



STATE OF WEST VIRGINIA  
WEST VIRGINIA ETHICS COMMISSION  
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July 27, 2010

Rick Modesitt  
Commissioner  
Wood County Commission  
PO Box 2206  
Parkersburg, WV 26102

Dear Commissioner Modesitt:

You state that, from time-to-time, citizens question whether county commissioners may engage in various activities together without violating the Open Meetings Act. For example, you have been asked whether county commissioners may: travel in the same car; attend functions or meetings together; sit at the same table at meetings; eat meals together or attend a building dedication.

You ask for documentation which sets forth the applicable law. Please be advised that the general legal principles which govern these matters are as follows:

There is nothing in the Open Meetings Act which prohibits County Commissioners from travelling together, eating together or sitting at the same table at meetings. The Open Meetings Act specifically states that the term "meeting" does not include:

General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action.

W.Va. Code § 6-9A-2(4)(D). This exception in the Act is consistent with the Legislative finding that:

The Legislature finds, however, that openness, public access to information and a desire to improve the operation of government do not require nor permit every meeting to be a public meeting. The Legislature finds that it would be unrealistic, if not impossible, to carry on the business of government should every meeting, every contact and every discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting.

W.Va. Code § 6-9A-1.

While a quorum of county commissioners **may** gather together outside the course of a properly noticed meeting for the reasons referenced above, including but not limited to social events or site visits, when gathered together in these settings they **may not** make a decision or deliberate toward a decision on matters requiring official action. For example, in Open Meetings Act Opinion 2001-36 the Open Meetings Committee ruled that a series of phone calls to obtain approval for official action from board members is not a proper meeting in compliance with the Act.

I am enclosing some relevant opinions of the Commission which include:

**O.M.A.O. 2001-03 Pleasants County Board of Education**

Two or more County Board of Education Members may properly visit a school to observe facilities, educational programs, teaching strategies and other school activities as an on-site inspection activity exempt from the requirements of the Act.

**O.M.A.O. 2001-08 Randolph County Commission**

County Commissioners making presentation to members of separate governing body are not meetings of County Commission subject to the Act.

**O.M.A.O. 2001-34 Preston County Commission**

A quorum of County Commissioners may meet with constituents and other public officers, so long as they do not begin deliberating toward a decision on a matter requiring official action

**O.M.A.O. 2001-03 Pleasants County Board of Education**


Two or more County Board of Education Members may properly visit a school to observe facilities, educational programs, teaching strategies and other school activities as an on-site inspection activity exempt from the requirements of the Act.

**O.M.A.O. 2006-10 Paden City City Council**

City Council committee may conduct site visits of properties under their authority; however, any deliberations or discussions on the merits of any official action to be taken or proposed must take place in a meeting conducted under the Act.

Please let me know if you require anything further.

Very truly yours,



Theresa M. Kirk  
Executive Director

OPEN MEETINGS ADVISORY OPINION NO. 2001-03

COPY

Issued On April 5, 2001 By The

WEST VIRGINIA ETHICS COMMISSION  
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

Donna Davis, a member of the Pleasants County Board of Education, asks if it would be a violation of the Open Meetings Act for two or more school board members to visit a school and observe a particular activity at the same time.

FACTS RELIED UPON BY THE COMMITTEE

The requester explains that it is common practice for school board members to visit county schools to get a first hand view of the condition of the buildings, and observe educational programs, teaching strategies, and other school activities. On such occasions, they usually observe a particular activity, and will frequently visit with faculty, students and administrators to obtain their perspective.

On some occasions, without prior coordination, two members of the five-member board may appear at the same school at the same time. On rare occasions, as many as three members may appear at the same location, and engage in similar activities. However, the members do not discuss business among themselves, and no official business is conducted.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

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

(4) "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. The term meeting does not include:

(B) Any on-site inspection of any project or program;

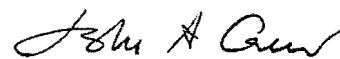
ADVISORY OPINION

The Open Meetings Act is intended to guarantee that the public has an opportunity to attend meetings at which government agencies conduct their business, and that they are given reasonable advance notice of where and when business meetings will be held and the matters to be considered.

