

## OPEN MEETINGS ADVISORY OPINION NO. 2001-36

Issued On December 6, 2001 By The

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

#### OPINION SOUGHT

John M. Bowers, a member of the Library Board for the James W. Curry Library in French Creek (Upshur County), asks if a governing body may approve purchases through a series of telephone calls between the Board President and individual Board Members?

#### FACTS RELIED UPON BY THE COMMITTEE

From time to time between regularly scheduled meetings of the Library Board, an item of business, such as purchase of a piece of equipment, may arise. These purchases do not involve emergency situations. On these occasions, the Board President may elect to call each Board Member individually and obtain their vote on approving or disapproving the purchase, rather than call a special meeting of the Library Board with appropriate notice to the public and media.

#### CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-2(4) provides in pertinent part:

Meeting means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means.

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.

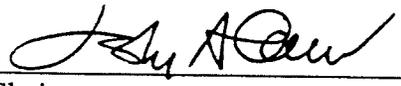
#### ADVISORY OPINION

The Open Meetings Act requires governing bodies of public agencies to conduct their business in open public meetings. The Act defines a "meeting" as "the **convening** of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action."

Given its customary definition, convene means to assemble. This Committee believes the Act requires the members of a governing body to assemble or meet together at the same time. The Act does say that "meetings may be held by telephone or other electronic means," but this Committee believes that this provision requires the members of a governing body to meet simultaneously as a group, to act in concert, whether in person, by phone, or other electronic means.

The Act requires a meeting to conduct official business. This Committee concludes that a succession of phone calls does not constitute a "meeting" and, in the absence of an emergency, does not satisfy the provisions of the Act. Therefore, the Board should not continue its practice of taking official action based on a series of phone calls between the President and individual Board Members.

The Committee notes that while the Act permits meetings to be held by telephone, such meetings are subject to the other requirements of the Open Meetings Act, such as giving appropriate public notice of the meeting, making an agenda available in advance of the meeting, and keeping proper minutes. In addition, when one or more members participate in a telephone or video conference, a public place must be provided for those who wish to attend, and those members participating by telephone must be audible to all those personally present.

  
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Chairman