

OPEN MEETINGS ADVISORY OPINION NO. 2016-01

Issued on February 4, 2016, by

THE WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The **City Manager for the City of Morgantown** asks:

- (1) In computing periods of time for purposes of the Open Meetings Act, what is the effect of a half-day holiday?
- (2) If a half-day is counted as a day for purposes of complying with the Open Meetings Act notice requirements, must the agenda or notice be posted before the close of business on that day?
- (3) If an agenda is posted 72 hours prior to a meeting, does that satisfy the requirement that a meeting agenda must be posted three business days prior to a meeting?

FACTS RELIED UPON BY THE COMMITTEE

Public employees, including municipal employees, on occasion are given a half-day off on Christmas Eve or New Year's Eve or both.¹ When state or local government employees work a half-day, normally the public office building in which they work will close at or around noon.

During the 2015 holiday season, public employees were given several half-day holidays. The City of Morgantown states that questions arose in regard to whether a half-day counts for purposes of calculating periods of time under the Open Meetings Act. The City seeks clear guidance on this issue for purposes of clarifying its rules and procedures to ensure compliance with the Open Meetings Act.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W.Va. Code § 6-9A-3 reads 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....

¹ There may also be other holidays or instances where that occurs.

(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

(1) Whether a half-day holiday is included in computing periods of time under the Open Meetings Act.

The Open Meetings Act requires public agencies to inform the public of: (1) the time, date, place and purpose of their meetings, and (2) what will be dealt with at the meetings. W.Va. Code § 6-9A-3. To comply with the Act, governing bodies of public agencies must timely post a meeting notice which notifies the public when and where the meeting will be held. They must also post an agenda which notifies the public of the items of business which will be addressed at the meeting.

The notice requirements for state agencies are expressly set forth in the Act, which requires agencies to “electronically file a notice of each meeting with the Secretary of State for publication 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) and §6-9A-3(e)(2).

In regard to local governing bodies, *e.g.*, city councils, county commissions or parks and recreation boards, the Act does not specifically establish when meeting notices or meeting agendas must be made available to the public. As the Act does not provide specific guidance for local governing bodies, in accordance with its authority to interpret the Open Meetings Act, this Committee has established required time frames in which local governing bodies must post their meeting notices and agendas. See W.Va. Code §6-9A-10, which authorizes the Committee to interpret the Open Meetings Act.

For a governing body which meets on a regular basis, the Committee has established the following notice requirements:

A governing body which meets in accordance with a fixed schedule, as the Town Council does, may comply with the meeting notice requirement by posting notice of its meeting schedule annually, and keeping this notice posted throughout the year. The schedule should be posted in a public place which is accessible to the public during normal business hours, such as the Town Hall.

Open Meetings Advisory Opinions 2004-13 and 2006-15. For agendas, the Committee has held that for regular meetings they must be made available at least three business days before each regularly scheduled meeting by “posting the agenda in an appropriate public space, such as the Town Hall, in addition to having copies of the agenda available to be picked up in that same building during normal business hours.” *Id.* There is an exception for local governing bodies which meet once a week. These bodies must post their agendas two business days before the meeting. See Open Meetings Advisory Opinions 2007-09 and 2012-01.²

In counting business days, the day of the meeting, Saturdays, Sundays and **legal** (emphasis supplied) holidays are excluded. Open Meetings Act Opinion 2006-15. For example, in the absence of an intervening legal holiday, a governing body may issue notice of a special meeting to be held on Tuesday no later than the close of business on the preceding Friday. *Id.*

The Requester seeks guidance on the application of these rules when a local government entity is only open for a half-day due to a scheduled holiday. This Committee must determine whether a half-day holiday is a “legal holiday” for purposes of computing periods of time under the Open Meetings Act. If it is a legal holiday, it must be excluded in computing the time period in advance of a meeting for posting a notice or agenda.

The West Virginia Code designates various days as legal holidays. These days include, but are not limited to, Memorial Day, West Virginia Day, New Year’s Day and Christmas Day. W.Va. Code § 2-2-1(a). The West Virginia Code does not designate New Year’s Eve or Christmas Eve as legal holidays. This section of the Code also provides “[a]ny day proclaimed or ordered by the Governor or the President of the United States as a day of special observance or Thanksgiving, or a day for the general cessation of business, is a holiday.” W.Va. Code § 2-2-1(a)(15). It further provides:

Any day or part thereof designated by the Governor as time off, without charge against accrued annual leave, for state employees statewide may also be time off for county employees if the county commission elects to designate the day or part thereof as time off, without charge against accrued annual leave for county

² A different rule of law applies for special meetings. A local governing body will comply with the Open Meetings Act if it posts notice of a special meeting at least two days in advance of the meeting date.

employees. Any entire or part statewide day off designated by the Governor may, for all courts, be treated as if it were a legal holiday.

