



Open Governmental Proceedings Act

Also known as the

“Sunshine Law”

Or

“Open Meetings Law”

(WV Code 6-9A-1 through 12)

For more information on the Open Meetings Act please contact the:

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The West Virginia

Open Governmental Proceedings Act

*Also known as the
“Sunshine Law” or “Open Meetings Law”*

(WV Code 6-9A-1 through 12)

The Open Meetings Law generally requires that meetings of a public agency’s governing body be open to the public and that reasonable notice of the meeting and its agenda be given in advance.

What agencies are covered?

The Act covers any administrative or legislative unit of state, county or municipal government including any subunit authorized by law to exercise some portion of executive or legislative power. The Act does not apply to courts.

What is a governing body?

Two or more members of a public agency who have the authority to make decisions for or recommendations to the public agency on policy or administration is considered a governing body.

What meetings are covered?

Those where a governing body convenes to make a recommendation or decision or to deliberate toward a recommendation or decision including meetings held by telephone conference or other electronic means.

What meetings are not covered?

General discussions held in social, educational, training, or similar settings are generally not covered if there is no intent to lead to official action. Adjudicatory proceedings, on-site inspections, a political party caucus, and discussions on logistical and procedural methods to schedule and regulate a meeting are not covered.

Advance public notice of the meeting date and agenda must be provided.

What type of Notice is necessary?

Every public agency must establish rules for giving advance notice of all regularly scheduled and special meetings.

- ◆ Notice must include date, time, place and meeting agenda [and the purpose of special meetings.]
- ◆ Notice must be given in a reasonable manner, appropriate for the agency and its locality. Examples of notice: Newspaper notices; posting at public buildings; local radio announcements; or web site postings.
- ◆ State executive branch agencies must file their notices with the Secretary of State's Office to appear in the State Register at least five calendar days before the meeting. Other agencies must establish their own rules insuring that reasonable advance notice is given.

How specific must an agenda be?

Agendas must give reasonable notice to the public of what issues will be discussed. For example, "filling position of office manager" would be sufficient. Use of vague headings such as "old business" and "new business" is clearly insufficient. The public should also be given notice of significant additions or changes to the agenda. Each governing body should have rules on how such notice will be given.

Should minutes be prepared?

The Act requires that written minutes of all open meetings be available to the public within a reasonable time after the meeting. The minutes must include:

- ◆ The date, time and place of the meeting.
- ◆ The name of each member of the governing body present and absent.
- ◆ All motions, orders, resolutions, ordinances and measures proposed, the name of the person proposing each action and the disposition of the matter.
- ◆ The results of all votes, including role call votes by member name, if such vote is conducted.

A Committee of the Ethics Commission provides formal written advice. The Ethics Commission Staff provides informal telephone advice.

How do I get advice?

The West Virginia Ethics Commission's Committee on Open Governmental Meetings gives written advisory opinions to governing bodies and their members on whether a proposed action or an action of an ongoing nature violates the law. The opinions provide an absolute defense in any civil suit or criminal prosecution to the requesting agency and any other governing body who is similarly affected, provided the opinion is relied upon in good faith.

The Ethics Commission's Executive Director and Attorneys also provide informal advice by telephone, but their opinions do not confer immunity.

Written advisory opinions are given to governing bodies requesting advice on their proposed actions or action of an ongoing nature. Opinions are not rendered on past actions.

Why ask for a written Advisory Opinion?

A written advisory opinion gives the persons seeking the opinion an absolute defense to civil suits and criminal charges for actions taken in good faith reliance on the opinion.

The Committee on Open Meetings meets on the first Thursday of each month to consider written requests. Requests for written advisory opinions should be submitted in writing at least ten days before the meeting.

NOTE: The Committee cannot provide advice on an action that has already occurred. However, if the action is part of an ongoing course of conduct, an advisory opinion on continuing that course or practice may be requested.

Precedential opinions which may be followed by other public agencies that face substantially similar situations are posted on the Commission's web site at www.wvethicscommission.org

Enforcement and penalties for violating the Open Meetings Law

How is the Act enforced?

The Ethics Commission has no role in enforcing the Act and does not investigate complaints of violations. The Act provides that any citizen may file a civil action in Circuit Court within 120 days after the action or decision complained of occurred. Only the Court has the power to compel compliance with the Act or annul a decision made in violation of the Act.

What are the penalties for violating the Act?

In addition to injunctive relief requiring a governing body to rescind an action taken in violation of the Act, the prevailing party may obtain attorneys' fees and costs. Anyone who willfully and knowingly violates the provisions of the Act is subject to criminal prosecution for a misdemeanor and may be fined up to \$500 for a first offense.

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