the notices and agendas are regularly made available online.

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.



Suzan Singleton, Acting Chairperson
Open Governmental Meetings Committee
West Virginia Ethics Commission

¹ County boards of education are required to provide 20 noninstructional days within a school term, six of which must be outside the school environment days. W. Va. Code§ 18-5-45(c)(3).