

# West Virginia Ethics Commission

## 2019 Ethics Act and Open Meetings Act Training



Presented By:  
Theresa M. Kirk  
Staff Attorney

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## Jurisdiction



- Ethics Act
- W. Va. Code § 61-10-15 (*County officials and employees*)
- Open Meetings Act
- School Board eligibility
- Administrative Law Judge Code of Conduct
- Lobbyists registration
- Financial Disclosure Statements

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## Who is covered by the Ethics Act?

- Public employees
- Elected and appointed public officials
- Public servant volunteers - in general – person who is not paid but is vested with powers ordinarily reserved to public officials
- Legislative, judicial and executive branches of state government
- County and municipal governments and their boards



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## Advice



- Informal Advice – Ethics Commission staff
- Advisory Opinions – on Commission website
- May request a formal Advisory Opinion – issued by the WV Ethics Commission

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## Topics of Ethics Act



- Gift and Solicitation Rules
- Prohibited Public Contracts
- Employment Restrictions
- Private Gain
- Voting
- Financial Disclosure Statements
- Conflicts of Interest

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## Gift Rules



W. Va. Code § 6B-2-5(c) and  
Legislative Rule - Title 158, Series 7

### General Rule

Do **not** accept a gift with a fair market value over \$25 per year from an **interested** person. But there are exceptions.



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## Gift Rules

An **interested** person is:

- A Lobbyist

Or one who:

- Seeks or does business with the public servant's agency (vendor);
- 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 nonperformance of official duties.

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## 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
- Reasonable travel, meals and lodging expenses for being a speaker at conference
- Gifts that are purely private in nature

Ethics Commission Gift Guideline – outlines other exceptions

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## Gift Rules

May you accept a free trip to Myrtle Beach that you won as a door prize from a vendor at a conference?

**Answer:** No – AO 2006-07. But what if the vendor offers to pay your expenses to attend a conference at Myrtle Beach?





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## Gift Rules

May you accept a discount on a cellular phone service plan offered by a vendor to public employees?

**Answer:** Yes. If the discount is not solicited and is part of the company's standard practice.  
AOs 2010-02 and 2017-07.

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## 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.

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## Gift Rules

May you ask a vendor for free dog food for your dog?


What about dog food for the humane society?

If the solicitation is okay, are there rules on oral solicitations? Yes. Legislative Rule, Title 158, Series 7.




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## Prohibited Contracts

W. Va. Code § 6B-2-5(d)

- Elected public officials and employees may not have a financial interest in a public contract under their authority or control (\$1,000 threshold).
- This means almost all financial transactions (e.g., purchases, leases, labor, gas, hardware and sales) except employment contracts with governmental bodies.



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## Prohibited Contracts

W. Va. Code § 6B-2-5(d)

Part-time appointed officials are not subject to prohibition, but they must recuse themselves if a conflict arises.




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## Prohibited County Contracts

W. Va. Code § 61-10-15

- W. Va. Code § 61-10-15 prohibits some county officials from having personal financial interests, directly or indirectly, in a contract, purchase or sale over which their public position gives them voice, influence or control.



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## Prohibited County Contracts

### Exceptions

- Nothing prevents or makes unlawful the employment of a spouse as a principal or teacher or auxiliary or service employee in the public schools of any county.
- Does not apply to any person who is a salaried employee of a vendor or supplier if the employee meets the five criteria found in W. Va. Code § 61-10-15(e).

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## Public Contracts

### Exemptions

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



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## Employee – Seeking Employment

W. Va. Code § 6B-2-5(h)

Full-time public employees may not seek employment with 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


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## Seeking Employment

W. Va. Code § 6B-2-5(h)

**Full-time** public employees who are subject to restrictions on seeking employment in the private sector may obtain an employment exemption. Guideline and application form on Ethics Commission website.



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## Employees - second jobs


W. Va. Code § 6B-2-5(h)

Restrictions apply if you are full-time and the second job is with a vendor or person conducting business with your agency. Otherwise, a second job is okay if you:

- ✓ Perform work on your own time
- ✓ Follow agency rules
- ✓ Do not get paid for doing something which is part of your job duties

If two public jobs – may need to file time records with the Ethics Commission


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## Other jobs and business opportunities

**Remember – full-time public officials and employees** - do not conduct private business with vendors or regulated persons.

**Example:** A County Assessor may not have a real estate business in the county where he or she serves. Advisory Opinion 2011-14



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## Other Jobs/ Public Contracts

**Question:** Is it permissible for a public laborer's private trucking business to subcontract with a contractor of the agency which employs him?

What if the public employee is an inspector at the job site where the contractor works?

**Answer:** See A.O. 2013-22



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## Post-employment restrictions

W. Va. Code § 6B-2-5(f)

- Public official or employee may not represent a client in a matter in which he or she is or was substantially involved on behalf of the agency unless the agency consents.
- Prohibition applies forever.

