

OPEN MEETINGS ADVISORY OPINION NO. 2006-11

Issued On October 5, 2006 By The

**WEST VIRGINIA ETHICS COMMISSION
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS**

OPINION SOUGHT

The Fountain Public Service District asks that its proposed Rules of Procedure be reviewed for compliance with the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

The Fountain Public Service District ordinarily meets on the first and third Monday of each month. The District's proposed rules call for posting notice of the date, time, place and agenda of each regular meeting on the front door or bulletin board of the District's office at least 72 hours in advance of the meeting. The rules further provide that the agenda for a regular meeting may be amended up to 48 hours prior to the meeting. The rules similarly call for posting notice of a special meeting, including the date, time, place and agenda, at least 48 hours in advance of the meeting.

The full text of the District's proposed Rules of Procedure is attached to this 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.

Each governing body of the executive branch of the state shall file a notice of any meeting with the secretary of state for publication in the state register. Each notice shall state the date, time, place and purpose of the meeting. Each notice shall be filed in a manner to allow each notice to appear in the state register at least five days prior to the date of the meeting.

ADVISORY OPINION

The Open Meetings Act generally requires governing bodies of public agencies to make certain information available to the public and news media in advance of a meeting, including: (1) the date, time, place and agenda of all regularly scheduled meetings; and (2) the date, time, place and purpose of all special meetings. The Act specifically requires State executive branch agencies to publish notice of any special or regular meeting in the State Register at least five days before the meeting. Otherwise, the Act does not comprehensively describe when and how this information should be disseminated.

The Fountain Public Service District is not a governing body "of the executive branch of the state" within the meaning of the Open Meetings Act. Therefore, the District is not required to publish notice of its meetings in the State Register at least five calendar days in advance of the meeting.

The Open Meetings Act does not specify how far in advance of a regular meeting a governing body at the county or municipal level of government, such as a Public Service District, must make available a meeting notice and agenda for each regular meeting. This Committee finds that the Legislature intended these governing bodies to provide "reasonable" notice of the date, time, place and agenda of all regular meetings, as well as the date, time, place and purpose (or agenda) of all special meetings.

The Fountain Public Service District proposes to post notice of each regular meeting and the meeting agenda 72 hours in advance of the meeting. Inasmuch as the District ordinarily meets on Monday, the proposed rule allows the governing body to comply by posting a meeting notice and agenda for a 7:00 PM Monday meeting not later than 7:00 PM on the preceding Friday. Because the rule allows the agenda to be amended up to 48 hours in advance, an amended agenda could be posted as late as 7:00 PM on the preceding Saturday. In these hypothetical examples, the public and media would have only one working day to make plans to attend or cover the meeting. This Committee concludes that the amount of notice provided in the proposed rule is insufficient to fulfill the Legislative intent of the Open Meetings Act, and does not provide reasonable notice to the public and media.

This Committee finds that there are two acceptable methods for the District to provide notice of a regular meeting. If a governing body conducts its regular meetings at the same time and place on an established schedule, such as the first and third Monday of each month, annually posting a schedule of these meetings for the year in a public location, such as the front door or bulletin board of the District's offices, will provide reasonable notice of the date, time and place of the meeting to the public and media. In the alternative, the governing body may similarly post a notice stating the date, time and place of each regular meeting at least three business days in advance of the meeting. For purposes of calculating the number of days in any notice period based upon "business" days, Saturdays, Sundays, legal holidays and the day of the meeting are not counted.

The Open Meetings Act also requires governing bodies of public agencies to make available in advance of each regular meeting an agenda listing the matters requiring official action that may be addressed at the meeting. As a minimum, the meeting agenda for a regular meeting should either be posted in a public place, such as on the front door or bulletin board, or made available in the District's offices during regular business hours, at least three business days in advance of each regular meeting. Once an agenda has been made available in compliance with this standard, such an agenda may be amended up to two business days in advance of the meeting. Otherwise, the agenda may only be amended to consider an emergency matter requiring immediate official action by the governing body.

In the event a governing body finds it necessary to amend its agenda to include a matter requiring immediate official action, such amended agenda should explain the nature of the emergency which warrants dispensing with the normal notice period. In addition, this same explanation of the emergency should be included in the minutes for that meeting.

