

West Virginia Ethics Commission

2024 Ethics and Open Meetings Act Training

Presented By:

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Executive Director



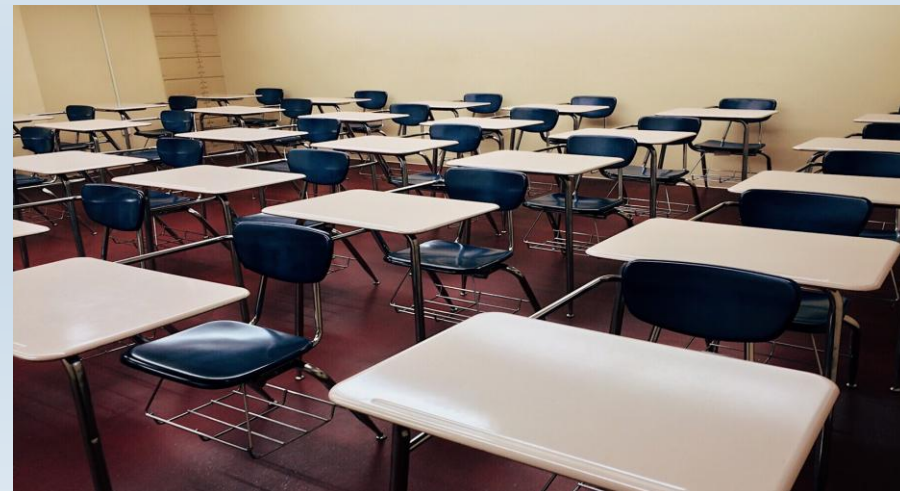


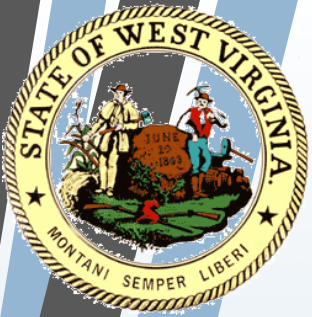
WV Ethics Commission

- School board eligibility
- W. Va. Code § 61-10-15
(County officials and employees)
- ALJ Code of Conduct
- Lobbyists Registration
- Financial Disclosure Statements

School Board Eligibility

BOE member may not hold (or run for) any other “public office,” unless other office is uncompensated and unrelated to public schools. W. Va. Code § 18-5-1a(a)(3).



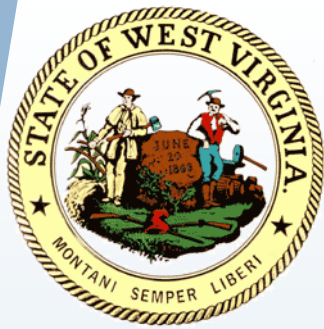


BOE Prohibited Public Offices

**2003-02: County Emergency
Ambulance Authority**

2004-03: Public Service District

2010-01: County Board of Health



Lobbying Contracts

W. Va. Code § 6B-3-10:

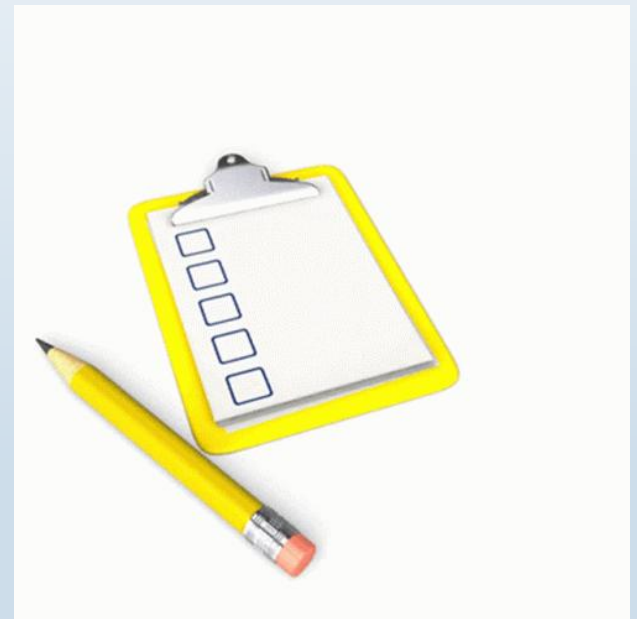
Disclosure requirements for government agencies that contract for lobbying services, including filing lobbyist contracts with the Ethics Commission





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.
- Must be more than a *de minimis* use or gain for personal purposes.

