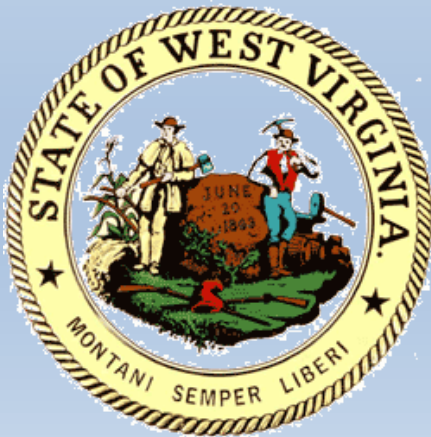


# West Virginia Ethics Commission

## 2023 Ethics and Open Meetings Acts Training



Presented By:

Kimberly B. Weber  
Executive Director



# Topics of Ethics Act

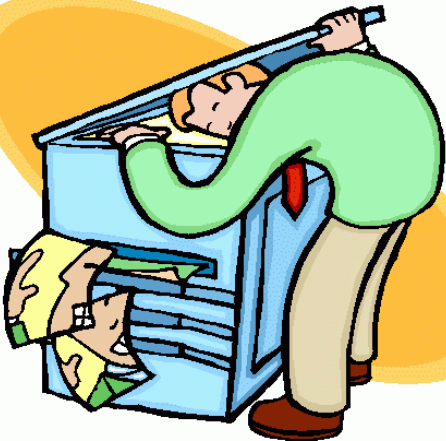
- Office for Private Gain
- Solicitation and Gifts
- Name/Likeness ("Trinkets")
- Prohibited Public Contracts
- Voting
- Conflicts of Interest
- Employment Restrictions

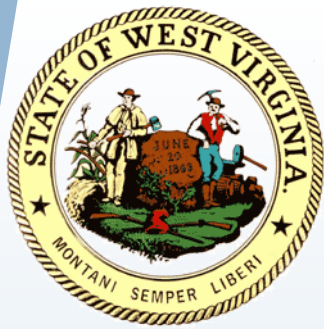


# Use of Public Office for Private Gain

W. Va. Code § 6B-2-5(b)

- May not use public resources, including time, supplies, premises, subordinate staff, or prestige, for someone's unlawful personal benefit.
- Ethics Act prohibits more than a *de minimis* use for personal purposes.





# Bonus Points

## Private Gain

Business travel-related bonus or reward points  
Airplane, hotel, gas



Non-travel related reward points  
Merchandise from online catalog





# Use of Public Office for Private Gain

## P card misuse

CIC 2017-05

An administrator at a High School was a P card holder. In the past, she bought chair covers and decoration for school events. In 2016, she charged \$550 for table covers and chair covers for her wedding. She received a public reprimand and \$2,000 fine.





# Use of Public Office for Private Gain

## P card misuse

County Assessor, in 2015, used his P Card and county credit card for over \$50k in personal items. Biggest charge was for a Harley Davidson motorcycle. Pled guilty to embezzlement, and the EC found he violated the Ethics Act and was fined \$10k.





# Use of Public Office Private Gain Nepotism

- A public official or employee may not directly supervise or participate in decisions affecting the employment and working conditions of his or her relative or a person with whom he or she resides.
- Exception: Required by law and independent third party involved.



Legislative Rule at 158 C.S.R. § 6.



# Use of Public Office for Private Gain

## Nepotism

- "Relative" means spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law.





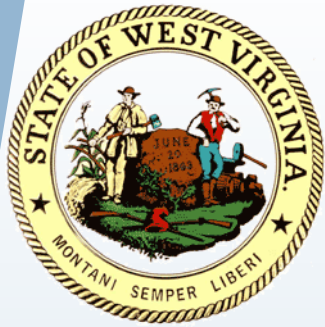


# Use of Public Office for Private Gain

## Unauthorized Spending

- The Ethics Commission has limited involvement in determining whether a proposed expenditure is okay.
- The Commission considers, among other factors, whether the proposed expenditure is authorized elsewhere.
  - W. Va. Code
  - Legislative Rules
  - Attorney General Opinions
  - Auditor Opinion Letters
  - Agency's attorney





# Use of Public Office for Private Gain

## Spending Public Funds

QUESTION: May a public agency use public funds to purchase coffee makers or refrigerators for office employees?

