



A Guide to the West Virginia Open Governmental Proceedings Act

(W. Va. Code §§ 6-9A-1 through 12)



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The Open Meetings Act
generally requires that meetings of a public agency's governing body be open to the public and the media, and that reasonable notice of the meeting and its agenda be given in advance.

General Information on Open Meetings Act

Who is covered?

The Act covers all administrative and legislative units of state, county and municipal government including any subunit (e.g. committees) authorized by law to exercise some portion of executive or legislative power. The Act does **not** apply to courts or private organizations that receive government funding.

What is a governing body?

Two or more members of a public agency who have the authority to make decisions for, or recommendations to, the public agency on policy or administration is considered a governing body.



What is a meeting for purposes of the Open Meetings Act?

A "meeting" covered by the Act is a convening of a quorum of a governing body or subcommittee in order to make a decision or to deliberate towards a decision.



Meetings may be held by telephone conference or other electronic means, such as video conferencing. In these instances, governing bodies must ensure that all their members can hear, and be heard by, each other and any media or member of the public present at the meeting.

When a quorum of a governing body discusses issues of interest upon which the governing body expects to take some official action, then this is a meeting. If this discussion takes place outside the confines of a public meeting—whether in person, by telephone, email or other telecommunication means — it is an illegal meeting.

What gatherings are not meetings subject to the Open Meetings Act?

General discussions among members of a governing body or committee on issues of interest to the public in a social, educational, training, informal, ceremonial or similar setting, so long as there is no intent to conduct public business or for the discussion to lead to official action, are not gatherings subject to the Open Meetings Act.

Adjudicatory proceedings, on-site inspections, a political party caucus, and discussions on logistical and procedural methods to schedule and regulate a meeting are also not matters covered by the Open Meetings Act.

Notice and Agenda

How much advance notice of a meeting is necessary?

Public notice of the meeting date and agenda must be made available in advance of a meeting to the public and news media.

Every public agency must establish rules for giving advance notice of all regularly scheduled and special meetings. W.Va. Code § 6-9A-3. In addition, the Open Meetings Committee of the West Virginia Ethics Commission, through the issuance of advisory opinions, has established rules which determine how much advance notice is required.



How do I calculate days for purposes of the Open Meetings Act?

In calculating days, do not count the day of the meeting, weekend days or State or Federal Holidays. State Agencies, however have additional obligations for posting meeting notices.



When and how do I post a Notice?

State Agencies - Each State Agency shall file a notice of any meeting with the Secretary of State for publication in the State Register in a manner to allow it to appear in the Register at least **five** calendar days before the date of the meeting.

Local Governing Bodies - Notice must be given in a reasonable manner. When a governing body meets in accordance with a fixed schedule, such as the second and fourth Monday of each month, it may comply with the meeting notice requirement in the Act by annually posting notice of the date, time and place of these regular meetings or regular committee meetings for the coming year, and keeping this notice posted throughout the year.

Regular meetings – For local governing bodies which do not have a fixed schedule, these bodies may comply with the Open Meetings Act by posting a notice **three** business days in advance of the meeting.



Special meetings - When a local governing body meets on an irregular schedule, or needs to meet before the next regularly scheduled meeting to address matters that do not involve an emergency, these are considered special meetings. Notice must be posted **two** business days in advance of the meeting.

Although State Agencies may conduct a special meeting, i.e. a meeting held between regularly scheduled meetings, due to the more restrictive language in the Open Meetings Act, the State Agency meeting notice must be published in the State Register at least **five** calendar days prior to the date of the special meeting. State Agencies may **not** call an Emergency Meeting for a subject that is not a true emergency. Failure to file a timely notice of the meeting with the Secretary of State does **not** constitute an emergency.

(See **Emergency Meetings** on page 8.)

What must a notice include?

Notice must include the date, time and place of the meeting. For special meetings or emergency meetings, the notice must state the purpose.



When do I post the Agenda?

Regular meeting – **three** business days before the meeting.

Special meeting- **two** business days before the meeting.

Emergency meeting – As soon as practicable

Where and how do I post an agenda?

A governing body complies with the Act by posting its meeting agenda for each regularly scheduled meeting in a public place at its central office, as well as having copies of the agenda available to be picked up at the same location during regular business hours.

