

OPEN MEETINGS ADVISORY OPINION NO. 2007-09

Issued On September 6, 2007 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Harrison County Commission seeks guidance on how far in advance of a regular meeting it should make the meeting agenda available to the media and the public.

FACTS RELIED UPON BY THE COMMITTEE

The Harrison County Commission meets weekly on Thursday, unless there is a legal holiday or the Commission lacks a quorum.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code§ 6-9A-3 provides in pertinent part:

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, except in the event of an emergency requiring immediate official action.

Each governing body of the executive branch of the state shall file a notice of any meeting with the secretary of state for publication in the state register. Each notice shall state the date, time, place and purpose of the meeting. Each notice shall be filed in a manner to allow each notice to appear in the state register at least five days prior to the date of the meeting.

ADVISORY OPINION

The Open Meetings Act generally requires governing bodies of public agencies to make certain information available to the public and news media in advance of a meeting, including: (1) the date, time, place and agenda of all regularly scheduled meetings; and (2) the date, time, place and purpose of all special meetings.

In Open Meetings Advisory Opinion 2006-15, this Committee concluded that all governing bodies of public agencies are required to make a meeting agenda available to the public and the media a reasonable time in advance of each regular meeting. In that particular opinion, the Clay County Board of Education was advised to make its meeting agenda available at least three business days in advance of each regular meeting. That opinion did not take into consideration how often the Board of Education met.

The Harrison County Commission meets weekly on Thursday. In order to comply with the three-business-day standard, the Commission would be required to issue its agenda before close of business each Monday. That would necessitate preparing a new agenda on the second business day following the previous meeting. In Open Meetings Advisory Opinion 2001-10, this Committee advised the Kanawha County Commission that it would comply with the Act by making its agenda available two business days in advance, when it was conducting its regular meetings on a weekly basis.

--- This Committee finds that a governing body of a public agency, such as the Harrison County Commission, which establishes a regular meeting schedule that involves meeting weekly, or more frequently, may comply with the Open Meetings Act by making a meeting agenda available to the public and the media at least two business days in advance of each regular meeting.

The agenda may be made available by posting on a bulletin board or providing copies at a designated location on a counter or table in a public place which can be accessed by the general public during normal working hours. In its discretion, the Commission may disseminate copies of the agenda by regular mail, telephone facsimile or electronic mail to news media that routinely cover its meetings. Governing bodies which operate Internet web sites are encouraged to post their meeting agendas on those sites. However, failure to send an agenda to the media or post an agenda on an agency web site will not constitute failure to comply with the Act. Conversely, posting exclusively on an agency web site, without posting or making the agenda available in a public location, will not provide reasonable notice to the public and the media of the meeting agenda.

When counting "business days" for purposes of this opinion, the day of the meeting, Saturdays, Sundays and legal holidays are excluded. Thus, in the absence of an intervening legal holiday, the Commission may issue its agenda for its regular Thursday weekly meetings not later than the close of business on Tuesday. Once the weekly agenda has been issued, it may only be amended to address an emergency requiring immediate official action. Routine matters that come up after the agenda has been issued must be held over to the next meeting. If an agenda is amended to accommodate action on an emergency matter, both the meeting agenda and the meeting minutes must explain the facts and circumstances of the emergency.

””” 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-1 1, 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 E. Shepherd, II

James Shepherd, II, Chairperson
Open Governmental Meetings Act Committee