A.O. 2016-09





# Use of Public Office for Private Gain

## 2020 Employee Recognition/Retirement Events

Great Job!

- Food and beverages, entertainment, and gift or memento.
- Total public funds = \$25 per employee per year. May be allocated between events and employees. (Maximum \$100 per employee.)

Guideline is [here](#).

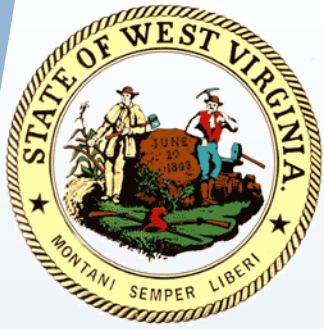


# Use of Public Office for Private Gain

## Retirement Gifts/Events

- May spend up to **\$100** of public funds to purchase plaque or another commemorative item.





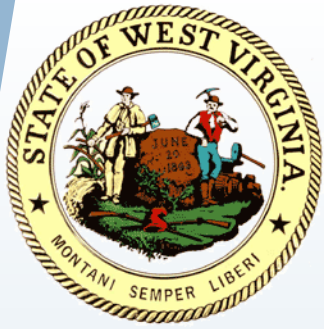
# Use of Public Office for Private Gain

## Endorsements

- Do not **endorse commercial** products. Do not give testimonials such as town was a “satisfied customer.”

Exception: Overriding public benefit





# Use of Public Office for Private Gain

## Public Job and Public Office

**2022-02 County Commission Employee** A county commission employee may be a candidate for and hold office on city council. She may not campaign while she is on the clock at work.

**2023-09 A Legislator** may work at a state college. The Legislator need not recuse himself from voting on legislation or appropriations that benefit his public employer. Overruled Advisory Opinions 2012-19 and [2012-23](#). See also Article 6, Section 13, of the West Virginia Constitution.





# Confidential Info

W. Va. Code § 6B-2-5(e)

No present or former public official or employee may disclose confidential information or use that information to further his/her personal interests or the interests of another person. [Address, SS#, credit card, driver's license and marital status]



**Improper disclosure of confidential information is a criminal misdemeanor!**



# Gift Rules

## No Gifts over \$25 from Interested Persons

An interested person is:

- A Lobbyist

Or one who:

- Seeks or does business with the public servant's agency (vendor);
- Is regulated or controlled by the agency; or,
- Has a specific financial interest which may be substantially affected by the performance or nonperformance of official duties.







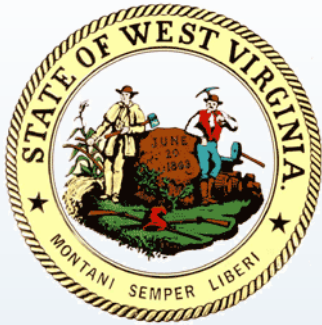
# Gift Rules

## Some Exceptions!



- Meals and beverages of any value if the person purchasing them is present
- Ceremonial gifts with insignificant value – for example, a plaque
- Gifts that are purely private in nature

See [Ethics Commission Gift Guideline – outlines other exceptions](#)



# Gift Rules

## Charitable Solicitations

W. Va. Code § 6B-2-5(c)

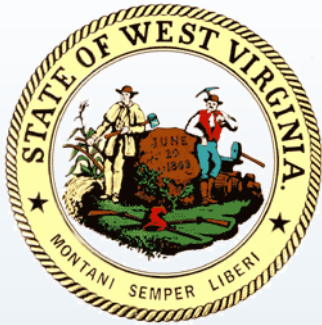
Gifts may only be solicited for a charitable purpose, such as the United Way.