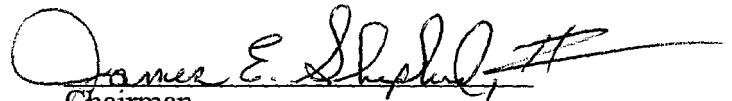
In regard to special meetings, the District may comply with the Act by posting notice of a special meeting at least two business days in advance of the meeting. This notice must include the date, time and place of the special meeting. It must also describe the purpose or purposes of the special meeting, either in the meeting notice, or on a separate agenda for the special meeting made available at the same time and in the same manner as the meeting notice.

If the District modifies its Rules of Procedure to comply with the guidance contained in this opinion, the Rules would then comply with the minimum requirements in § 6-9A-3 of the Act.

In addition to describing meeting notice and agenda procedures, governing bodies may elect to include other provisions governing meeting procedures in their rules. Consistent with its legislative mandate to consider whether a proposed course of action violates any provision in the Open Meetings Act, this Committee will review additional provisions in a governing body's procedural rules. However, this Committee's opinion, and the immunity which this opinion conveys, 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 this opinion as it relates to these additional provisions, this Committee finds that no such proposed provisions are inconsistent with the Act.

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.


Chairman

RULES OF PROCEDURE
FOUNTAIN PUBLIC SERVICE DISTRICT

ARTICLE I

NAME AND PLACE OF BUSINESS

Section 1. Name: FOUNTAIN PUBLIC SERVICE DISTRICT

Section 2. The principal office of Fountain Public Service District (the "District") will be located at State Route 46 near the intersection with Route 9, Keyser, Mineral County, West Virginia.

Section 3. The Common Seal of the District shall consist of 2 concentric circles between which circles shall be inscribed Fountain Public Service District, and in the center shall be inscribed the corporate seal.

Section 4. The fiscal year of the District shall begin on July 1 of each year and shall end on the following June 30.

ARTICLE II

PURPOSE

This District is organized exclusively for the purposes set forth in Chapter 16, Article 1 3A of the Code of West Virginia of 1931, as amended (the "Act").

ARTICLE III

MEMBERSHIP

Section 1. The members of the Board of the District (the "Board") shall be those persons appointed by The County Commission of Mineral County, West Virginia, or otherwise appointed pursuant to the Act, who shall serve for such terms as may be specified in the order of the County Commission or otherwise.

Section 2. Should any member of the Board resign or otherwise become legally disqualified to serve as a member of the Board, the Secretary shall immediately notify the County Commission or other entity provided under the Act and request the appointment of a qualified person to fill such vacancy. Prior to the end of the term of any member of the Board, the Secretary shall notify the County Commission or other entity provided under the Act of the pending termination and request the County Commission or other entity provided under the Act to enter an order of appointment or re-appointment to maintain a fully qualified membership of the Board.

ARTICLE IV

MEETINGS OF THE PUBLIC SERVICE BOARD

Section 1. The members of the Board shall hold regular monthly meetings on the 1st and 3rd Monday of each month, at such place and hour as the members shall determine from time to time. If the day stated shall fall on a legal holiday, the meeting shall be held on the following day. Special meetings of the Board may be called at any time by the Chairman or by a quorum of the Board.

Section 2. At any meeting of the Board, two (2) members shall constitute a quorum. Each member of the Board shall have one vote at any membership meeting and if a quorum is not present, those present may adjourn the meeting to a later date.

Section 3. Unless otherwise agreed, notice to members of regular meetings shall not be required. Unless otherwise waived, notice of each special meeting of the membership shall be given to all members by the Secretary by fax, telephone, mail or other satisfactory means at least two (2) days before the date fixed for such special meeting. The notice of any special meeting shall state briefly the purposes of such meeting and the nature of the business to be transacted. No business other than that stated in the notice or incidental thereto shall be transacted at any such special meeting.

