

OPEN MEETINGS ADVISORY OPINION NO. 2006-05

Issued On August 3, 2006 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

Richard Talbott, a Member of the Berkeley County Planning Commission, seeks guidance on several issues, including the propriety of time limits for public comments during a routine public comment period and other questions relating to the Commission's public hearing function.

FACTS RELIED UPON BY THE COMMITTEE

According to the requester, the Berkeley County Planning Commission allows citizens to make public comments during a "sunshine period" provided at each bi-weekly meeting. Each speaker is subject to a three-minute time limit which is alternatively enforced by mechanical buzzer, visible electronic light panel or verbal admonishment. This time limit is applied without regard to the length of the agenda, the number of speakers who are waiting to exercise this privilege, time of day, or other factors impacting on the duration of the meeting.

The Commission similarly enforces a three-minute time limit on public comments during legally advertised public hearings held pursuant to the statutory mandates applicable to all planning commissions. Before or during public comment periods and public hearings, the chair routinely encourages participants to keep their comments or testimony brief, and avoid repetition. Participants are further requested to reserve comments which are germane to a matter that is the subject of a public hearing for that segment of the meeting, rather than presenting such comments during the general "sunshine period."

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-3 provides:

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. Any governing body may make and enforce reasonable rules for attendance and presentation at any meeting where there is not room enough for all members of the public who wish to attend. This article does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised: Provided, That persons who desire to address the governing body may not be required to register to address the body more than fifteen minutes prior to time the scheduled meeting is to commence.

ADVISORY OPINION

There is no provision in the Open Meetings Act which requires governing bodies of public agencies to solicit and consider public comment before taking official action on matters within their authority. As a matter of course, many governing bodies routinely set aside a portion of each meeting to receive public comments on a broad range of topics. The Berkeley County Planning Commission has apparently established such a meeting segment, referred to as the "sunshine period."

This Committee has previously concluded that the Act establishes only one specific limitation on public comment periods - the governing body is not permitted to require participants to sign up more than fifteen minutes before the start of the meeting as a condition for participating in a public comment period. This Committee may approve other specific limitations on public comments, if such restrictions are reasonable.

For example, in Open Meetings Advisory Opinion 2006-04, this Committee approved a City Council's procedural rules for conducting open meetings. Those rules included a five-minute time limit on public comments when no more than four persons signed up to speak, and a pro-rated four-minute time limit when the maximum of five persons per meeting signed up to speak. In several earlier opinions, this Committee approved five-minute time limits on presentations during an agency's public comment period. Other agencies provide for public comment periods without specifying any time limit on presentations.

In Open Meetings Advisory Opinion 2002-01, this Committee reviewed and approved procedural rules adopted by the Berkeley County Planning Commission pursuant to W. Va. Code § 6-9A-3. Those rules made no reference to a time limit for public presentations. If the Planning Commission has adopted new rules, it is recommended that the Commission submit its revised rules for review to verify that they are in compliance with the requirements of the Act.

In any event, this Committee concludes that a three-minute time limit on public presentations during a regular or special meeting of a governing body is reasonable. However, this Committee recommends that any agency adopting procedural rules for conducting its meetings, which rules include time limits on presentations, should further provide a mechanism for extending those time limits with the concurrence of the governing body, such as by unanimous consent or majority rule.

The focus of the Open Meetings Act is on conducting government business in the "sunshine" where the public and media can observe what their elected and appointed public officials say while conducting public business. In order for a governing body to efficiently and effectively perform its business, it is not unreasonable to inform or remind those persons who wish to make public comments to adhere to established time limits, to avoid repetitive or rambling comments, or to hold comments until a public hearing to be conducted on a particular issue, whether later in the same meeting, or during a subsequent meeting.

Although a governing body may hold a public hearing in the course of an open meeting, the requirements for these hearings are established by statutory provisions outside the Open Meetings Act. W. Va. Code § 8A-2-1, *et seq.*, requires that a Planning Commission must hold a public hearing on a new or amended comprehensive plan, before approving a major subdivision or land development plan and plat, and before adopting or amending a zoning ordinance. These same statutes specify requirements for publishing notice of these public hearings in newspapers of general circulation.

These statutory requirements in Chapter 8A of the Code relating to public hearings are distinctly different and separate from the requirements for conducting an open meeting. This Committee's authority for issuing definitive guidance to governing bodies of public agencies is limited to the meaning and application of the Open Meetings Act. Accordingly, this Committee declines to answer any questions from the requester in regard to the proper method for a County Planning Commission to conduct a public hearing.

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