Public agency may impose stricter standards.

Supervisors may not solicit contributions from a subordinate.

May solicit other public agencies 2019-11



# Gift Rules

## Charitable Solicitations

2023-10

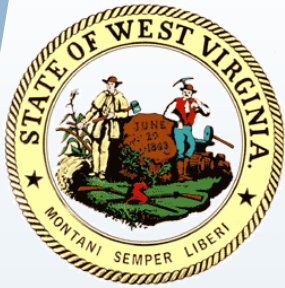
City officials may solicit donations for the City's free, outdoor concert series held in its amphitheater.

GoFundMe or similar crowdsourced funding. Auditor's Office.

The officials must follow the manner of solicitation limitations found in Rule 158-7-6 and 7.



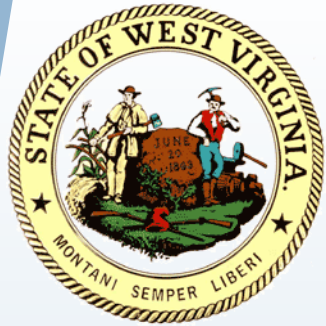
GoFundMe



# Public Official's Name or Likeness

May **not** use **public funds** or public resources to display the public official's name or likeness **for the purpose of promoting public official or political party**. W. Va. Code § 6B-2B-2(b).





# Public Official's Name or Likeness

- May use in normal course of business such as on letterhead, envelopes, educational materials, reports, certificates, office signs, press releases, bios, social media, and websites





# Prohibited Interest in Agency Contracts

W. Va. Code § 6B-2-5(d)

Public servants may not have a financial interest in a public contract under their authority or control.





# Prohibited Contracts Exceptions

W. Va. Code § 6B-2-5(d)

- \$1,000 threshold
- Part-time appointed officials and legislators are not subject to prohibition
- Public employment.
  - but must recuse themselves if a conflict arises.





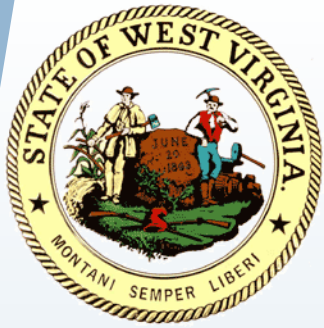
# Public Contract

Exemptions

Ethics Commission has discretion to grant an exemption to public entity based upon undue hardship or excessive cost.







# Voting

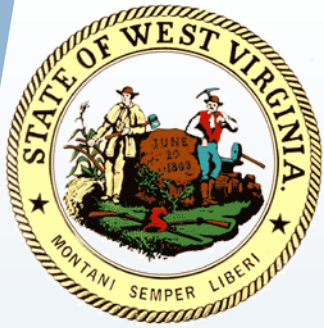
W. Va. Code § 6B-2-5(j)



- May not vote if public official, or an immediate family member, or a business with which they or a family member is associated, has a financial interest.
- Public officials may not vote on a personnel matter involving a relative.

(Class exception - five similarly situated)

2019-08 hotel development in mayor's neighborhood



# Voting

## W. Va. Code § 6B-2-5(j)

- If member also serves on a non-profit, the agency may still make appropriations to the non-profit.
- Member or spouse may not vote if either is employed by non-profit.
- If Board member is unpaid, he/she may vote only if disclosed on agenda and at the meeting.





# Voting Proper Recusal

A public servant who is required to recuse himself or herself must:

- Fully disclose his or her interest
- Leave the room during both the discussion of, and the vote on, the issue
- Minutes must reflect recusal

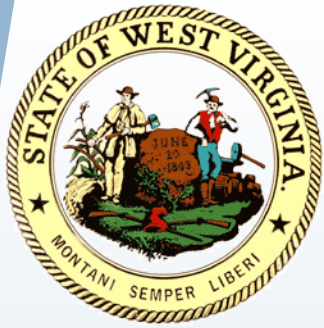




# Restrictions on Volunteer Activity Off the Job!?

The WV Ethics Act places very few *specific* limitations on volunteer activity off the job. Just remember that the Act prohibits use of public office or employment for the private gain of the official/employee or another and think of the organization for which you volunteer as another and apply the normal rules of the Ethics Act.