The Act specifically provides that on-site inspections of projects or programs are not to be considered business meetings of the agency and are exempt from the provisions of the Act. This provision is consistent with and is explained by the language of the Act's "Declaration of legislative policy", *i.e.*

"The Legislature finds, however, that openness, public access to information and a desire to improve the operation of government do not require nor permit every meeting to be a public meeting. The Legislature finds that it would be unrealistic, if not impossible, to carry on the business of government should every meeting, every contact and every discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting." W. Va. Code § 6-9A-1

The school visits described here are not Board business meetings, regardless of the number of Board members present. Even if a quorum chanced to meet during such a school visit and discussed school business, they would not violate the Act, so long as the discussion was not intended to lead to, and did not result in, official action.



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Chairman

COPY

OPEN MEETINGS ADVISORY OPINION NO. 2001-08

Issued On May 3, 2001 By The

WEST VIRGINIA ETHICS COMMISSION  
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

Walter Schmidlen, Randolph County Commissioner, asks whether two or more County Commissioners getting together with municipal officials to encourage participation in a project, or giving a presentation to obtain state support for a project, would involve meetings which must be convened in accordance with the Open Meetings Act.

FACTS RELIED UPON BY THE COMMITTEE

After deciding at a public meeting to encourage municipal participation in a sewer project, and sending correspondence to the municipality communicating their position, the County Commissioners have been invited to meet with the Mayor and one or more City Council Members to discuss the project.

The Commissioners, consistent with their previous public actions, intend to provide information to the municipal officials regarding the project. The Commissioners do not plan to use the meeting to discuss any further official action they would be taking on the project.

In addition, two Commissioners will be making a presentation in Charleston seeking support for the sewer project. The Commissioners likewise want to know if participation in such a gathering is subject to the requirements for conducting an open public meeting.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

"Governing body" means the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members. . . . W. Va. Code § 6-9A-2(3).

"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. The term meeting does not include:

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action . . . W. Va. Code § 6-9A-2(4).

"Official action" means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held. W. Va. Code § 6-9A-2(5).

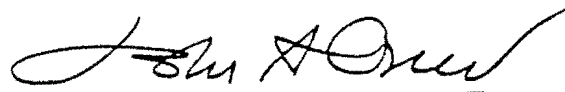
### ADVISORY OPINION

Describing the purpose of the Open Meetings Act, the Legislature noted "it would be unrealistic, if not impossible, to carry on the business of government [if] every meeting, every contact and every discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting." W. Va. Code § 6-9A-1. Accordingly, the Act provides that "general discussions among members of a governing body," even when held in a planned setting with a quorum present, do not involve a meeting governed by the Act, so long as there is no intention for the discussion to lead to an official action.

The Committee has previously observed that it would defeat the purpose of the Open Meetings Act to permit the members of a governing body to get together privately and discuss the merits of matters they will later be called to vote upon in an open meeting. Such a subterfuge was likewise condemned by the West Virginia Supreme Court of Appeals in McComas v. Board of Education, 197 W. Va. 188, 475 S.E.2d 280 (1996).

In considering this request, the Committee relies on the representations of the requester that the Commissioners do not intend to meet with other officials as a guise for discussing the merits of a pending matter, or any matter they should reasonably expect to come before them for official action. Therefore, a gathering of Commissioners for the purpose of presenting their position to officials of a municipality in their county, or advocating their position before a state or regional agency, regarding a matter which they have already considered and acted upon, would not be a meeting of the County Commission subject to the Act.

The Commissioners are cautioned that whenever a presentation unexpectedly leads to new issues on which they will be required to take official action, they must defer any discussion on the merits of such matter until it can be placed on the agenda of a scheduled meeting. It should also be noted that this opinion is not intended to indicate whether the municipality or other agency has an obligation to notify the public of its meeting with the Commissioners, as such issues must be raised by the affected governing body, or one of its members.



