



The Nuts and Bolts of Governmental Ethics and Open Meeting Laws

**WEST VIRGINIA
ETHICS COMMISSION**

WV ETHICS COMMISSION

Agency Mission

- Advise
 - Informally, by telephone
866-558-0664
 - Formally, by issuance of
Advisory Opinions
- Train & Educate
- Investigate & Prosecute
Complaints



THE ETHICS ACT



- Applies to public servants in state, county & municipal government
- Applies to executive, legislative & judicial branches
- Applies to elected and appointed officials, full & part-time employees
- Does not apply to contractors or private organizations receiving government funds

GOVERNMENTAL ETHICS

- General Principles-



- Maintain confidence in integrity and impartiality of the governmental process
- Public employees should avoid conflicts between their personal interests and their public responsibilities.

OVERVIEW OF MATTERS GOVERNED BY ETHICS ACT

- Public contracts
- Private gain
- Nepotism
- Voting
- Gifts
- Employment



Prohibited Interests in Public Contracts W. Va. Code § 6B-2-5(d)



- Elected public officials and full-time employees may not have a financial interest in a public contract under their authority or control
- Extends to immediate family members or a business with which you or an immediate family member is associated
- Part-time appointed board member exception

Prohibited Interests in Public Contracts W. Va. Code § 6B-2-5(d)



- **Less than \$1,000 on an annual basis – okay if no favoritism**
- **Exemptions - required if contracts, individually or cumulatively, exceed \$1,000 during a calendar year**
- **Does not generally apply to employment**



COUNTY



Prohibited Interests in Public Contracts

W. Va. Code § 61-10-15

- **Certain county officials, including BOE members and officials, may not have a financial interest in any amount in a public contract over which their public position gives them *voice, influence or control***
- **Ethics Commission has authority to grant hardship waivers**

Use of Public Office for Private Gain



W. Va. Code § 6B-2-5(b)

“A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.”

USE OF OFFICE FOR PRIVATE GAIN



- May not use public resources to conduct personal or private business
- More than a *de minimis* use of public resources violates the Act



Nepotism



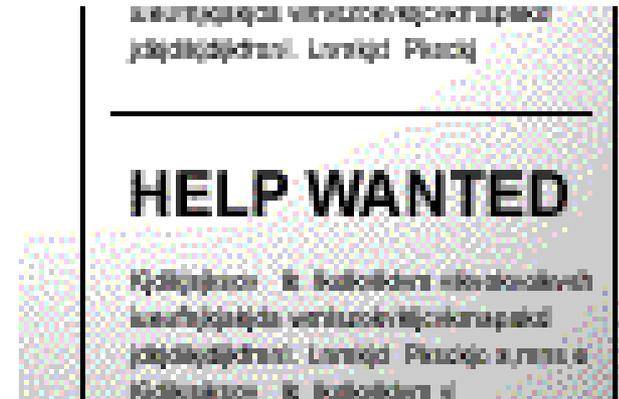
- The **Private Gain Rule** governs the hiring of immediate family members. Ethics Commission has guidelines.
- General rule – independent third party should make decision.
- But, stricter limitations for County Officials
- W. Va. Code § 61-10-15

Employment - Nepotism



W. Va. Code § 61-10-15 (ANTI-NEPOTISM)

- Prohibits employment of County Official's dependent family members (spouse or dependent children).
- Includes those who cohabit
- Exceptions –
 - County Commission spouse – may work at county hospital
 - County official and employee get married while working together



EMPLOYMENT - NEPOTISM

W. Va. Code § 61-10-15 (ANTI-NEPOTISM)

- Prohibits employment of County Official's dependent family members (spouse or dependent children).
 - AO 2012-26 Spouse of Candidate for County Commission may not remain employed with County Clerk's office **OR** by any other county office or agency if Candidate elected;
 - AO 2012-28 Spouse of Candidate for Prosecuting Attorney may not remain employed with Prosecuting Attorney's office **BUT may** be employed by any other county office or agency if Candidate elected;