# Employment Restrictions

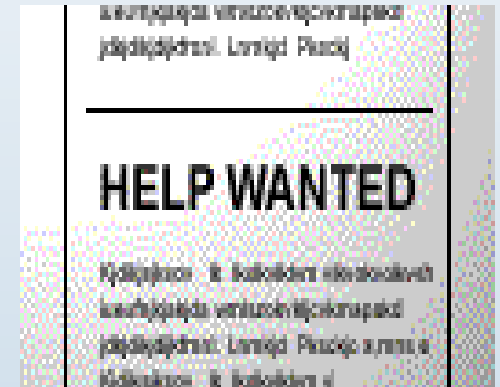
W. Va. Code § 6B-2-5(h)

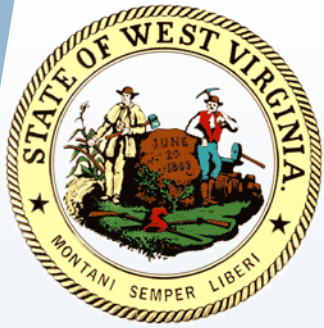
**Full-time** public employees may not seek employment with, or buy, sell or lease property to or from, any person who:

- Had a matter on which they or their subordinate took regulatory action within the past 12 months, or
- Currently has a matter before their agency on which they or a subordinate is working, or
- Is a vendor over which they exercise control

**Employment Exemptions available**

2019-17 and 2020-05





# Employment Restrictions

W. Va. Code § 6B-2-5(h)(1)(B)

## Examples: “Matter Before Your Agency”

[Advisory Opinion 2023-06](#) A **state agency director** may continue his part-time, **of counsel attorney** job with a private law firm—as long as the law firm does not represent clients before the state agency.

[Advisory Opinion 1995-33](#) A **state employee** may work for an **engineering firm** that had clients subject to the public agency’s control, but did not conduct work in the employee’s geographical areas. Therefore, the **firm did not have a matter before him or his subordinates.**



# Employment Restrictions

W. Va. Code § 6B-2-5(h)(1)(C)

## Vendors

Full-time public employees **may not work** for a **vendor** to the agency if the official or public **employee**, or a **subordinate** of the official or public employee, **exercises authority or control** over a public contract with such vendor, including, but not limited to:

- (i) Drafting bid specifications or requests for proposals;
- (ii) Recommending selection of the vendor;
- (iii) Conducting inspections or investigations;
- (iv) Approving the method or manner of payment to the vendor;
- (v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or
- (vi) Taking other nonministerial action which may affect the financial interests of the vendor.

# Post-employment Restrictions



W. Va. Code § 6B-2-5(f)

## Representation

May not represent a private party in a matter after you leave if you

1) had worked on a “particular matter involving that specific party” and

2) you had “personally and substantially participated” on behalf of the agency (in a decision- making, administrative, or staff support capacity) -

unless former agency consents.





# Post-employment Restrictions

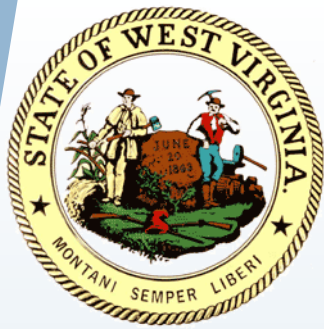


W. Va. Code § 6B-2-5(g)

## Revolving Door

- No elected or appointed public official or full-time staff attorney or accountant, shall:
- for ONE YEAR after the termination of that service, represent a client before the entity he or she served in:
  - A contested administrative matter,
  - To support or oppose a proposed rule,
  - To support or oppose issuance of a license or permit,
  - Rate-making proceedings, or
  - To influence the expenditure of public funds





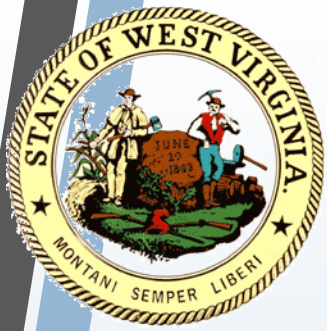
# Financial Disclosures

W. Va. Code § 6B-2-6

Must file by February 1 annually.