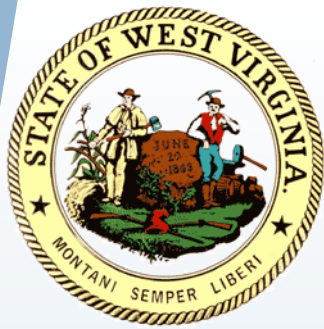




Use of Public Office for Private Gain

W. Va. Code § 6B-2-5(b)





Bonus Points

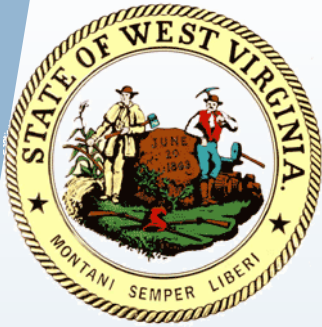
Private Gain

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



Non-travel related reward points
Merchandise from online catalog





Real Life Examples

P card misuse

CIC 2017-05

An administrator at a College or University was a P card holder in the football program. He used bonus points from purchases of sportswear he made for the team to buy \$540 for personal apparel for himself and his family. He received a public reprimand, and \$1,000 fine, and restitution.





Real Life Examples

Private Gain

Settlements a/k/a Conciliation Agreements

- A Mayor had town employees fix water leaks at his house.
- A State agency director stored his personal furniture in the state's office building.
- Public Service District employees sold PSD equipment on eBay and kept the money.



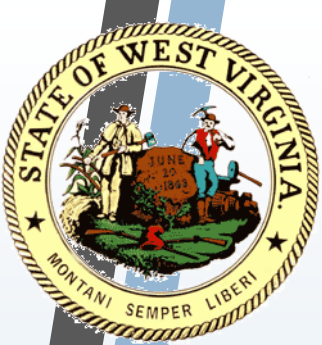
Use of Public Office for Private Gain

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.





Elected clerk uses her Office's dumpster

- Caller noticed a large amount of trash (roof shingles) in the public Office's dumpster from the weekend.
- Security cameras showed the clerk and her husband.
- Not the first time.





Use of Public Office for Private Gain

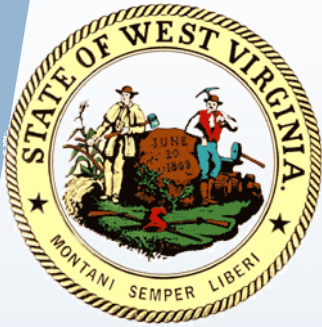
Prestige of Office

Circuit Clerk tried to convince arresting police officer not to take him to jail.



- Statements like "You know I am the Circuit Clerk."
- Threats to retaliate against the arresting officer.

Agreed to settlement



Use of Public Office for Private Gain

Agency may not allow its employees to use (more than de minimis amount of) their agency-provided cell phone as their personal cell phone unless the employees pay a reasonable fee to the agency. Even if unlimited plan.

No commercial or political campaign use.





Use of Public Office for Private Gain

Unauthorized Spending

The Ethics Commission has limited involvement in determining whether a proposed expenditure is okay.

- W. Va. Code
- Legislative Rules
- Attorney General Opinions
- Auditor Opinion Letters
- Agency's attorney





Nepotism

May not

- directly supervise or
- participate in employment or working conditions
- of a relative or
- a person living in same residence
- Exception: Required by law and independent and third party involved.



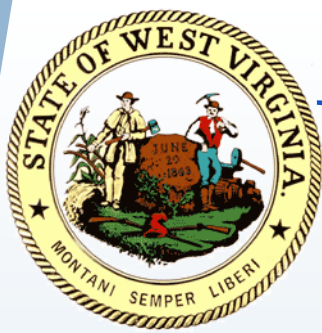


Nepotism

"Relative"

- spouse
- children
- parents, siblings
- grandparents
- grandchildren
- parents-in-law
- siblings-in-law
- "kids"-in-law





Use of Public Office for Private Gain Nepotism

A.O. 2020-13 A principal's wife, sister, and brother-in-law may be employed in the same school where he serves as principal, but the principal may not be involved in hiring or supervising them.





Use of Public Office for Private Gain

2024 Employee Recognition/Retirement Events

A light blue sticky note pinned to the left side of the slide with a green pushpin. The note has the text "Great Job!" written in black cursive, with a simple smiley face drawn below it.

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](#).