VOTING

- **May not vote on the employment of a relative**



VOTING

- **“Relative” includes husband, wife, son, daughter, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, grandmother, grandfather, & grandchild**



VOTING

- **May not vote to award contract to a business with which you or an immediate family member is associated**



VOTING

- **“Immediate family member” includes spouse with whom you are living, dependent children, dependent parents and dependent grandchildren**



RECUSAL

- Disclose Interest
- Leave Room –
discussion and vote
- Minutes reflect



Gift Limitations



- **The Ethics Act prohibits public servants from accepting gifts from interested persons, under certain circumstances.**



GIFT LIMITATIONS

- **General rule – may not accept gift from an interested party in excess of \$25/year**
- **No \$\$ limit on food and beverages if host is present**
- **Public agencies may adopt stricter limits**



WHO IS AN INTERESTED PERSON?

One who:

- Seeks or does business with the public servant's agency;
- Is engaged in activities regulated or controlled by the agency; or,
- Has financial interests which may be substantially & materially affected, in a manner distinguishable from the public generally, by the performance or non performance of official duties.

Public Employee Recognition Guideline



- Permissible to use public funds to recognize public employees if it serves a public purpose of promoting employee morale through recognition of achievement
- Responsibility for deciding whether it is an appropriate use of public funds lies with the head of the State Agency or the appointed board to whom the head of Agency reports.

Public Employee Recognition Guideline



- May be used to purchase:
 - » Light refreshments
 - » Meals
 - » Mementos of appreciation
- May spend up to \$25 per employee per fiscal year

Example: If 10 employees, then may spend \$250 in public funds
- May be allocated between employee recognition events
- May spend up to \$100 on one employee and less than \$25 on others

Retirement Gifts & Events Guideline



- Applies to public servants who are retiring from public service, transferring to another public agency, resigning to return to private sector or completing their last term of office
- General Rule: May spend up to **\$100** of public funds to purchase plaque or other commemorative item
- May **not** give money (or gift card) as gift

Retirement Gifts & Events Guideline



- Absent specific legislative authority, may **not** spend public funds to pay for meals, food, or beverages at an event recognizing a departing public servant
 - Any meals, food or beverages must be purchased using private funds collected in accordance with guideline
- May **not** use public funds to underwrite any rental or related fees associated with event held at an off-site location

Door Prizes, Gifts & Giveaways At Conferences

- A public agency may **not** use public funds to purchase door prizes, gifts, or giveaways.
- A public agency **may** use a reasonable amount of public funds to purchase:
 - items such as tote bags, pens, pencils or sticky notes to provide to conference attendees; and
 - incentives items to encourage audience participation
- Fair market value of all such items provided to each participant may not exceed \$25

Door Prizes, Gifts & Giveaways At Conferences

PUBLIC SERVANTS

- May only accept items valued at \$25 or less
- Prizes valued above \$25 must be:
 - Returned,
 - Donated to charity, or
 - Donated to the agency.
- \$25 limit applies to all gifts from a single source in a calendar year.

Door Prizes, Gifts & Giveaways At Conferences

- Attendees may bring gifts to conferences planned by public servants if:
 - You make it clear that participation is voluntary;
 - You inform the attendees that they must use **personal**, not **public**, funds;
 - You and/or the conference participants/public servants may **not** solicit anyone, including local businesses or persons for any gifts; and,
 - Fair market value of a gift may not exceed \$25.

Door Prizes, Gifts & Giveaways At Conferences

VENDORS

- You **may** ask vendors or conference sponsors to donate items of nominal value (usually with a company logo) so long as they derive some commercial value from it.
- You and/or the conference participants/public servants may **not** solicit any gift or door prize from a vendor or conference sponsor; and,
- Fair market value of any item may not exceed \$25.

Advisory Opinions



- Issued by the Commission
- Discussed and approved in a public meeting
- Name of requester/agency not identified
- Immunity granted for conduct in good faith reliance on advisory opinion
- Copies and Index of advisory opinions are on the Ethics Commission website:

www.ethics.wv.gov

What do you think?