- (1) Elected state and county officials
- (2) All members of state boards, commissions and agencies appointed by the Governor; and
- (3) Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.





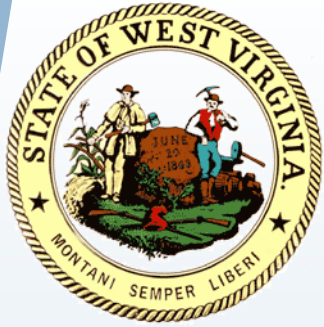
# Disclosure of \$1 million dollar Contracts

Disclosure of Interested Parties, such as contractor or owner and subcontractors. State agency must file with the Commission before beginning work.

W. Va. Code § 6D-1-1, et seq.

\$1,000,000





# Sanctions

W. Va. Code § 6B-2-4(s)(1)

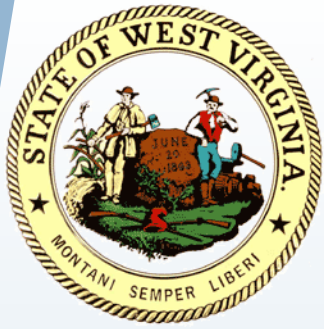
- Public reprimand
- Restitution
- Fines of \$5,000 per violation
- Reimbursement to the Commission
- Recommendation that a Respondent be terminated from employment or removed from office.



# Topics of Open Meetings Act

- Meetings subject to OMA
- Meetings not subject to OMA
- Notice/Agenda for meetings
- Executive sessions
- Meeting minutes
- Violations





# Open Meetings Act

- State, county, and municipal administrative and legislative bodies, and any bodies that meet the definition of 'public agency,' are subject to the Act. Committees, too.



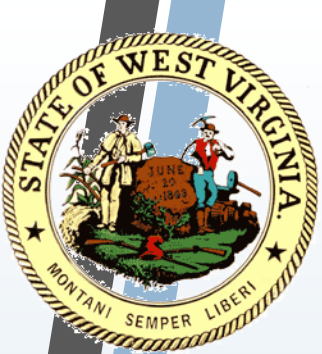


# Meeting defined

*A meeting is subject to OMA when:*

- A quorum of a governing body meets
- On a matter for which a quorum is required in order to make, or deliberate toward,
- A decision that requires official action.





# Meetings NOT Subject to OMA

Logistical matters

e.g., creating the agenda

[2019-03](#)

Adjudicatory

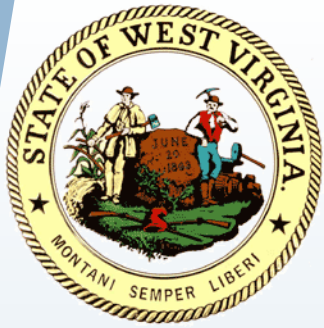
On-site inspection

e.g., Construction site

Political party caucus



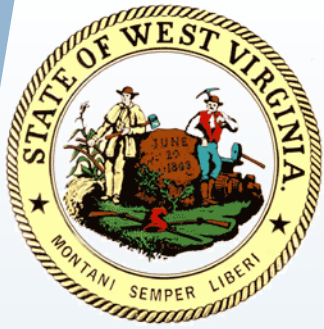




# Not Subject to OMA

- General Discussions at planned or unplanned gatherings; training, ceremonial, or similar settings
- Without intent to conduct public business
- No intention for the discussion to lead to an official action





# In-person Meeting

## OMAO 2023-01

The Open Meetings Act does not require a governing body to provide a physical meeting space but requires only that citizens be given access to a meeting by telephone conferencing or other electronic means.