W.Va. Code § 2-2-1(c).

The State of West Virginia gives state employees time off with pay for various official holidays, including Christmas Day and New Year's Day. State employees in recent years have also been given a half-day off on Christmas and/or New Year's Day. The West Virginia Division of Personnel's Legislative Rule provides "when Christmas or New Year's Day occurs on Tuesday, Wednesday, Thursday, or Friday, the last half of the scheduled workday immediately preceding the holiday will be given as time off not to exceed four hours." W.Va. C.S.R. § 143-1-14.1.b. Oftentimes local government entities give their employees the same days off, including the half-days. On those days, the government entity is open for official business for one-half of the day.

This Committee finds that a half-day holiday is not a legal holiday for purposes of calculating periods of time under the Open Meetings Act. The Committee bases its conclusion upon the fact that business is conducted on these half-days. Further, the Committee bases its opinion on the plain language in W.Va. Code §2-2-1. This Code section lists specific legal holidays, *e.g.*, Christmas Day and New Year's Day. It then qualifies that some days "may be treated" as legal holidays. The Code reads in relevant part "[a]ny entire or part statewide day off designated by the Governor may, for all courts, be treated as if it were a legal holiday." W.Va. Code § 2-2-1(c).

In conclusion, for purposes of the Open Meetings Act a half-day holiday may be included when a governing body is calculating periods of time under the Open Meetings Act, *i.e.*, a half-day counts towards the three-day posting requirement. An example of the application of this ruling is provided in the next section.

(2) Whether a governing body which is open for a half-day must post its meeting agenda or notice before close of business on that day.

For purposes of calculating time under the Open Meetings Act, this Committee has held that the deadline for posting a notice or agenda is the **close of business** (emphasis added). Open Meetings Advisory Opinions 2004-13 and 2006-15. This rule of law is consistent with the provisions in the Open Meetings Act governing the meeting notice requirements for state agencies which must file their notices during "the Secretary of State's regular business hours." W.Va. Code §6-9A-3(e)(2). If a state agency fails to electronically file during regular business hours, "the date of filing will be considered the next business day." *Id.*

This Committee holds that when there is a half-day holiday, the posting deadline is the close of business on the half-day. An example of the application of this ruling is as follows: If Christmas Day is on a Friday, and a local governing body is open until noon on Christmas Eve (Thursday), and if its regular meeting is the following Wednesday, then it complies with the agenda requirements for a regular meeting by posting its agenda by noon on the prior Wednesday. Under this scenario, for its Wednesday

meeting, a governing body includes the following days in applying the three business day rule: (1) Tuesday (because the day of the meeting, Wednesday, is not counted); (2) Monday; and Thursday (half-day holiday).

(3) Whether 72 hours equals three business days for purposes of calculating time pursuant to the Open Meetings Act.

This Committee finds 72 hours does not equal three business days for purposes of calculating periods of time pursuant to the Open Meetings Act. Black's Law Dictionary defines the term "business day" as "a day that most institutions are open for business ..." BLACK'S LAW DICTIONARY 454 (9th Ed. 2009). For purposes of defining this term for computing time under the Open Meetings Act, the Committee relies upon the commonly accepted meaning of the term "business day," the Black's Law definition of this term, and its prior holding that "[i]n counting business days, the day of the meeting, Saturdays, Sundays and legal holidays are excluded. Open Meetings Advisory Opinions 2011-10 and 2007-09.

In conclusion, the Committee on Open Governmental Meetings holds: (1) Half-day holidays may be included for purposes of calculating business days under the Open Meetings Act; (2) If a government office has a scheduled half-day holiday, and the notice deadline falls on that day, then the posting deadline for the agenda or notice is the close of business on the half-day, e.g., noon, and (3) In calculating days for purposes of the Open Meetings Act, governing bodies may not include weekend days or legal holidays.

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. 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 as 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/ Lawrence J. Tweel
Lawrence J. Tweel, Chairperson
Open Governmental Meetings Committee
West Virginia Ethics Commission