- May county elected officials, whose compensation is set by statute, extend a county funded employee wellness program to themselves?

What do you think?

- May a vendor pay a County Manager's registration fee (>\$25) for a golf tournament at an annual conference of government officials?
- The Manager has a good relationship with the vendor, and the offer represents a gesture of good will.

What do **YOU** think?

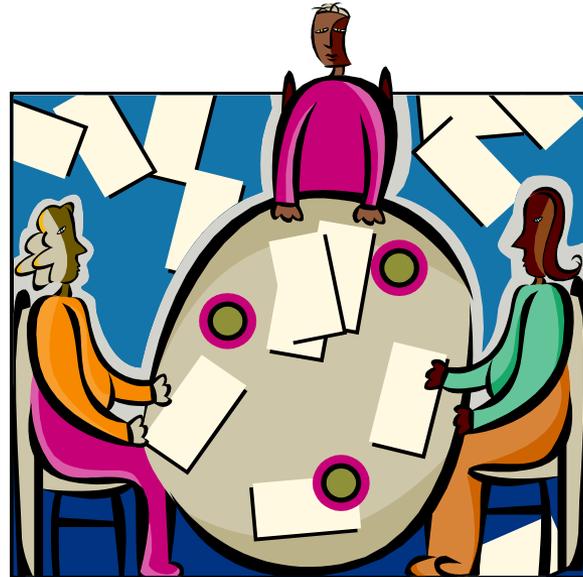
- May a person who serves as a private consultant to the County Commission take one or more Commissioners out to dinner?
- How would the Open Meetings Act apply?
- W. Va. Code § 6B-2-5(c)(2)(A)

Open Meetings Act



**1975-- Legislature
enacted Open
Meetings Act**

**1999 – Legislature
created a Committee
within the Ethics
Commission authority
to issue formal advisory
opinions**



Open Meetings



- **Applies to governing bodies of public agencies**
- **Includes County Commission, Public Service District, City Councils, Regional Commissions, and Boards of Education**
- **Same rules apply to Committees and Subcommittees**

Robert's Rules of Order



- Does not trump, supersede or replace the OMA
 - It is a supplement to the Open Meetings Act
 - O.M.A.O. 2010-02
- Robert's Rules of Order provides guidance on parliamentary procedure during a meeting
 - It is not State law
- The OMA is a State law that mandates government entities to perform certain conduct before, during and after a meeting.

MEETING NOTICE

- **Provide reasonable notice:**
- **Regular Meetings**
 - follow established schedule; OR
 - provide 3 business days notice
- **Special Meetings**
 - provide 2 business days notice

Meeting Agenda

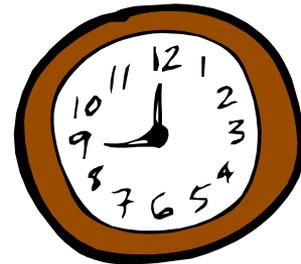


- **All governing bodies –
Issue meeting agenda 3 business days in
advance of meeting**
- **Business days do not include the day of the
meetings, weekends or legal holidays**
- **Post in public place by close of business on
day # 1**

Meeting Agenda



- Agendas need not be **published** – only **made available**
- Posting in a public place meets the minimum requirements
- Agencies encouraged to post on website



Meeting Agenda



- **List all items requiring official action on the agenda**
- **Official action involves anything requiring a vote of the governing body**
- **Be specific – no generic headings, e.g. personnel**



AMENDING AN AGENDA

- **Agenda may be amended up to two (2) business days before the meeting, except for a true emergency.**
- **Amended Agenda must be made available to the public and media in the same manner as the original agenda.**

What is an emergency?