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## 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, appear in a representative capacity 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



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## Use of Public Office for Private Gain

W. Va. Code § 6B-2-5(b)

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




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## Private Gain Nepotism

- "Nepotism" means favoritism shown or patronage granted in employment or working conditions by a public official or public employee to relatives or persons with whom the public official or public employee resides.
- "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.
- Must follow the Legislative Rule at 158 C.S.R. § 6.




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## Use of Public Office for Private Gain

### Nepotism

- Must administer employment and working conditions in an impartial manner.
- To the extent possible, 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.



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## Use of Office for Private Gain

### Nepotism

W. Va. Code § 61-10-15 - County commissions and agencies subject to stricter limitations. May not hire a commissioner's spouse or immediate family member.


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## Use of Public Office for Private Gain

### Unauthorized Spending

- The Ethics Commission only has authority to determine whether a proposed expenditure violates the private gain provision of the Act.
- The Commission considers, among other factors, whether the proposed expenditure is authorized elsewhere.
  - W. Va. Code
  - Legislative Rules
  - Attorney General Opinions
  - Auditor Opinion Letters




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## Use of Public Office for Private Gain

### Paying for Meals

- Review applicable laws to determine whether there is express or implied authority for the expenditure.
- Unauthorized expenditures for meals violate the private gain provision of the Act if the overriding benefit is to the employee, or another person, and not the government agency.



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## Use of Public Office for Private Gain


**Question:** May you, while on state business, use a personal rewards card when purchasing fuel with a state-issued credit card and keep the rewards points for yourself?

A.O. 2019-13



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## Use of Public Office for Private Gain

### Employee Recognition

- May use public funds to recognize public employees because it serves a public purpose of promoting employee morale through recognition of achievement.
- \$25 per employee per year
- May be used, for example, to purchase light refreshments, meals or mementos of appreciation.




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## Use of Public Office for Private Gain


### Retirement Gifts/Events

- May spend up to \$100 of public funds to purchase plaque or other commemorative item.
- Usually, may not spend public funds to pay for meals, food, or beverages at an event.



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## Use of Public Office for Private Gain

### Endorsements

- Do not endorse commercial products. Do not give testimonials such as town was a "satisfied customer."
- A.O. 2017-24: Can sell ads but should use disclaimers and make ads available to other businesses.





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## Confidential Info

W. Va. Code § 6B-2-5(e)

Do not disclose confidential information or use that information to further your 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.





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## Limitations on Public Official's Name or Likeness

- May not use public funds, public employees, or public resources to distribute, disseminate, publish or 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).
- Example – do not use agency funds to buy coffee mugs with the name of an elected official on it.

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## Public Official's Name or Likeness

- May use name or likeness on educational material and press releases so long as the primary purpose is to provide information. W. Va. Code § 6B-2B-2(d)-(e).
- Educational material defined as publications, guides, calendars, handouts, pamphlets, reports or booklets....It includes information...about the office, services the office provides to the public, updates on law.... W. Va. Code § 6B-2B-1(c).

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## Public Official's Name or Likeness

- May use public funds to communicate with constituents in the normal course of duties but do not include any reference to voting in favor of the public official in an election.
- May use name on letterhead, envelopes, reports, certificates, office signs, press releases



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## Public Official's Name or Likeness

### Websites & Social Media

- May appear on the agency's website or social media so long as it is reasonable and has a primary purpose to promote the agency's mission and services rather than to promote the public official.
- May be in biographical info, educational materials, and press releases.



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## Voting

W. Va. Code § 6B-2-5(j)



- May not vote if public official or employee, or an immediate family member, or a business with which they or a family member is associated, have a financial interest. (Class exception - five similarly situated)
- Public officials may not vote on a personnel matter involving a relative.

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## Voting

W. Va. Code § 6B-2-5(j)

- 2017 Amendment: If member also serves on a non-profit, the agency may still make appropriations to the non-profit.
- May not vote if member or spouse is employed by non-profit.
- An unpaid non-profit board member may vote if relationship with non-profit disclosed on agenda, at the meeting and in the minutes



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## 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




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## Financial Disclosures

W. Va. Code § 6B-2-6

- Elected and certain appointed officials and employees in state government and elected county officials must file by February 1 annually.
- File within 30 days of taking office or employment; and candidates or elected office must also file within 10 days after filing their candidacy papers with Secretary of State.
- Must report business interests, sources of income and contracts with public agencies in the state.
- Must report receiving gifts over \$100 from a person or entity who has direct and immediate interest in the outcome of the public official's work.



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## Financial Disclosures: Executive Branch filers

- All members of state boards, commissions and agencies appointed by the governor.
- Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.
- The above positions in state colleges and universities do not have to file.

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## 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.

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## Open Meetings Act

- Enacted in 1975
- State, county, and municipal administrative and legislative bodies, and any bodies that meet the definition of "public agency," are subject to the Act.



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## Topics of Open Meetings Act

- Definition of "Meeting"
- Exceptions to having Open Meeting
- Notice of Meeting
- Agenda for Meeting
- Executive Session
- Meeting Minutes
- Violations



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## "Meeting" defined

A "meeting" is defined by the Act as:

- The convening of a governing body of a public agency
- For which a quorum is required in order to make, or deliberate toward, a decision
- On a matter which results or will result in official action.