PUBLIC NOTICE OF MEETINGS

Section 4. Pursuant to Section 3, Article 9A, Chapter 6 of the West Virginia Code of 1931, as amended (1999 Revision), notice of the date, time, place and agenda of all regularly scheduled meetings of the Board, and the date, time, place and purpose of all special meetings of the Board, shall be made available, in advance, to the public and news media (except in the event of an emergency requiring immediate action) as follows:

A. Regular Meetings. A notice shall be posted and maintained by the Secretary of the Board at the front door or bulletin board of the office of the District and, if different from the office, at the front door or bulletin board of the place fixed for regular meetings of the Board not less than 72 hours before a regularly scheduled meeting is to be held, stating the date, time and place fixed and entered of record by the Board for the holding of regularly scheduled meetings. In addition, a copy of the agenda for each regularly scheduled meeting shall be posted at the same locations by the Secretary of the Board not less than 72 hours before such regular meeting is to be held. The agenda may be amended up to 48 hours prior to the meeting. If a particular regularly scheduled meeting is cancelled or postponed, a notice of such cancellation or postponement shall be posted at the same locations as soon as feasible after such cancellation or postponement has been determined.

B. Special Meetings. A notice shall be posted by the Secretary of the Board at the front door or bulletin board of the office of the District and at the front door or bulletin board of the place fixed for the regular meetings of the Board not less than 48 hours before a specially scheduled meeting is to be held, stating the date, time, place and purpose for which such special meeting shall be held. In addition, a copy of the agenda for each special meeting shall be posted at the same locations by the Secretary of the Board not less than 48 hours before such special meeting is to be held. If the special meeting is cancelled, a notice of such cancellation shall be posted at the same locations as soon as feasible after such cancellation has been determined.

ARTICLE V

OFFICERS

Section 1. The officers of the Public Service Board shall be a Chairman, a Secretary and a Treasurer. The Chairman shall be elected from the members of the Public Service Board. The Secretary and Treasurer need not be members of the Public Service Board, and may be the same person.

Section 2. The officers of the Public Service Board shall be elected each year by the members at the first meeting held in such year. The officers so elected shall serve until the next annual election by the membership and until their successors are duly elected and qualified. Any vacancy occurring among the officers shall be filled by the members of the Public Service Board at a regular or special meeting. Persons selected to fill vacancies shall serve until the following January meeting of the Board when their successors shall be elected hereinabove provided.

ARTICLE VI

DUTIES OF OFFICERS

Section 1. When present, the Chairman shall preside as Chairman at all meetings of the Public Service Board. The Chairman shall, together with the Secretary, sign the minutes of all meetings at which he or she shall preside. The Chairman shall attend generally to the executive business of the Board and exercise such powers as may be conferred by the Board, by these Rules of Procedure, or as prescribed by law. The Chairman shall execute, and if necessary, acknowledge for record, any deeds, deeds of trust, contracts, notes, bonds, agreements or other papers necessary, requisite, proper or convenient to be executed by or on behalf of the Board when and if directed by the members of the Board.

Section 2. The Secretary shall keep a record of all proceedings of the Board which shall be available for inspection as other public records. The Secretary shall, together with the Chairman, sign the minutes of the meetings at which he or she is present. The Secretary shall have charge of the minute book, be the custodian of the Common Seal of the District and all deeds and other writings and papers of the Board. The Secretary shall also perform such other duties as he or she may have under law by virtue of the office or as may be conferred from time to time by the members of the Board, these Rules of Procedure or as prescribed by law.

Section 3. The Treasurer shall be the lawful custodian of all funds of the District and shall disburse funds of the District on orders authorized or approved by the Board. The Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through him and shall prepare and submit such reports and statements of the financial condition of the Board as the members may from time to time prescribe. He shall perform such other duties as may be required of him by law or as may be conferred upon him by the members of the Board, these Rules of Procedure or as prescribed by law.

Section 4. If the Chairman, Secretary or Treasurer is absent from any meeting, the remaining members of the Board shall select a temporary chairman, secretary or treasurer, as necessary, who shall have all of the powers of the absent officer during such period of absence.

ARTICLE VII

AMENDMENTS TO RULES OF PROCEDURE

These Rules of Procedure may be altered, changed, amended, repealed or added to at any regular or special meeting of the Board by a majority vote of the entire Board, or at any regular or special meeting of the members when a quorum is present in person and a majority of those present vote for the amendment; but no such change, alteration, amendment, repeal or addition shall be made at any special meeting unless notice of the intention to propose such change, alteration, amendment, repeal or addition and a clear statement of the substance thereof be included in the written notice calling such meeting.

These Rules of Procedure shall replace any and all previous rules of procedure, bylaws or similar rules heretofore adopted by the District.