

OPEN MEETINGS ADVISORY OPINION NO. 2016-03

Issued on November 3, 2016, by

THE WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The **Pocahontas County Commission** seeks to verify whether its revised policy relating to posting agendas complies with the Open Governmental Proceedings Act.

FACTS RELIED UPON BY THE COMMITTEE

On September 1, 2016, this Committee issued Open Meetings Advisory Opinion 2016-02, which generally approved of the Pocahontas County Commission's proposed policy and procedures ("policy") for the issuance of meeting agendas for all regular, special and emergency meetings. The Opinion noted, however, that the policy needed to be revised to exclude the day of the meeting from the regular and special meeting notice period calculation. The Opinion also found that the policy needed to be revised to provide that a governing body shall post an emergency meeting as soon as practicable prior to the meeting, and that the agenda for an emergency meeting needed to explain the facts and circumstances of the emergency in addition to the date, time, place and purpose of the emergency meeting.

The Pocahontas County Commission has since revised its policy pursuant to this Committee's direction in Open Meetings Advisory Opinion 2016-02. The Committee has reviewed the revised policy in its entirety. A complete copy of the policy is attached to this Advisory Opinion as Appendix A.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W.Va. Code § 6-9A-2(2) reads as follows:

"Emergency meeting" means any meeting called by a governing body for the purpose of addressing an unexpected event which requires immediate attention because it poses:

- (A) An imminent threat to public health or safety;
- (B) An imminent threat of damage to public or private property; or
- (C) An imminent material financial loss or other imminent substantial harm to a public agency, its employees or the members of the public which it serves.

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

...

(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.

...

(h) In the event of an emergency a governing body may call an emergency meeting.

(1) The governing body of a state executive branch agency shall electronically file a notice for an emergency meeting with the Secretary of State, as soon as practicable prior to the meeting. Any other governing body shall notice an emergency meeting in a manner which is consistent with this article and the Ethics Commission Committee on Open Governmental Meeting's opinions issued pursuant to the authority of section ten of this article, as soon as practicable prior to the meeting.

(2) The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

ADVISORY OPINION

The Committee finds that the Pocahontas County Commission's revised policy for the issuance of meeting agendas for all regular, special and emergency meetings is consistent with the provisions of the Open Governmental Proceedings Act. The Committee notes that this Opinion, and any immunity which the governing body receives, will be limited to whether the revised policy is inconsistent with the Act. The Opinion does not address discretionary application of the revised policy to a specific situation.

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. ‘

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