Chairman

**OPEN MEETINGS ADVISORY OPINION NO. 2001-34**

**Issued On December 6, 2001 By The**

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

**OPINION SOUGHT**

The Preston County Commission seeks guidance regarding the deadline for issuing meeting agendas, agenda specificity, addressing items that are not on the agenda, and discussions among Commissioners outside an open meeting.

**FACTS RELIED UPON BY THE COMMITTEE**

The Preston County Commission meets weekly on Monday at 9:30 A.M. The three Commissioners share a single office. From time to time, two or more Commissioners may be present when no meeting is scheduled. On occasion, an elected official or constituent may come in to discuss matters with two or more Commissioners which will require official action by the Commission.

**CODE PROVISIONS RELIED UPON BY THE COMMITTEE**

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. W. Va. Code § 6-9A-3.

“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. The term meeting does not include:

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action . . . .  
W. Va. Code § 6-9A-2(4).

**ADVISORY OPINION**

The Open Meetings Act requires public agencies to make meeting agendas available in advance to the public and news media, but does not specify how far in advance an agenda must be issued. This Committee has concluded that “reasonable notice” must be provided.

In the case of a County Commission meeting weekly, the Committee has previously ruled that making an agenda available at least two days in advance of its regularly scheduled meeting would comply with the Act. Similarly, the Committee has determined that notice of a special meeting, including the date, time, place, and purpose of the meeting, should be issued at least two days in advance. The Committee finds that these same two-day notice periods are appropriate for the Preston County Commission.

In calculating the number of days in the notice period, Saturdays, Sundays, and legal holidays are not counted. Therefore, in the absence of an intervening legal holiday, the Preston County Commission would comply with the requirements of the Act by making the agenda of its regular Monday meetings available to the public and media at any time before the close of business on the preceding Thursday.

The Committee has also determined an agenda may be amended to add additional items of business - items not known at the time the original agenda was prepared and made available to the public - no later than two days before a meeting, unless it is to deal with an emergency matter. Routine matters, such as approval of purchases and contracts 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 statute does not establish how specific a meeting agenda's description of the items of business must be. However, this Committee has determined that, in order to comply with the Act, the language must be sufficient to make the public aware of the specific matters to be dealt with at the meeting. In this regard, generic language such as "old business" and "personnel matters" would not be sufficient.

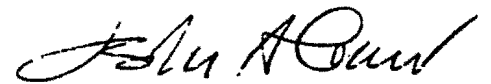
The regular agenda of the Preston County Commission provides time for office holders to talk to the Commission under the heading of "recognition of office holders present." This generic language would not be sufficient to put the public on notice that the Commission may be taking official action on a particular matter, such as the Assessor's request to hire an additional appraiser, or the Sheriff's petition to fund a new communication system.

Although office holders may make presentations to the Commission regarding matters that are not specified in the meeting agenda, the Commission may not take official action on a matter that is not fairly described in the agenda, unless it involves an emergency situation requiring immediate official action. Otherwise, when a matter requiring official action by the Commission is brought up in a presentation, the item will need to be placed on the agenda and addressed at a subsequent meeting.

Describing the purpose of the Open Meetings Act, the Legislature noted "it would be unrealistic, if not impossible, to carry on the business of government [if] every meeting, every contact and every

discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting." W. Va. Code § 6-9A-1. Accordingly, the Act provides that "general discussions among members of a governing body," even when held in a planned setting with a quorum present, do not involve a meeting governed by the Act, **so long as there is no intention for the discussion to lead to an official action.**

Accordingly, not all conversations involving a quorum of a governing body, such as two County Commissioners in Preston County, are out of bounds. Elected officials remain free to meet with each other, their constituents, and other public office holders. However, any conversation among a quorum of the members of a governing body which involves deliberating toward a decision on a matter requiring official action must be deferred until the matter can be placed on a meeting agenda and discussed during an open meeting.