# Notice

Please Notice This



The **Open Meetings Act** requires advance notice of the date, time, and place of the meeting, including any committee meeting.



# Meeting Notice Time

- Promulgate Rules
- Regular meeting's notice and agenda must be posted **THREE** business days in advance (unless you meet every week, then two days).
- 'Special meeting' notice must be posted **TWO** business days in advance.
- But – state agency = **FIVE** business days notice w SOS.



# Notice: Ethics Commission website

## **Meeting Information**

Meetings of the Ethics Commission are scheduled for 10 a.m. on these dates:

December 6, 2018  
January 3, 2019  
February 7, 2019  
March 7, 2019  
April 4, 2019  
May 2, 2019  
June 6, 2019  
July 11, 2019  
August 1, 2019  
September 5, 2019  
October 3, 2019  
November 7, 2019  
December 5, 2019

Agendas are posted in the Ethics Commission's offices and on this website on the Friday prior to the scheduled meeting. Meeting minutes are posted on this website after they have been approved by the Ethics Commission.

## **Location of meetings**

All meetings are held in the Third Floor Conference Room at 210 Brooks Street in Charleston.

## **Ethics Commission**

The nine-member Ethics Commission meets monthly to issue Advisory Opinions, Contract Exemptions and Employment Exemptions; to consider proposed Conciliation Agreements and to address other matters.

## **Open Meetings Committee**

The Ethics Commission's Committee on Open Governmental Meetings is comprised of three members of the Ethics Commission. The Committee meets as needed to issue Advisory Opinions which interpret the Open Governmental Meetings Act.

## **ALJ Committee**

The Ethics Commission's Committee on Standards of Conduct for State Administrative Law Judges meets as needed to issue Advisory Opinions regarding the Code of Conduct for Administrative Law Judges. The Committee, comprised of three members of the Ethics Commission, also processes Verified Complaints filed against state Administrative Law Judges.



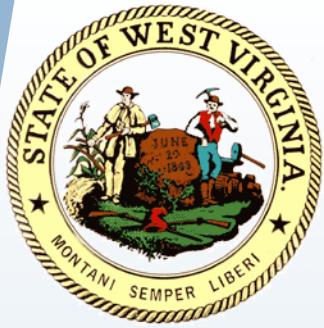
# Emergency Meeting

W. Va. Code § 6-9A-2-(2)

(2) "Emergency meeting" means any meeting called by a governing body for the purpose of addressing an **unexpected event** which requires **immediate attention** because it poses:

- (A) An imminent threat to public health or safety;
- (B) An imminent threat of damage to public or private property; or
- (C) An imminent material financial loss or other imminent substantial harm to a public agency, its employees or the members of the public which it serves.

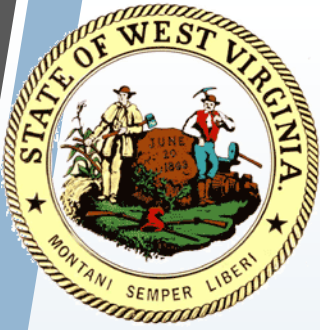




# Meeting Agenda

- Agendas must give reasonable notice to the public of every issue to be discussed. Don't take up issues not on the agenda. Hold them over for next agenda.
- Items must be specific enough to put the public on notice of intended action.
- Vague headings are insufficient, *e.g.*,
  - Old Business
  - New Business

OMAO 2008-17



# Meeting Agenda

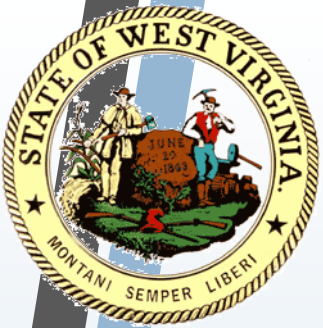
“Personnel” and “Opening sealed bids” are too vague a description

*Instead, use “filling position of office manager,” or “open sealed bids for city hall roof repair project.”*

OMAO 99-10: Marshall Co BOE Employee grievance: “Level III grievance” is sufficient.



