

OPEN MEETINGS ADVISORY OPINION NO. 2006-04

Issued On June 1, 2006 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

Amy Schmitt, a member of the Charles Town City Council, asks whether their proposed procedural rules comply with the requirements of the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The Charles Town City Council is proposing to adopt procedural rules governing the issuance of meeting notice, meeting agendas, and other matters related to the conduct of its meetings. The Council regularly meets twice monthly on the first and third Monday. Agendas for these meetings are posted on the bulletin board for city meetings and the City's website three business days in advance of the scheduled meeting. A posted agenda may be revised, provided an amended agenda is made available in the same manner at least two days in advance of the scheduled meeting. The rules further provide for calling special meetings upon "reasonable notice" to each Council Member within the City.

The proposed *rules* also provide for filing documents relating to matters to be considered by the Council with the City Clerk on the Friday immediately preceding the day of the meeting. However, there is an exemption from this requirement extended to the Mayor and City Manager. The draft further provides: "Nothing herein shall be construed to prohibit any member of the City Council, at the proper order of business, from introducing or submitting any ordinance, resolution, petition, committee report or communication during any regular meeting."

Another provision in the proposed rules relating to preparation of meeting minutes states: "MAKING ENTRIES IN THE MINUTE BOOK. No remarks, voting explanations or words spoken in debate by any member of the City Council shall be reproduced in the journal except by unanimous consent of the members of the Council present. The City Clerk is authorized to condense and summarize any remarks, voting explanations and words spoken in debate."

A complete copy of the Council's draft procedural rule is attached to this Advisory Opinion as Appendix A.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code§ 6-9A-3 provides in pertinent part:

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, except in the event of an emergency requiring immediate official action.

W. Va. Code§ 6-9A-5 provides:

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

available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each member of the governing body present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- (4) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.

ADVISORY OPINION

The Open Meetings Act requires each governing body to promulgate certain procedural rules. At a minimum, these rules must state how and when the date, time, place and agenda of all regular meetings, as well as the date, time, place and purpose of all special meetings, will be made available to the public and news media.

The provisions in the Council's procedural rules for providing notice and an agenda for its regular meetings are generally consistent with previous opinions from this Committee regarding these matters. However, there are certain revisions that need to be made to comply with the minimum requirements of W. Va. Code §6-9A-3, as previously applied by this Committee.

The Open Meetings Act specifically provides for State executive branch agencies to make available notice of their meetings by publishing notice of each regular and special meeting in the State Register at least five calendar days before the meeting. The Act does not specify how county and municipal agencies, such as a City Council, are required to issue notice of their regular and special meetings. This Committee has previously concluded that notice of regular and special meetings must be provided in a manner that is "reasonable" in terms of how and when such notice is disseminated.

The proposed rules indicate that the Council's regular meetings will be held on the first and third Monday of each month at 7:00 p.m. in the City Council Chambers. In order to comply with the minimum requirements of the Act, a schedule containing these meeting dates should be posted and maintained on a public bulletin board, such as the bulletin board described in the proposed rules.

Further, notice to the public of special meetings should be posted in a similar manner at least two business days in advance of the meeting. In computing this period, Sundays, Saturdays, legal holidays and the day of the meeting are not counted. A meeting agenda may be issued at the same time as the special meeting notice as a separate document, or included in the special meeting notice in a statement of the purpose or purposes of the special meeting.

The rules contain a statement in Section 4(b) that "[n]othing herein shall be construed to prohibit any member of the City Council, at the proper order of business, from introducing or submitting any ordinance, resolution, petition, committee report or communication during any regular meeting." In regard to this provision, this Committee has previously determined that a governing body of a public agency may neither take official action, nor engage in a discussion intended to lead to an official action, concerning any matter that is not included in the meeting agenda in advance, unless the matter involves an emergency requiring immediate official action. Thus, if an issue of concern

is raised in the course of a meeting by a Council Member, employee or member of the public, and the matter will require official action, unless the matter involves an emergency, it should be placed on the agenda for the next regular or special meeting. Section 4(b) of the proposed rule should be revised consistent with this guidance.

In addition to describing meeting notice and agenda procedures, a governing body may elect to include other provisions governing meeting procedures in its rules. Consistent with its legislative mandate to consider whether a proposed action violates any provision in the Act, this Committee will review additional provisions in a governing body's procedural rules. However, the Committee's opinion, and any immunity which the governing body receives, will be limited to whether these additional rules are inconsistent with the Act. The opinion will not address discretionary application of a rule to a specific situation, unless the requester provides a proposed set of facts describing that situation.

Having noted the limited scope of its opinion, the proposed rules also contain a provision which limits recording the details of remarks, words spoken in debate and voting explanations when preparing and maintaining the meeting minutes. This Committee has not previously reviewed a provision such as this for compliance with the Act. However, the Committee finds that so long as those matters required by § 6-9A-5 are included, a governing body has discretion to determine the detail to which other matters will be described in the meeting minutes.

The proposed rules contain additional provisions regulating the operation of a public comment period at the beginning of each meeting. The rules do not require anyone to sign up to speak more than fifteen minutes before the start of the meeting. However, each speaker who signs up not earlier than fifteen minutes before the beginning of each meeting is subject to a five minute time limit, the public comment period will extend over a maximum of twenty minutes, and each speaker's time must be prorated if more than four people sign up to address the Council. In any event, no more than five people may sign up to address the Council at a given meeting.

In addition to allowing members of the public to sign up to participate in a public comment period at the beginning of each meeting, the proposed rules provide a procedure for additional members of the public to be recognized by a Council Member to address the Council without objection from another Council Member or, when an objection is raised, by a majority vote of the Council. Members of the public recognized to speak through this alternate procedure are also subject to a five-minute time limit.

This Committee has previously recognized that the Open Meetings Act does not require a governing body to provide a public comment period as part of each meeting. The Act assures that the public and news media may observe the actions of those elected and appointed individuals who conduct government business during an open meeting, but does not mandate active public participation in the debate or discussion. Thus, governing bodies have substantial discretion to adopt reasonable rules to regulate the operation of a public comment period they decide to provide, so long as the public is not required to sign up more than fifteen minutes in advance of the meeting as a condition for participation. Accordingly, this Committee finds that the proposed rules relating to public comment are neither unreasonable or inconsistent with any provision in the Open Meetings Act.

This Committee further finds that no provisions in any additional rules adopted by the Council are inconsistent with the Act.

/s/ James E. Shepherd, II

James Shepherd, II, Chairperson
Open Governmental Meetings Act Committee