

OPEN MEETINGS ADVISORY OPINION NO. 2006-15

Issued On January 4, 2007 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

The Clay County Board of Education (Board) requests guidance on the method and time frames for issuing notice and agendas for its meetings.

FACTS RELIED UPON BY THE COMMITTEE

The current policy of the Board requires that the news media be advised of the date, time and location of each regular and special meeting of the Board and its committees. Notice of special meetings is to be provided in time for the media to make public announcement of the meeting, except when an emergency makes such notice impossible.

The meeting agenda is prepared by the Superintendent and mailed to each Board Member on Thursday prior to a meeting on the following Monday. Additional items may be included in the agenda through an addendum prepared by the Superintendent if the Board approves the addition by a majority vote.

Current policy does not specify when or where the meeting agenda is made available to the public and the media.

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.

Each governing body of the executive branch of the state shall file a notice of any meeting with the secretary of state for publication in the state register. Each notice shall state the date, time, place and purpose of the meeting. Each notice shall be filed in a manner to allow each notice to appear in the state register at least five days prior to the date of the meeting.

ADVISORY OPINION

The Open Meetings Act generally requires governing bodies of public agencies to make certain information available to the public and news media in advance of a meeting, including: (1) the date, time, place and agenda of all regularly scheduled meetings; and (2) the date, time, place and purpose of all special meetings.

Meeting Notice The Act specifically requires State executive branch agencies to publish notice of any special or regular meeting in the State Register at least five days before the meeting. Otherwise, the Act does not comprehensively describe when and how this information should be disseminated.

The Clay County Board of Education is not a governing body “of the executive branch of the state” within the meaning of the Open Meetings Act. Therefore, the Board is not required to publish notice of its meetings in the State Register at least five calendar days in advance of the meeting.

Regular Meetings The Open Meetings Act does not specify how far in advance of a regular meeting a governing body at the county or municipal level of government, such as a County Board of Education, must make available a meeting notice and agenda for each regular meeting. This Committee finds that the Legislature intended such governing bodies to provide “reasonable” notice of the date, time, place and agenda of all regular meetings, as well as the date, time, place and purpose (or agenda) of all special meetings.

Thus, governing bodies are required to issue: (1) a “meeting notice,” stating when and where the meeting will be held; and (2) a “meeting agenda” listing the particular matters which will be dealt with during the meeting.

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 for the coming year, and keeping this notice posted throughout the year. Posting such notice in the Board’s central office, in a place which is readily available to the public during normal working hours, would fully comply with the Act.

Obviously, a governing body may provide additional notice to the media and the public over and above the minimum notice required to comply with the Act. Accordingly, the Board is encouraged to continue providing notice of the date, time and place of all regular and special meetings to the news media in time to make public announcement of this information.

Special Meetings When a 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 of special meetings must include the date, time and place of the meeting, as well as explain the “purpose” of the meeting.

The “purpose” of a special meeting is considered synonymous with the agenda for that meeting. If only one or two matters will be dealt with at a special meeting, those matters may be described in the meeting notice, and no separate agenda will be necessary. However, if the special meeting will deal with several matters, a separate agenda may be prepared and made available at the same time and in the same manner as the meeting notice.

In order to provide reasonable notice of a special meeting, the Board should post the meeting notice in the Board’s central office, in a place which is readily available to the public during normal working hours, at least two business days in advance of the meeting. In counting business days, the day of the meeting, Saturdays, Sundays and legal holidays are excluded. Thus, in the absence of an intervening legal holiday, the Board may issue notice of a special meeting to be held on Tuesday, not later than the close of business on the preceding Friday.

Meeting Agendas The Act requires governing bodies of public agencies to make a meeting agenda available in advance to the public and news media. The Act does not specify when or how this must be done.

When The Board may comply with the Act by making the meeting agenda available at least three business days before each regularly scheduled meeting. Business days are counted as described earlier in this opinion.

How The Board may comply 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, the Board, in its discretion, may distribute agendas to the news media by mail, telephone facsimile or E-mail, or the agenda may be posted on an Internet website, if the Board has established a presence on the Internet. 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.

When the Board has made its agenda available three business days or more in advance of the meeting, it may, at its option, amend the agenda to add additional items of business - items not known at the time the original agenda was prepared and made available to the public. Amendments may be made as late as two business days before the meeting, and made available to the public and media in the same manner as the original agenda.

However, no amendment of the agenda may be made less than two business days before a meeting, unless it is to deal with an emergency matter. Routine matters that come up after the deadline for issuing an amendment has passed must be held over to the next meeting. If an agenda is amended to accommodate action on an emergency matter, both the meeting agenda and the meeting minutes must explain the facts and circumstances of the emergency.

The procedures by which a governing body, such as the Clay County Board of Education, determines whether to include an item on the agenda, or amend the agenda to add one or more additional items, involves a logistical matter. The Board has broad discretion in establishing such procedures, so long as the agenda and any amendments are made available to the public and media as otherwise provided in this opinion.

In addition to regularly scheduled meetings and special meetings, public agencies may hold emergency meetings. Emergency meetings may be held with little or no advance notice. Any meeting notice issued, and the meeting minutes, must fully explain the purpose of the meeting and the facts and circumstances justifying an emergency meeting.

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/S by James E. Shepherd II
Chairman