

## OPEN MEETINGS ADVISORY OPINION NO. 2008-07

Issued On April 3, 2008 By The

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

#### OPINION SOUGHT

The Parkersburg/Wood County Convention and Visitors Bureau asks if it is subject to the Open Meetings Act.

#### FACTS RELIED UPON BY THE COMMITTEE

The Parkersburg/Wood County Convention and Visitors Bureau, Inc., was established in 1985 as a non-profit corporation in accordance with Section 501(c)(6) of the federal Internal Revenue Code. The Convention and Visitors Bureau adopted by-laws in 1989. The by-laws set forth the number and composition of Board members. The Board consists of 15 members, 10 of whom are elected by the membership. The remaining 5 members are appointed by the City of Parkersburg, City of Vienna, City of Williamstown and the Wood County Commission.

The Convention and Visitors Bureau is funded from membership fees paid by local member businesses, local events sponsored by the Bureau, an advertising grant from the West Virginia Division of Tourism, and the hotel/motel tax authorized by W. Va. Code § 7-18-13. There is no requirement in the West Virginia Code that Convention and Visitors Bureaus must have public officials from cities or counties serve on their board for purposes of receiving proceeds from the hotel/motel tax. Instead, it is within the discretion of these entities, through their by-laws, to establish how appointments to the board will be made and who is eligible to serve.

#### CODE PROVISIONS RELIED UPON BY THE COMMITTEE

The Open Meetings Act applies to "public agencies" defined as:

Any 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.

W. Va. Code § 6-9A-2(6).

#### ADVISORY OPINION

The Open Meetings Act applies only to public agencies. The Act says that "public agency means any 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."

The Open Meetings Act defines a "public agency" in relevant part as a "public corporation." W.Va. Code § 6-9A-2(6). If the Requester is a public corporation, then it is subject to the Open Meetings Act. The Open Meetings Act does not define the term "public corporation."

Moreover, this term does not appear to be defined anywhere within the West Virginia Code. In Open Meetings Advisory Opinion 99-13, this Committee determined that a public corporation is a corporation created by state or local authority to carry out a governmental function.

Black's Law defines a public corporation as follows:

1. A corporation whose shares are traded to and among the general public.
2. A corporation that is created by the state as an agency in the administration of civil government. – Also termed *political corporation*.
3. A government-owned corporation that engages in activities that benefit the general public, usu. While remaining financially independent. Such a corporation is managed by a publicly appointed board.

Black's Law Dictionary 344 (7<sup>th</sup> Ed. 1990). The definition found in Black's Law Dictionary is not outcome determinative. It does provide a general framework to examine this question based upon whether Convention and Visitors Bureaus are: (1) created by the state as an agency in the administration of government; or, (2) a public corporation managed by a publicly appointed board.

This Committee finds that Convention and Visitors Bureaus are not "public corporations" for purposes of the Open Meetings Act on the following grounds:

**First**, Convention and Visitors Bureaus are not created by the State of West Virginia. The State, through the Legislature, has directed that proceeds of the hotel occupancy tax shall be appropriated to the support of these Bureaus if these Bureaus are located in a city or county. The Legislature has not directed or authorized cities or towns to form these Bureaus.

**Second**, there is no Legislative requirement that these Bureaus have a "publicly appointed board." While the Requester has voluntarily elected to allow cities and counties in the region where it operates to appoint 5 of its 15 board members, its decision to extend this appointment power does not make the Requester a public entity for purposes of the Open Meetings Act.

**Third**, in defining what is a "Convention and Visitors Bureau" the enabling legislation does not use the term "public corporation." Instead, the definition reads in relevant part that, "Convention and visitor's bureau" and "visitor's and convention bureau" are interchangeable and either shall mean a nonstock, nonprofit corporation with a full-time staff..." W.Va. Code § 7-18-4(d)(1).

In contrast, in other instances the Legislature has specifically used the term "public corporation." For example, when it created the "Hatfield-McCoy Regional Recreation Authority" it stated that the authority is hereby created as a "public corporation." W.Va. Code § 20-14-3(a).<sup>1</sup> Other examples of the use of this term in the Code include the following: (1) a county fire board shall ... be created as a public corporation. W.Va. Code § 7-17-9; (2) a solid waste authority shall constitute and be a public corporation. W.Va.

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<sup>1</sup> The Legislature also requires county commissioners to appoint some of the board members to the Hatfield-McCoy Authority.

Code § 7-16-4; and, (3) county and municipal development authorities shall be public corporations. W.Va. Code § 7-12-6. The Committee finds that the absence of the term "public corporation" in relation to convention and visitor's bureau must be given weight.

In conclusion, the Open Meetings Committee finds that the Parkersburg/Wood County Convention and Visitors Bureau is not a public corporation created by state or local authority to carry out a governmental function. It exists independent of state authorization. While the Committee believes that the Open Meetings Act should be broadly construed, it declines to do so when it appears that the Legislature did not intend this result. As such, the Committee finds that the Parkersburg/Wood County Convention and Visitors Bureau is not a public agency subject to the requirements of the Open Meetings Act.

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.

  
James E. Shepherd II, Chairman