

OPEN MEETINGS ADVISORY OPINION NO. 2004-14

Issued On November 4, 2004 By The

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

OPINION SOUGHT

The Greenbrier County Commission asks that an addendum to its procedural rules be reviewed for compliance with the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

In Open Meetings Advisory Opinion 2002-14, this Committee reviewed and approved procedural rules that had been adopted by the Greenbrier County Commission to comply with the requirements of W. Va. Code § 6-9A-3. That policy is attached as Appendix A. The Commission now asks for review of an addendum to that policy which states as follows:

- 1) Anyone who wishes to be on the agenda, whether it is a member of the public or an office holder, must supply, prior to the meeting, the topic and a description in writing of what they want to speak about and any documentation that would be applicable.
- 2) Nothing to be added to the agenda after is posted on Thursday before the meeting, unless it is deemed to be an emergency by the Commission.
- 3) Make no decisions on any issue not on the agenda, unless they are emergency type items.
- 4) If public comment is allowed, only agenda items for that meeting should be discussed. Any other items should be listed as a new agenda item for another meeting.

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.

ADVISORY OPINION

The Open Meetings Act requires each governing body to promulgate certain procedural rules. As 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.

This Committee previously issued an opinion finding that certain procedural rules adopted by the Greenbrier County Commission satisfied the minimum requirements of the Act. The Commission's proposed addendum clarifies the current procedures, primarily by noting that agenda items need to be provided in advance so that the agenda can be prepared and posted in accordance with the time standards contained in the current policy.

The Open Meetings Act affords broad discretion to governing bodies in determining what matters may be placed on a meeting agenda. Accordingly, a governing body may adopt reasonable procedures, such as time standards and information requirements, to be followed by persons seeking to have an item included on the agenda for an upcoming meeting.

The addendum also clarifies that a matter addressed in a public comment period may not be discussed by the Commission, unless such matter is on the meeting agenda, or the matter involves an emergency requiring immediate official action by the Commission, as determined by the Commission. This provision is consistent with previous opinions by this Committee which recognize that citizens participating in public comment periods, where permitted, may raise matters that are not listed on the meeting agenda. In such circumstances, unless the matter involves an emergency, the governing body must defer any discussion or decision to a subsequent meeting where that particular matter has been included in the meeting agenda.

None of the provisions in the addendum are inconsistent with the Open Meetings Act. As noted in our previous opinion, Committee approval of this language governing emergency situations does not release the governing body from the requirement to exercise appropriate discretion when determining whether a particular situation involves an emergency. Further, on each occasion when the Greenbrier County Commission determines that a particular matter involves an emergency that needs to be added to the agenda, if this determination is made in advance of the meeting, but less than two working days before the meeting, not including Saturdays, Sundays, legal holidays and the day of the meeting, the nature of the emergency should be explained on the amended agenda, or emergency meeting notice, as well as in the minutes for that meeting.



Chairman

AGENDA POLICY AND PROCEDURES

The Greenbrier County Commission will hold its regular meetings on the second and fourth Tuesday of each month, beginning in September of 2002, in the County Commission meeting room in the Greenbrier County Courthouse in Lewisburg, West Virginia, and the agenda for the same shall be posted at the front door of the Courthouse no later than three (3) days before a meeting, excluding Saturdays, Sundays, and legal holidays, by 4:30 p.m. of the first day, except for emergency situations to be determined by the Commission. Should a legal holiday fall on one of the three (3) days as outlined above, prior to a regular meeting, then the agenda shall be posted at the front door of the Courthouse one (1) day earlier by 4:30 p.m. of the first day to account for the holiday, except for emergency situations to be determined by the Commission. No action will be taken on any agenda item added after the 4:30 p.m. deadline on the first day, except for emergency situations to be determined by the Commission. Reasonable effort will be made to provide notice of meetings via fax to the local media by 4:30 p.m. of the first day. Special meetings scheduled by the Commission will also be governed by the three (3) day guidelines outlined above, and shall contain the date, time, place and purpose of same.