- Emergency meeting is any meeting called by a governing body to address an unexpected event requiring immediate attention because of an imminent threat to public health or safety; an imminent threat of damage to public or private property; or 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 Procedures



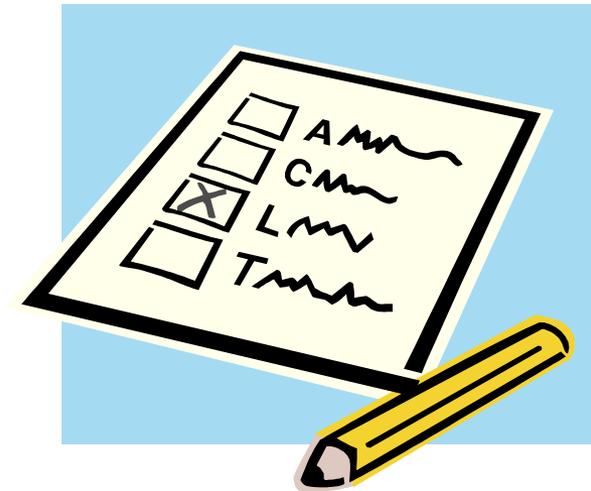
- Members may participate by telephone
- Members participating by telephone must be able to **hear** what is said by the members who are physically present
- Public present at meeting must be able to **hear** what is said over the phone



Meeting Procedures



- **May not vote by secret or written ballot**
- **Voting must take place by verbal statement or show of hands**
- **No proxy voting allowed**



Quorum quandary

- General discussions among members of a governing body on issues of interest to the public when held in a social, educational, training, informal, ceremonial or similar setting, **even if a quorum is present**, is OK so long as they do not deliberate on matters requiring them to take official action at some time.

Executive Session



- **May only go into executive session for reason permitted by Act**
- **May only go into executive session if the subject of the discussion is on the Agenda**
- **Must have motion to go into executive session identifying exemption**
- **Majority vote required to convene in executive session**

Executive Session



- **Personnel – most common exemption**
- **Hiring, firing, promoting, transfer, discipline or compensation of an employee**
- **If the subject employee requests an open session, the governing body may not conduct the discussion in executive session**

Executive Session



- **General personnel matters are not exempt and must be discussed in open meeting**
- **Examples: Across-the-board pay raise; supplemental health insurance; creating new positions**

Executive Session



May not enter executive session to discuss agenda item “A” and then continue to discuss agenda item “J” or some issue that is not even on the agenda

May not vote in executive session



Executive Session

- Be wary of conducting more business than necessary in executive session
- Public perception of meeting “behind closed doors”



Public Comment



- **Public comment periods are recommended, but not mandatory**
- **May not require speaker to sign up more than 15 minutes in advance**



Public Comment



- **May set time limits for speakers**
- **If item requires official action, place on agenda for next meeting**



Meeting Minutes



- **Minutes required for all meetings**
- **State which members of governing body were present and any who were absent**
- **Must identify who made each motion**
- **Show the outcome of each vote on all motions, proposals, resolutions, orders, ordinances and measures**
- **Not required to show who voted for or against an item unless there is a roll call vote**

Open Meetings Advisory Opinions



- Issued by the Commission
- Discussed and approved in a public meeting
- Name of requester/agency identified
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Violations



**Intentional violations
are a criminal
misdemeanor subject
to prosecution by the
County Prosecutor**



Violations



Even inadvertent violations may result in Circuit Court order rescinding official action and awarding attorney's fees and court costs to party who filed complaint



OPEN MEETINGS ACT



What are the answers to the following OMA questions?

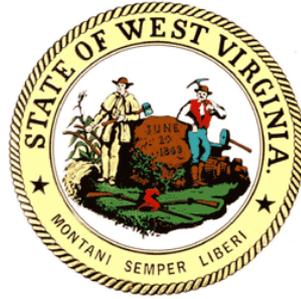


The County Commission needs to purchase property for a new 911 Center. The Commission Members tour several properties which are being considered. Is this okay?

- ★ **At each meeting, the Board allows time for public comment. During the public comment period, a parent suggests that the Board adopt a new policy. The Board likes the idea so it votes to adopt the policy. Is this okay?**

Commissioners make a number of phone calls among themselves trying to agree on whether to propose legislation on a particular issue.

Is this okay?



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