In addition, in its discretion, it may distribute agendas to the news media by mail, telephone facsimile or E-mail, or the agenda may be posted on the governing body's internet website, if it has one. While additional dissemination to the public and the media is encouraged, failure to provide an agenda by such additional means will not invalidate an otherwise proper public meeting.



What about governing bodies which meet weekly?

For governing bodies which meet weekly, different rules apply. The agenda may be issued **two** business days before the meeting.

May I amend an agenda?

Yes. The agenda may be amended up to two business days before the meeting. If you amend the agenda, you must repost the agenda following the procedure you used to post the original agenda. The only circumstances under which a governing body may amend an agenda during a meeting is if a true emergency arises.

How specific must an agenda be?

Agendas must give reasonable notice to the public of every issue that will be discussed. Specifically, any matter requiring the governing body to take official action must be listed on the agenda. For example, "filling position of office manager" would be sufficient.

Use of vague headings such as "old business" and "new business" is clearly insufficient. The public should also be given notice of significant additions or changes to the agenda, as noted above. Each governing body should have rules on how such notice will be given.



Minutes

Should minutes be prepared?

The Act requires that written minutes of all open meetings be available to the public within a reasonable time after the meeting. The minutes must include:

- The date, time and place of the meeting.
- The name of each member of the governing body present and absent.
- All motions, orders, resolutions, ordinances and measures proposed, the name of the person proposing each action and the disposition of the matter.
- The results of all votes, including roll call votes by member name, if such votes are conducted.



Emergency Meetings

What is an emergency?

Governing bodies should exercise caution when calling an **emergency meeting**. Ordinarily, an “emergency” involves an unexpected situation or sudden occurrence of a serious nature, such as an event that threatens public health and safety.



Every unexpected or sudden event does not constitute an emergency. For example, employing an attorney to assist the governing body does not constitute an emergency. Likewise, acting on a questionable bill for legal services does not constitute an emergency.

Is immediate action required?

When in doubt as to what constitutes an emergency, ask what are the consequences if the governing body does not act immediately. If it can wait two business days without significant adverse consequences, then you should call a special meeting instead.



Or, call the Ethics Commission to discuss the situation with staff.

In order to satisfy the terms of an emergency meeting exemption, not only must a matter involve an emergency, the governing body must be required to take immediate official action in response to the situation.

For example, if a flood were to contaminate a town's water supply, the council may be required to approve various actions to protect public health and restore the system to safe operation.

Must a notice or an agenda be posted?

For an **emergency meeting**, the notice must be posted as soon as practicable. The notice must set forth the reason for, and purpose of, the emergency meeting. Similarly, governing bodies that wish to add emergency matters to their meeting agenda must post an amended agenda which includes the emergency item. The amended agenda shall further explain the facts and circumstances which warrant adding the emergency item to the agenda.

In the event of an emergency requiring immediate official action, a State Agency may file an emergency meeting notice with the Secretary of State at any time prior to the meeting. The emergency meeting notice shall state the date, time, place and purpose of the meeting and facts and circumstances of the emergency.

Are written minutes required for an Emergency Meeting?

Yes. The explanation for the emergency must be repeated during the meeting and set forth in the written minutes of the meeting.

Executive Sessions

When may a governing body go into an executive session?

A governing body may go into an executive session for any of the reasons set forth in the Open Meetings Act at W.Va. Code § 6-9A-4. Some common grounds for going into an executive session are to discuss personnel matters, pending litigation, to consider matters involving the purchase, sale or lease of real property, or to plan or consider an official investigation.

How do you convene an executive session?

A member of the governing body must make a motion to go into executive session. The motion must state in plain language the grounds for convening an executive session.

For example, a member may state that he or she is moving to go into executive session based upon the personnel exception. It is not necessary to cite the specific code provision. A governing body may go into executive session to discuss **only** matters that appear on the meeting agenda.



Must the agenda state that the governing body will go into executive session?

No. In fact, a governing body may not decide in advance of a meeting that it will go into executive session. The agenda **may** indicate that it is anticipated that a matter may be discussed in executive session, but the governing body may only go into executive session by a majority vote of the members present.

The agenda item must be descriptive enough to put the public on notice of the nature of the matter being discussed regardless of whether it will be discussed in an open session or executive session.

For example, an agenda item to discuss pending litigation may read, "Discuss pending lawsuit of *Smith v. Jones* with Legal Counsel." Once again, generic agenda items such as "Discuss pending litigation" are too vague to adequately put the public on notice as to the matter to be discussed.

