

OPEN MEETINGS ADVISORY OPINION NO. 2007-07

Issued On August 2, 2007 By The

WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Elks Run Study Group asks if it is subject to the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The Elks Run Study Group was formed by joint resolutions of two municipalities, Bolivar and Harpers Ferry, in Jefferson County. Elks Run is a freshwater tributary of the Potomac River from which the Harpers Ferry Water Works draws water to supply drinking water to the residents of Bolivar and Harpers Ferry. Elks Run is not within the boundaries of either municipality.

The mission of the Elks Run Study Group is to study the water quality of Elks Run, including any degradation in the water quality, and report back to each municipality so that appropriate action may be taken to protect the water supply. The Group consists of seven members, four appointed by the Bolivar Town Council and three appointed by the Harpers Ferry Town Council. Ordinarily, one or more of the appointed members from each municipality are also elected members of the Town Council.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-2 includes the following definitions:

(3) "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

(6) "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....

ADVISORY OPINION

The Elks Run Study Group was created by the official actions of two municipalities. It is authorized to study a particular matter of public interest and to report back to the municipalities with its findings or recommendations. Those municipal governing bodies appoint the members of the Group. Accordingly, the Committee concludes that the Elks Run Study Group is a governing body of a public agency subject to the requirements 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, *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