

Ethics News

For WV Counties and Cities

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WV's Open Meetings Act

West Virginia's Open Meetings act requires all meetings of any governing body to be open to the public. "Governing body" means two or more members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration.

The Act sets forth requirements for posting agendas, noticing meetings, determining types of meetings (regular, special or emergency) and convening executive sessions. It also includes definitions of "meeting," "official action," "quorum" and other terms used in the Act.

Meeting notices must include the date, time and place of the meeting. For special meetings or emergency meetings, the notice must state the purpose of the meeting.

A governing body complies with the Act by posting notices in a public place at its central office and by having copies of the agenda available there during regular business hours. In addition, it may distribute agendas to the news media by mail, facsimile or email. The agenda also may be posted on the

governing body's website if it has one.

A "meeting" covered by the Act is a convening of a quorum of a governing body or subcommittee in order to make a decision or deliberation towards a decision. Meetings may be held by telephone conference or other electronic means, such as video conference.

General discussions among members of a governing body or committee on issues of interest to the public in a social, educational, training, informal, ceremonial or similar setting, so long as there is no intent to conduct public business or for the discussion to lead to official action, are not the types of meetings subject to the Open Meetings act. Adjudicatory proceedings, on-site inspections, political party caucuses, and discussions on logistical and procedural methods to schedule and regulate a meeting are also not matters covered by the Open Meetings Act.

For more information on the Open Meetings Act, click [here](#).

Calculating notice

When a governing body must post its notice and make its agenda available to the public depends on what type of meeting is to be held. Here are the general posting requirements:

- **Regular meeting**—three business days before the meeting.
- **Special meeting**—two business days before the meeting.
- **Emergency meeting**—as soon as practicable prior to the meeting.

For governing bodies which regularly meet weekly, the notice and agenda must be issued two business days before the meeting.

In calculating days, do not count the day of the meeting, weekend days or legal holidays. Half-day holidays are not legal holidays for the purpose of calculating days. "Outside the school environment" and "out of calendar" days for schools are not considered legal holidays and therefore must be counted when computing time periods.

State agencies have additional obligations for posting a meeting notice with the Secretary of State's office.

Coronavirus and open meetings

The Ethics Commission staff has recently received various inquiries regarding compliance with the Open Meetings Act due to the unique circumstances caused by coronavirus outbreak. The following is the opinion of Ethics Commission staff.

Emergency Meeting

- If a governing body needs to meet to discuss or vote on an issue relating to the coronavirus outbreak, the governing body may call an emergency meeting if immediate attention is required to address an issue relating to the same. (W. Va. Code § 6-9A-2(2)(A)).
- A governing body must post an emergency meeting notice as soon as practicable prior to the meeting, and an emergency meeting agenda and minutes must include the facts and circumstances of the emergency. State agencies must electronically file a notice of the emergency meeting with the Secretary of State.
- The governing body may only call an emergency meeting if it meets the emergency meeting test not because it is merely more convenient to hold an emergency meeting in lieu of a special or regular meeting.

Meeting telephonically or via live audio or visual stream

- For emergency, special or regular meetings, a governing body may meet telephonically or via live audio or visual stream if members of the public may also attend. Open Meetings Act Opinion 1999-08.
- The governing body may allow members of the public to attend by providing them access to a public meeting room in which they may at a minimum hear the telephonic or video meeting. For example, a governing body may have a speaker phone or a computer with audio or video feed in a city council meeting room.
- It is the opinion of Ethics Commission staff that allowing citizens to attend a meeting in person is not required if the governing body determines, based upon guidance issued by the federal government, the state of West Virginia, the Centers for Disease Control and Prevention or other government agencies authorized to make these types of decisions, that it constitutes a public health risk to allow citizens to attend in person. The governing body may instead provide citizens with a call-in number for a telephonic meeting or provide access via web link to a livestream of the meeting.

Agendas

Agendas may be amended up to two business days before the meeting. If an agenda is amended, it must be made available to the public in the same manner as the original agenda was made available. The only circumstance under which a governing body may amend an agenda *during* a meeting is if a true emergency arises.

Agendas must give reasonable notice to the public of what issues will be discussed. Any matter requiring the governing body to take official action must be listed on the agenda. For example, "filling position of office manger" is sufficient. Use of vague headings such as "old business," "new business" and "personnel matters" is insufficient.

Minutes

The Act requires that written minutes of all open meetings be available to the public within a reasonable time after the meeting. The minutes must include:

- The date, time and place of the meeting;
- The name of each member of the governing body present and absent;
- All motions, orders, resolutions, ordinances and measures proposed as well as the name of the person proposing each action and the disposition of the matter, and
- The results of all votes, including roll call votes by member name if such votes are conducted.

Meeting minutes should usually be made available to the public one business day after the public body's next regular meeting. If material changes are made to draft minutes, the approved minutes should be made available no later than three business days after the meeting.

Executive session Q & A

Q: When may a governing body go into an executive session?

A: A governing body may go into an executive session for any of the reasons set forth in the Open Meetings Act at W. Va. Code § 6-9A-4. Some common grounds for going into an executive session are to discuss personnel matters or pending litigation; to consider matters involving the purchase, sale or lease of real property, or to plan or consider an official investigation. A governing body must attempt to segregate the non-exempt portions from the exempt portions of its meeting unless segregation would make a coherent discussion impossible.

Q: How do you convene an executive session?

A: A member of the governing body must make a motion to go into executive session. The motion must state in plain language the grounds for convening an executive session. For example, a member may state that he or she is moving to go into executive session based upon the personnel exception. It is not necessary to cite the specific code provision. A governing body may go into executive session to discuss only matters that appear on the meeting agenda.

Q: Must the agenda state that the governing body will go into executive session?

A: No. In fact, a governing body may not decide in advance of a meeting that it will go into executive session. The agenda may indicate that it is *anticipated* that a matter may be discussed in executive session, but the governing body may only go into executive session by a majority vote of the members present. The agenda item must be descriptive enough to put the public on notice of the nature of the matter being discussed regardless of whether it will be discussed in an open session or executive session.

Q: May a governing body vote on matters in executive session?

A: No. Votes must be taken in the public session and not in executive session. A Governing body may only vote after it reconvenes in an open session. Public agencies may not close a meeting that otherwise would be open merely because an agency attorney is a participant. If the public agency has approved or considered a settlement in closed session, and the terms of the settlement allow disclosure, the terms of that settlement shall be reported by the public agency and entered into its minutes within a reasonable time after the settlement is concluded.

Q: Is a governing body required to take minutes for an executive session?

A: No. The decision of whether or not to take minutes for an executive session lies within the discretion of the governing body. The governing body may want to seek the advice of legal counsel concerning whether minutes should be taken. If a governing body decides to take minutes in an executive session, the Act does not require the disclosure of such minutes to the public.

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