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## Exceptions

- Adjudicatory
- On-site Inspection - construction site
- Political Party Caucus



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## Exceptions

- General Discussion
  - Planned or unplanned
  - Social, educational, training, informal, ceremonial or similar setting
  - Without intent to conduct public business and
  - No intention for the discussion to lead to an official action



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## Exceptions


- The "general discussion" exception is most difficult to follow. Some guidelines:
  - If discussion is about something that will lead to official action, either right then or at a later time, the meeting must be noticed.
  - Does not prevent a quorum of members of the governing body from going to the mayor's house for barbecue.
  - Does prevent a quorum of members of the governing body from going to the mayor's house for barbecue and a discussion about the new budget.

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## Notice and Agenda

**Please Notice This**



**The Open Meetings Act** requires advance notice of the date, time, and place of the meeting, including any committee meeting, and an agenda of all matters to be considered and/or discussed.

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## Notice and Agenda

- "Regular meeting" notice must be posted and agendas made available **THREE** business days in advance (unless you meet every week, then two days).
- "Special meeting" notice must be posted and agendas must be made available **TWO** business days in advance.
- **Bul** – state agency = **FIVE** business days notice.
- The agenda must be made available at the organization's place of business by close of business on the first day.




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## Notice WV SOS

- WV SOS - Administrative Law - Meeting Notices - Online Data Services Page



Online Entry Example
8/3/2017 -- 9:30 AM
Ethics Commission Open Governmental Meetings Act Committee
To act upon requests for Advisory Opinions interpreting the West Virginia Open Governmental Meetings Act.
The agenda is available on Friday before the meeting at the Commission's office and online at <a href="http://www.ethics.wv.gov">www.ethics.wv.gov</a> .

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## 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.

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## Meeting Agenda

- Agendas must give reasonable notice to the public of every issue to be discussed
- Items must be specific enough to put the public on notice of intended action
- Vague headings are insufficient, e.g.,
  - Old Business
  - New Business
- Open Meetings Advisory Opinion 2008-17

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## Meeting Agenda

- "Personnel" is also too vague a description
- Instead, use "*filing position of office manager,*" or "*open sealed bids for XYZ project*"



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## Amending Agendas

- The agenda may be amended up to **TWO** business days before the meeting.
- The amended agenda must be made available to the public and media in the same manner as the original agenda.
- The only circumstance under which the agenda may be amended during a meeting is if an emergency arises.
- OMAO 2006-15

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## Amending Agendas

- Routine matters that arise after the deadline to amend an agenda must be held over to the next regular or special meeting.
- If an agenda is amended due to an emergency, both the meeting agenda and the meeting minutes must explain the facts and circumstances of the emergency.

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## Executive Session

W.Va. Code § 6-9A-4

- May only go into executive session for reasons permitted by the Open Meetings Act.
- There must be a corresponding agenda item.
- The motion to go into executive session must identify the reason for entering the session.
- Majority vote of those present is required.
- No decision may be made in the executive session.

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## Executive Session Reasons include -

- To consider personnel matters of a particular public official or employee.
- To decide upon disciplining, suspension or expulsion of any student in any public school or public college or university, unless the student requests an open meeting.
- To discuss matters which, by express provision of federal law or state statute or rule of court is rendered confidential, or which is not considered a public record within the meaning of FOIA. Open Meetings Act A.O. 2017-02.
- W. Va. Code § 6-9A-4 (contains complete list)

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## Meeting Minutes

W.Va. Code § 6-9A-5

Minutes required for all meetings, including committee and sub-committee meetings, but not executive sessions

- OMAO 99-09



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## Minutes

The Open Meetings Act specifies the information required to be in the 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.

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## 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 Brooke Street, Charleston, West Virginia, at 8:30 a.m., by Chairperson Lawrence Tweel. Present in person were Chairperson Tweel and Committee Member Betty S. Inland. Present via teleconference were Committee Member Suzan Singleton and Executive Committee Member Robert J. Wolfe. Executive Director Rebecca L. Strub, General Counsel Kimberly B. Weber, Staff Attorney Andrew Herrick, Staff Attorney Derek A. Knopp, and Special Assistant to the Executive Director M. Elean Briggs, all from the Commission staff, were present.

WHEREUPON, Chairperson Tweel asked for approval of the November 3, 2016, meeting minutes.

WHEREUPON, Committee Member Inland 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 Inland 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 Inland 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.

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

ATTEST:

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

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## Minutes

W.Va. Code § 6-9A-5

- Meeting minutes must be made available within a "reasonable time."
- "Reasonable time" defined by OMAO 2010-04 as "close of business on the next **business day** following [the next meeting]."
- 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.

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## Open Meetings Advisory Opinion 2019-02

May not prohibit the public or the media from using equipment necessary for broadcasting, photographing, filming or recording a meeting unless it is to prevent undue interference with the meeting.



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## 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.



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## West Virginia Ethics Commission



210 Brooks Street, Suite 300

Charleston WV 25301

(304) 558-0664

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

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

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