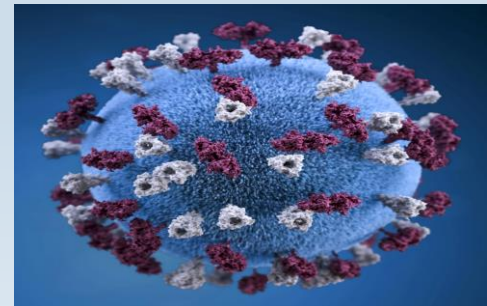




# Uniform Public Meetings During Emergencies Act 2023

W. Va. Code § 6-9C-1 through 10. The Emergency Meetings Act is separate from the Open Meetings Act.

The Open Meetings Committee of the Ethics Commission does not have authority to issue advisory opinions.

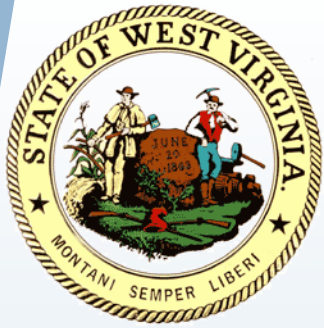




# Executive Session

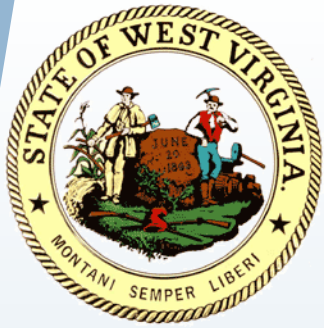
[W.Va. Code § 6-9A-4](#)

- May only go into executive session for reasons permitted by the Open Meetings Act.
- The agenda need not indicate an executive session, but must mention the item being taken up. [Hiring new executive director]
- The motion to go into executive session must identify the reason for entering the session.
- Vote must be made in public (except for student matters).



# Executive Session reasons include -

- To consider personnel matters of a particular public official or employee. But must vote in public and announce employee's name OMAO 99-10
- Matters involving war or security
- Involving commercial competition, which if made public, might adversely affect a public financial or other interest
- To discuss matters which, by express provision of federal law or state statute or rule of court is rendered confidential OMAO 2017-02
- W. Va. Code § 6-9A-4 (contains complete list)



# Executive Session

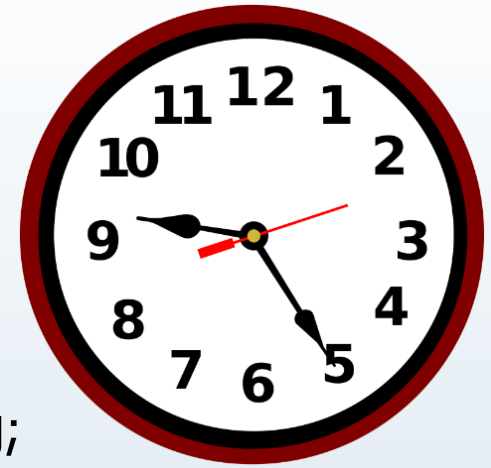
## Open Meetings Advisory Opinion 2022-01

The Open Meetings Act does not make information discussed during executive sessions confidential; nor does it create an excessive session privilege. Other rules and laws may create a duty of confidentiality.

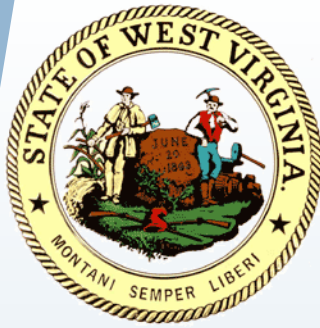




# Minutes



- The date, time and place of the meeting;
- The name of each member of the governing body present and absent;
- All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition, and
- The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member by name.



