

**OPEN MEETINGS ADVISORY OPINION NO. 99-08**

**Issued On August 5, 1999 By The**

**WEST VIRGINIA ETHICS COMMISSION**

**COMMITTEE ON OPEN GOVERNMENTAL MEETINGS**

**GOVERNMENTAL BODY/MEMBER SEEKING OPINION**

Stephen L. Cook, Member of the Monongalia County Board of Education

**OPINION SOUGHT**

Does the Open Governmental Proceedings Act authorize County Boards of Education to meet by telephone conference or other electronic means? If so, does the Act (a) require that all participants by telephone be audible to the public in attendance; (b) limit the number of members participating by telephone; (c) require some sort of verification of the telephone participants' identities; (d) permit a member to vote by fax; and (e) permit a telephone participant to receive the same compensation as those physically present.

**FACTS RELIED UPON BY THE COMMITTEE**

Nothing in the enabling legislation for County Boards of Education specifies whether the Board may meet with some or all members participating by telephone. *See* W. Va. Code § 18-5-1 *et seq.* Section 18-5-4 directs that "[t]he Board shall meet. . . ." It further states: "A majority of the members shall constitute the quorum necessary for the transaction of official business." For public hearings on school closings or consolidations, section 18-5-13a provides:

At least a quorum of the school board members and the county superintendent from the county wherein the affected school is located shall attend and be present at the public hearing. Members of the public shall have the right to be present, to submit statements and testimony, and to question county school officials at the public hearing.

By contrast, some legislation, such as the Governmental Ethics Act which created the West Virginia Ethics Commission, sets forth clear requirements and restrictions on participation by telephone:

Meetings of the commission shall be upon the call of the chairman and shall be conducted by the personal attendance of the commission members and no meeting shall be conducted by telephonic conferencing or other electronic conferencing, nor shall any member be allowed to vote by proxy: Provided, That telephone conferencing and voting may be held for the purpose of approving or rejecting any proposed advisory opinions prepared by the commission, or for voting on issues involving the administrative functions of the commission. Meetings held by

telephone conferencing shall require notice to members in the same manner as meetings to be personally attended, shall be electronically recorded, and the recordings shall be made a permanent part of the commission records. Members shall not be compensated for meetings other than those personally attended.

W. Va. Code § 6B-2-1(l).

### **PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMITTEE**

The 1999 amendments to the Open Governmental Proceedings Act included the following within the definition of “meeting”:

Meetings 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.*

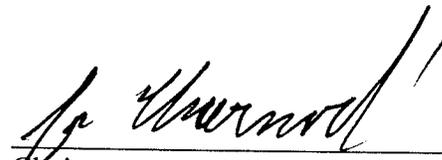
W. Va. Code § 6-9A-2(4) [Emphasis supplied]. There is no other mention of the telephone or video conferencing in the Act.

### **ADVISORY OPINION**

When statutory provisions are clear and unambiguous, there is no need to look further to determine the intent of the Legislature. The Committee finds that the italicized language of the Open Governmental Proceedings Act gives specific permission to governing bodies to hold meetings by telephone or video conferencing to the extent that no statute specifically limits or prohibits a governing body from doing so. The words “may be held” are permissive in nature.

With respect to subparts (a) and (d) of the Requester’s second question, a telephone conference must comply with the other requirements of the Act. Therefore, the public must be given notice of the telephone conference, a public place must be provided for those who wish to attend, those members participating by telephone must be audible to all those personally present and minutes must be kept. Because the Act prohibits voting by written ballot, a member cannot vote by fax.

The other subparts of the second question focus on procedural issues which do not affect public access to the decision-making process, such as verification of the identity of the telephone participants, composition of the quorum and compensation of telephone participants. It appears that the Legislature intended governing bodies to develop their own policies for conducting meetings by telephone conference or other electronic means, based upon the brevity of the 1999 amendment when compared to the detailed provisions on teleconferencing in a 1998 amending statute which was vetoed by the Governor. *See* Committee Substitute for H.B. 4473. Accordingly, these questions are beyond the authority of the Committee to answer.

  
Chairman