

## OPEN MEETINGS ADVISORY OPINION NO. 2005-06

Issued On April 7, 2005 By The

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

#### OPINION SOUGHT

The Hardy County West Virginia Childcare Center (HCWVCC), doing business as Beginning Steps, asks if its Board of Directors is subject to the Open Meetings Act.

#### FACTS RELIED UPON BY THE COMMITTEE

HCWVCC is a non-profit corporation that operates as a private, educational entity. This organization operates a child care facility, Beginning Steps, in a building owned by the Hardy County Rural Development Authority (HCRDA). An employee of HCRDA serves on HCWVCC's Board of Directors.

Most of the center's operating expenses come from tuition. However, the center has received grant funds on occasion for specific purposes through the Department of Health and Human Resources (DHHR), as well as the Governor's discretionary fund. In addition, low-income families are able to use the center's services through subsidies provided by DHHR and the center participates in a corresponding food subsidy program operated by the Department of Education.

#### CODE PROVISIONS RELIED UPON BY THE COMMITTEE

W. Va. Code § 6-9A-2(6) defines a "public agency" as: "[a]ny administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing authorized by law to exercise some portion of executive or legislative power."

#### ADVISORY OPINION

The Open Meetings Act applies only to public agencies. The Act defines a "public agency" as "any administrative unit of state, county, or municipal government, including any department, division, bureau, office, commission, authority, board, **public corporation**, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power."

If HCWVCC is to be included in the Act's definition of a "public agency" it must be as a "public corporation." In Open Meetings Advisory Opinion 99-13, the Committee determined that a public corporation is a corporation created by state or local authority to carry out a governmental function.

The Committee further noted that the Act does not look at an organization's receipt of state or local funds as a factor in determining whether the organization is a public corporation.

HCWVCC is not a corporation created by state or local authority to carry out a governmental function. It exists independent of state authorization, and the Committee finds that it is not a public corporation and, therefore, is not subject to the Act.

A handwritten signature in black ink that reads "Tsad Crauser". The signature is written in a cursive style with a horizontal line underneath it.

Chairman