

## OPEN MEETINGS ADVISORY OPINION NO. 2007-02

Issued On March 1, 2007 By The

### WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

#### OPINION SOUGHT

The organization which operates the Hancock County Senior Center asks if it *is* subject to the requirements of the Open Meetings Act.

#### FACTS RELIED UPON BY THE COMMITTEE

The Committee for Hancock County Senior Citizens, Inc., (HCSC) was established in 1976 as a non-profit, charitable organization. The Committee is recognized as a tax exempt charity by the federal Internal Revenue Service in accordance with section 501(c)(3) of the Internal Revenue Code.

HCSC conducts programs and activities to assist senior citizens in achieving and maintaining a higher quality of life. In exchange for a token rental payment, the Hancock County Commission provides a facility which is operated by HCSC as a Senior Center. The Commission pays for the insurance and utilities of the Center while HCSC insures the contents and vehicles.

The Center receives reimbursement through the West Virginia Medicaid program for services provided to seniors. The Center also receives some funding from the WV Bureau of Senior Services and the State's Agency on Aging under Title III of the Older Americans Act.

#### CODE PROVISIONS RELIED UPON BY THE COMMITTEE

The Open Meetings Act applies to "public agencies" defined 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.

W. Va. Code § 6-9A-2(6).

#### ADVISORY OPINION

The Open Meetings Act applies only to public agencies. The Act defines a "public agency" as "any administrative 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."

If HCSC is to be included in the Act's definition of a "public agency" it must be as a "public corporation." In Open Meetings Advisory Opinion 99-13, this Committee determined that a public corporation is a corporation created by state or local authority to carry out a governmental function. This Committee further noted that the Act does not look at an organization's receipt of state or local funds as a factor in determining whether the organization is a public corporation.

HCSC is not a corporation created by state or local authority to carry out a governmental function. It exists independent of state authorization, and this Committee concludes that it is not a public agency within the meaning and intent of the Open Meetings Act. Therefore, HCSC is not subject to the 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 E. Shepherd, II

James Shepherd, II, Chairperson  
Open Governmental Meetings Act Committee