

**OPEN MEETINGS ADVISORY OPINION NO. 2013-04**

**Originally Issued on December 12, 2013 and Ratified**

**on January 21, 2014 by**

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

**OPINION SOUGHT**

The **Eastern West Virginia Regional Airport Authority** asks that its bylaws be reviewed for compliance with the Open Meetings Act.

**FACTS RELIED UPON BY THE COMMITTEE**

The Eastern West Virginia Regional Airport Authority ("Authority") approved an amendment to its bylaws on October 1, 2013. The Authority has asked the Committee on Open Governmental Meetings to review the bylaws for compliance with the Open Meetings Act (the Act). Accordingly, the Open Meetings Committee has reviewed the proposed bylaws in their entirety.

The Act does not require this Committee to recite each provision of the bylaws in rendering an opinion as to whether they comply with the Act. Nevertheless, this Committee elects to provide comment on the provisions listed below which do not comply.

A complete copy of the Authority's bylaws is attached to this advisory opinion.

**CODE PROVISIONS RELIED UPON BY THE COMMITTEE**

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

Except as expressly and specifically otherwise provided by law ... [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 when 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.

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 explains:

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 generally requires governing bodies of public agencies to promulgate rules setting forth the notice and agenda requirements for regular and special meetings. W. Va. Code§ 6-9A-3. In addition to those requirements, governing bodies may elect to adopt other rules governing meeting procedures so long as the provisions are not in conflict with the Act.

Consistent with its legislative mandate to determine whether any proposed course of action would violate any provision in the Act, this Committee will review such additional provisions. Nevertheless, the Committee's opinion, and any immunity which flows from this opinion, will be limited to whether any provision in the proposed bylaws is inconsistent with the Act.

The Committee finds that the majority of the bylaws comply with the Act, but some would benefit from modification or clarification in order to more clearly identify their compliance with the appropriate sections of the West Virginia Code. This review will list each part of the noncompliant bylaws in the order in which they appear, with any corrections listed afterwards.

### ***Article I***

#### ***Section 2.***

*The procedure for conducting all annual, regular and special meetings shall be based on Robert's Rules of Order.*

While seemingly innocuous, Open Meetings Advisory Opinion 2010-12 gives guidance on the formal adoption of Robert's Rules of Order. It states:

There is nothing in the Open Meetings Act which requires a governing body to adopt a particular rule of parliamentary procedure. To avoid any potential for conflict between [Robert's Rules] and other applicable rules ... the Committee finds that [the Requester should adopt] a provision similar in substance as to that adopted by the City of Glendale which reads:

Except as otherwise provided in the Constitution of the United States and the State of West Virginia, the laws of the State of West Virginia or the Charter of the City of Glen Dale, all questions of order, the methods of organization and the conduct of business of the municipal council shall be governed by Robert's Rules of Order in all cases to which they are applicable, and in which they are not inconsistent with the governing rules of council.

Accordingly, the Committee recommends that the Authority adopt a similar provision instead of the current blanket adoption of Robert's Rules of Order. For example, "[t]o the extent that there is a conflict between Robert's Rules of Order and the Open Meetings Act, the latter prevails," would meet the requirements of the Act.

## **Article II**

### *Section 1.*

*All annual meetings shall be held in July of each year. Regular meetings shall be held at stated intervals, to be fixed by the Authority in its minutes from time to time. Special meetings may be called by the Chairman at any time.*

### *Section 2.*

*Notice of all annual, regular and special meetings shall be given by the Secretary within a reasonable length of time prior to the meeting date.*

These Sections do not comply with the Act. The Act requires that governing bodies that have regularly scheduled meetings must post the schedule annually in a conspicuous place and update it throughout the year, as necessary. See Open Meetings Advisory Opinion 2006-15. The posting must also include the date, time and place of the meetings. If the meetings are held at irregular intervals, notice of regular meetings must be posted three business days in advance of the meeting. *Id.*

Similarly, notice must be posted for special meetings two business days in advance of the meeting. The reason the given sections do not comply with the Act is that they do not define "reasonable length of time." This problem may be remedied by adding the specific time periods specified by Open Meetings Advisory Opinion 2006-15, *i.e.*, three business days for regular meetings and two business days for special meetings.

### **Article III**

Article 111, dealing with Authority officer duties, is generally outside the scope of the Act. Nevertheless, Section 4, in listing the Secretary's duties, states:

*The Secretary shall keep proper records of all proceedings, business and affairs of the Authority and shall have the custody and control of all records, documents, and instruments belonging to it. He shall give notice of all meetings in accordance with these by-laws and shall attend and keep a record of the minutes of all such meetings.*

The final sentence should state, "He shall give notice of all meetings in accordance with W. Va. Code§ 6-9A-1, *et seq.* and these bylaws ..." This addition ensures compliance with the Act as well as any rules promulgated by the Authority.

Additionally, it would be helpful to list what the Act requires to be contained in the minutes, either in this article or in a separate addition. As above, W. Va. Code§ 6-9A-5 lists the following requirements for minutes:

- (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.

Although specific reference to the statutory requirements for minutes is not required in bylaws, they must be followed for all meetings. Therefore, it is recommended that the bylaws include them in some manner for ease of reference.

### **Article IV**

#### **Section 1.**

*The Authority may create an executive committee, which shall be selected from among members. The executive committee shall be assigned duties and powers as the*

*Authority may, in its minutes, fix and determine. It may also create any other committee selected from its members, agents or employees as it may from time to time, in its minutes, fix and determine.*

While this Section in itself is permissible, it is important to note that any prospective Executive Committee, as well as any other committee created, remains subject to the requirements of the Open Meetings Act.

Open Meetings Advisory Opinion 2007-01 explains:

[A]ny committee or subcommittee consisting of two or more Board Members, but less than a quorum of the Board, which is appointed to make recommendations to the Board as a whole on such matters as specific policies or administrative matters, or any other matters requiring official action by the Board, involves a "governing body" within the meaning and intent of the Act, and the meetings of any such committee or subcommittee should be conducted in compliance with the Act.

Therefore, it is recommended that the bylaws include the sentence, "Any and all committees shall conduct their meetings in compliance with W. Va. Code§ 6-9A-1, *et seq.* and these bylaws."

## **Article VI**

### *Section 1.*

*These By Laws may be amended at any regular meeting of the Authority or at any special meeting thereof, providing a written or oral statement of the proposed amendment is given to each member prior to said meeting.*

Here, as before, it is helpful, but not necessary, to provide the requirements for Open Meetings Act compliance. The final sentence is recommended to state, "The agenda for said meeting shall properly list and describe the proposed amendment, and be posted within an appropriate time, in accordance with W. Va. Code§ 6-9A-1, *et seq.* and these bylaws." This addition ensures compliance with the Act as well as any rules promulgated by the Authority.

## **CONCLUSION**

The Committee commends the Authority for submitting its bylaws for review. Consistent with its limited authority, this Committee finds that none of the provisions contained in the current bylaws, other than those addressed above, are inconsistent with the Open Meetings Act. In regard to the changes which must be made for purposes of complying with this ruling, the Committee directs the Authority to submit the amended bylaws to the Executive Director of the West Virginia Ethics Commission for approval. If the Executive Director finds that the revised bylaws comply with this opinion, then she

shall append the revised bylaws and her letter approving the same to this opinion. If necessary, the Executive Director or Commission may submit the revised bylaws to the Open Meetings Committee for further review.

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/ Drema Bradford, Chair