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Chairman

OPEN MEETINGS ADVISORY OPINION NO. 2001-03

COPY

Issued On April 5, 2001 By The

WEST VIRGINIA ETHICS COMMISSION  
COMMITTEE ON OPEN GOVERNMENTAL MEETINGS

OPINION SOUGHT

Donna Davis, a member of the Pleasants County Board of Education, asks if it would be a violation of the Open Meetings Act for two or more school board members to visit a school and observe a particular activity at the same time.

FACTS RELIED UPON BY THE COMMITTEE

The requester explains that it is common practice for school board members to visit county schools to get a first hand view of the condition of the buildings, and observe educational programs, teaching strategies, and other school activities. On such occasions, they usually observe a particular activity, and will frequently visit with faculty, students and administrators to obtain their perspective.

On some occasions, without prior coordination, two members of the five-member board may appear at the same school at the same time. On rare occasions, as many as three members may appear at the same location, and engage in similar activities. However, the members do not discuss business among themselves, and no official business is conducted.

CODE PROVISIONS RELIED UPON BY THE COMMITTEE

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

(4) "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. The term meeting does not include:

(B) Any on-site inspection of any project or program;

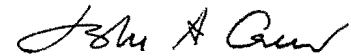
ADVISORY OPINION

The Open Meetings Act is intended to guarantee that the public has an opportunity to attend meetings at which government agencies conduct their business, and that they are given reasonable advance notice of where and when business meetings will be held and the matters to be considered.

The Act specifically provides that on-site inspections of projects or programs are not to be considered business meetings of the agency and are exempt from the provisions of the Act. This provision is consistent with and is explained by the language of the Act's "Declaration of legislative policy", *i.e.*

"The Legislature finds, however, that openness, public access to information and a desire to improve the operation of government do not require nor permit every meeting to be a public meeting. The Legislature finds that it would be unrealistic, if not impossible, to carry on the business of government should every meeting, every contact and every discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting." W. Va. Code § 6-9A-1

The school visits described here are not Board business meetings, regardless of the number of Board members present. Even if a quorum chanced to meet during such a school visit and discussed school business, they would not violate the Act, so long as the discussion was not intended to lead to, and did not result in, official action.



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Chairman

**OPEN MEETINGS ADVISORY OPINION NO. 2006-10**

**Issued On September 7, 2006 By The**

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

**OPINION SOUGHT**

William Fox, a member of the City Council in Paden City, seeks guidance on when certain committees are required to give notice of their meetings.

**FACTS RELIED UPON BY THE COMMITTEE**

The City Council in Paden City includes six Council Members, a Mayor and Recorder. Council Members have been appointed by the Mayor to serve on various three-member committees.

Councilman Fox briefly explained the operation of some of these committees. For example, the Street Committee's responsibilities include making recommendations regarding approving permits to remove street curbs. Thus, if a citizen submits a request to take out a curb to facilitate installing a driveway leading to a new garage he is building, the committee may visit the property to verify that the information in the request is accurate.

In another example, the Building and Grounds Committee, which enforces the building code, may get together to inspect municipal records to determine who is the property owner of record for enforcement purposes. Additionally, that committee may visit property which is the subject of a complaint to visually observe the specific conditions which are present at that particular location. These activities will normally involve all three committee members.

A final example involves members of the Street Committee meeting with one or more employees of the Street Department to obtain information regarding their working conditions and working relationships. The committee members believe they could more easily resolve certain work-related disputes if they could meet informally with the employees involved.

**CODE PROVISIONS RELIED UPON BY THE COMMITTEE**

W. Va. Code § 6-9A-2, *Definitions*, provides in pertinent part:

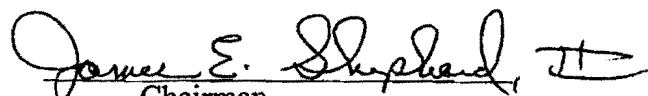
(4) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means. The term meeting does not include:

(B) Any on-site inspection of any project or program;

\* \* \*

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or

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.

  
Chairman