# Sample Minutes

## Minutes of the June 1, 2017 Meeting of the West Virginia Ethics Commission's Open Governmental Meetings Committee

The June 1, 2017, meeting of the West Virginia Ethics Commission's Open Governmental Meetings Committee was called to order in the Commission's Office at 210 Brooks Street, Charleston, West Virginia, at 9:30 a.m., by Chairperson Lawrence Tweel. Present in person were Chairperson Tweel and Committee Member Betty S. Ireland. Present via teleconference were Committee Member Suzan Singleton and Ex Officio Committee Member Robert J. Wolfe. Executive Director Rebecca L. Stepto, General Counsel Kimberly B. Weber, Staff Attorney Andrew Herrick, Staff Attorney Derek A. Knopp, and Special Assistant to the Executive Director M. Ellen Briggs, all from the Commission staff, were present.

WHEREUPON, Chairperson Tweel asked for approval of the November 3, 2017 meeting minutes.

WHEREUPON, Committee Member Ireland made a motion to approve the minutes. Committee Member Singleton gave a second. The motion passed.

WHEREUPON, Chairperson Tweel called upon Mr. Knopp to present Open Governmental Meetings Advisory Opinion 2017-01 for consideration.

WHEREUPON, Mr. Knopp presented proposed Open Governmental Meetings Advisory Opinion 2017-01 to the Committee for consideration. After discussion, a motion was made by Committee Member Ireland to accept the proposed Open Governmental Meetings Advisory Opinion 2017-01 as amended. Committee Member Singleton gave a second, and the motion passed unanimously.

WHEREUPON, Chairperson Tweel stated there were no more items for discussion. Committee Member Ireland moved that the meeting be adjourned, and Committee Member Singleton seconded. The motion carried, and the meeting was adjourned.

The foregoing minutes of the West Virginia Ethics Commission's Open Governmental Meetings Committee were approved at a regular meeting of the Committee on August 3, 2017.

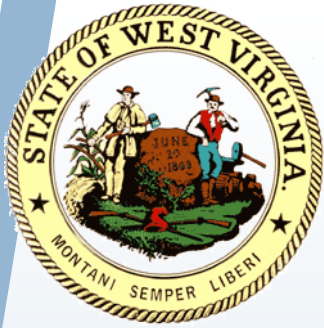
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Lawrence Tweel, Chairperson  
Open Governmental Meetings Committee  
West Virginia Ethics Commission

ATTEST:

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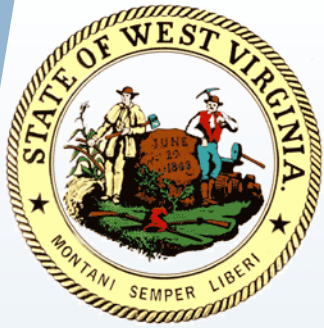
M. Ellen Briggs, Special Assistant  
to the Executive Director  
Open Governmental Meetings Committee  
West Virginia Ethics Commission



# Minutes

W.Va. Code § 6-9A-5

- Meeting minutes must be made available within a 'reasonable time.'
- 'Reasonable time' defined by OMAO 2010-04 one business day after the meeting at which the minutes were approved.
- If material changes to the minutes are necessary, then the minutes should be available no later than three business days following the next meeting.
- Draft minutes are encouraged, but not required, to be made available for public inspection.



# Violations

W.Va. Code §§ 6-9A-6 and 7

- An intentional violation is a criminal misdemeanor subject to prosecution by the county prosecutor and up to a \$500 fine. (\$1,000 for additional violations)
- May also be liable to wronged parties in civil court. (within 120 days of action)
- Court may annul vote taken in violation of Act.





# West Virginia Ethics Commission



0664

210 Brooks Street, Suite 300

Charleston WV 25301

(304) 558-

[www.ethics.wv.gov](http://www.ethics.wv.gov)

Email: [ethics@wv.gov](mailto:ethics@wv.gov)