May a governing body vote on matters in executive session?

No. Votes may not be taken in an executive session. Instead, the governing body may only vote once it reconvenes in an open session.

One exception is that a governing body may vote to give its attorney settlement authority in an executive session. The fact that a governing body has authorized its attorney to engage in settlement negotiations and/or has set a settlement range is not required to be disclosed. If a settlement is reached, then the settlement agreement, including the amount, becomes a matter of public record.

Is a governing body required to take minutes for an executive session?

No. The decision of whether or not to take minutes for an executive session lies within the discretion of the governing body. The



governing body may want to seek the advice of legal counsel concerning whether minutes should be taken.

If a governing body decides to take minutes in an executive session, the Act does not require the disclosure of such minutes to the public.

Advice and Advisory Opinions

How do I get advice?

Call or write the Ethics Commission for informal advice from one of the attorneys, or check out the Commission's website for relevant advisory opinions.

What is an Advisory Opinion?

The West Virginia Ethics Commission's Committee on Open Governmental Meetings gives written advisory opinions to governing bodies and their members on whether a proposed action or an action of an ongoing nature violates the law.

The opinions provide an absolute defense in any civil suit or criminal prosecution to the requesting agency and any other governing body which is similarly affected, provided the opinion is relied upon in good faith.

The Committee on Open Meetings meets on the first Thursday of each month to consider written requests.

Requests for written advisory opinions should be submitted in writing at least ten calendar days before the Open Meeting Committee meeting.



Why ask for a written Advisory Opinion?

A written advisory opinion gives the persons seeking the opinion an absolute defense to civil suits and criminal charges for future actions taken in good faith reliance on the opinion.

NOTE: The Committee cannot provide advice on an action that has already occurred. However, if the action is part of an ongoing course of conduct, an advisory opinion on continuing that course or



practice may be requested.

The Commission's website, www.ethics.wv.gov, contains precedential opinions. A governing body that acts in good faith reliance on a precedential advisory opinion has an absolute defense to a civil suit or criminal prosecution as long as the underlying facts and surrounding circumstances are substantially the same as those addressed by the written opinion.

Enforcement and Penalties

How is the Act enforced?

The Ethics Commission has no role in enforcing the Act and does not investigate complaints of violations. The Act provides that any citizen may file a civil action in Circuit Court within 120 days after the action or decision complained of occurred.

Only the Court has the power to compel compliance with the Act or annul a decision made in violation of the Act. Additionally, anyone who willfully and knowingly violates the provisions of the Act is subject to criminal prosecution for a misdemeanor.

What are the penalties for violating the Act?

In civil actions, in addition to injunctive relief requiring a governing body to rescind an action taken in violation of the Act, the prevailing party may obtain attorneys' fees and costs. If a public official is criminally prosecuted and found guilty, then he or she may be fined up to \$500 for a first offense.





Frequently Asked Questions



Are committee meetings subject to the Open Meetings Act and meeting posting requirements?

Yes. All sub-units of a governing body, regardless of size, must follow the Open Meetings Act. This includes regular, standing, and ad hoc committees.

Are work sessions subject to the Open Meetings Act?

Yes. The term work session is frequently used by governing bodies to describe a meeting where the members of the governing body or subcommittee are discussing a project or reviewing a budget, but will not be taking official action.

May citizens and the media record meetings?

Yes. Pursuant to the Open Meetings Act, anyone may record the meetings. The governing body may adopt rules governing the placement of the recording equipment, but it may not prohibit anyone from recording a meeting.

Does the Open Meetings Act require that meetings be electronically recorded by the governing body?

No. However, governing bodies should check their enabling legislation or local ordinances to determine whether recording is required pursuant to statute or rule.

May items be added to the agenda during a meeting?

No. If a citizen or member of the governing body raises a matter during the course of a meeting, the item may not be discussed or voted upon at the meeting. Instead, it must be added to a meeting agenda for a future meeting. The only exception is if the item is an emergency. In that case, the governing body should follow the procedure set forth for emergency meetings and agenda items.



Are governing bodies required to allow members of the public to speak at a meeting?

No. The purpose of the Open Meetings Act is to allow citizens to observe the governing body for purposes of promoting transparency. However, governing bodies are encouraged to have a public comment period. A governing body may adopt rules which impose restrictions upon public comment periods such as the amount of time which will be allocated to each speaker.

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**For more information on the Open Meetings Act,
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