

OPEN MEETINGS ADVISORY OPINION NO. 2006-01

Issued On May 4, 2006 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The **St. Albans City Council** seeks guidance on releasing minutes and other documents relating to its meetings, including executive sessions.

FACTS RELIED UPON BY THE COMMITTEE

The City Council has received a written request under the West Virginia Freedom of Information Act for "copies of all council minutes, notes of individual council members, electronic notes, messages or e-mails, correspondence to or correspondence from any council member, the council in its entirety or any other municipal body" relating to a particular matter. The Council seeks to determine to what extent the Open Meetings Act requires these documents be disclosed, particularly in regard to events which may have taken place in executive session.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

The Act defines "executive session" to mean "any meeting or part of a meeting of a governing body which is closed to the public." VI. Va. Code § 6-9A-2(2).

W. Va. Code § 6-9A-5 provides, in pertinent part:

Each governing body shall provide for the preparation of written minutes of all its meetings. Subject to the exceptions set forth in section four of this article, minutes of all meetings except executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting

VI. Va. Code § 6-9A-11 provides, in pertinent part:

(a) *ny* governing body or member thereof subject to the provisions of this article may seek advice and information from the executive director of the West Virginia ethics commission or request in writing an advisory opinion from the West Virginia ethics commission committee on open governmental meetings as to whether an action or proposed action violates the provisions of this article. The executive director may render oral advice and information upon request. The committee shall respond in writing and in an expeditious manner to a request for an advisory opinion. The opinion shall be binding on the parties requesting the opinion.

(b) Any governing body or member thereof that seeks an advisory opinion and acts in good faith reliance on the opinion has an absolute defense to any civil suit or criminal prosecution for any action taken in good faith reliance on the opinion unless the committee was willfully and intentionally misinformed as to the facts by the body or its representative.

ADVISORY OPINION

The Open Meetings Act requires governing bodies of public agencies, such as the St. Albans City Council, to make the written minutes of all meetings available to the public within a reasonable time after each meeting. However, W. Va. Code § 6-9A-5 gives a governing body complete discretion on whether to take minutes in any executive session, or to make a recording of any executive session. This Committee finds that any such minutes of an executive session, or any such recording of an executive session, are exempt from the disclosure requirements of the Act, and need not be made available or released to the public.

Under the *Open Meetings Act*, governing bodies of public agencies are generally required to appropriately issue written notice of each meeting and to make available, in advance, an agenda of matters to be addressed at each meeting. The agenda may either be a separate document or it may be incorporated in the meeting notice. Apart from these requirements and the previously noted provisions relating to minutes, the Open Meetings Act is silent as to any obligation to produce copies of correspondence or other written or electronic documents exchanged among or between the members of a governing body, or any notes or memoranda prepared by individual members, or by the support staff responsible for meeting preparations and logistics. Therefore, this Committee finds that the Act does not create any additional obligations to produce internal correspondence of this nature, beyond whatever obligations already exist under the Freedom of information law in W. Va. Code § 29B-1-1, *et seq.*

Under W. Va. Code § 6-9A-11 this Committee is only authorized to render written advisory opinions on the meaning and application of the provisions in the Open Meetings Act. The Committee has no authority to interpret the provisions of W. Va. Code § 29B-1-1, *et seq.*

/s/ James E. Shepherd, II

James Shepherd, II, Chairperson
Open Governmental Meetings Act Committee