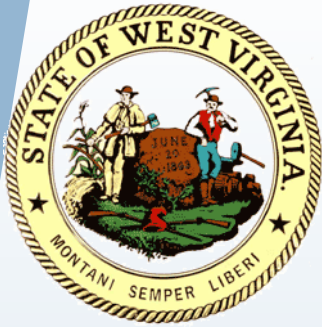


Use of Public Office for Private Gain

Retirement Gifts/Events

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





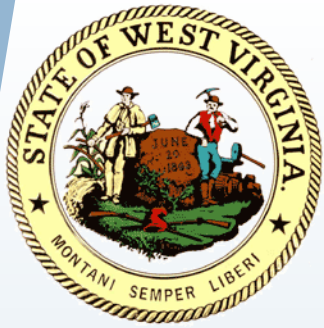
Use of Public Office for Private Gain

State agency director of nine employees held employee morale events at a painting studio (\$350) and a sports bar (\$190)

Employee Recognition Guideline max is \$25 per employee not \$60.

Also spent \$37 on an edible arrangement for a sick employee





Commercial Endorsements

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

Exception: Overriding public benefit





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]



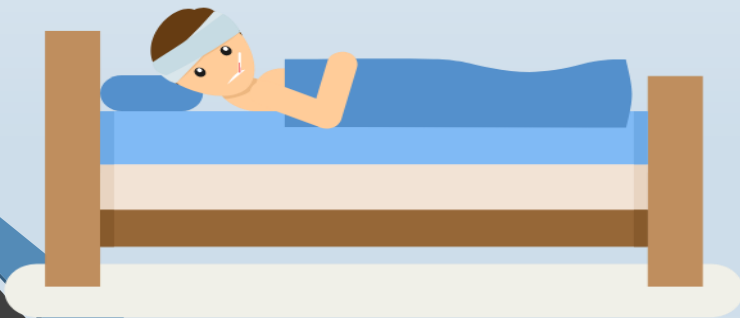
Improper disclosure of confidential information is a criminal misdemeanor!



Confidential Info

W. Va. Code § 6B-2-5(e)

A Sheriff used a deputy's confidential medical information to campaign against him.





Gift Rules

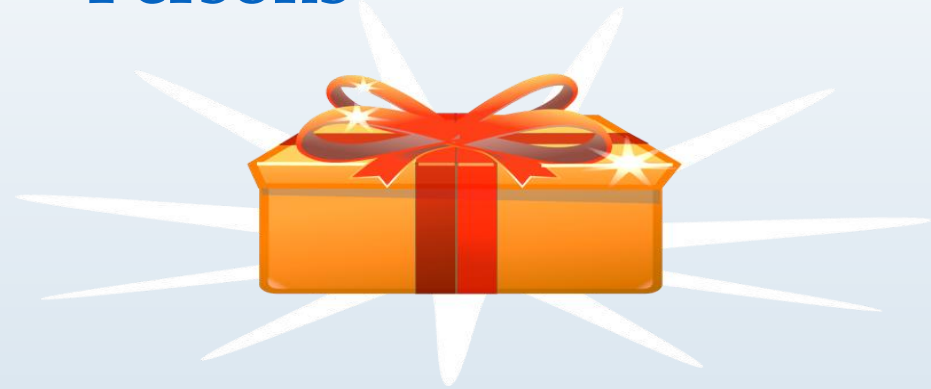
No Gifts over \$25 from Interested Persons

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.



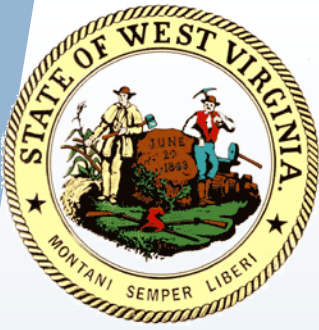


Gift Rules

No Gifts over \$25 from Interested Persons

A university procurement officer accepted two free NFL tickets from a vendor.





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

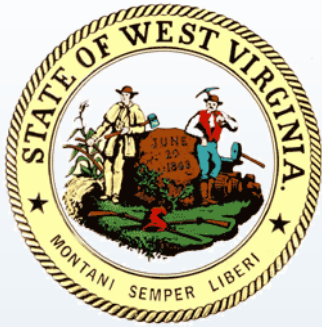


Gift Rules

W. Va. Code § 6B-2-5(c)

Solicitation of gifts is generally prohibited.





Gift Rules

Charitable Solicitations

W. Va. Code § 6B-2-5(c)

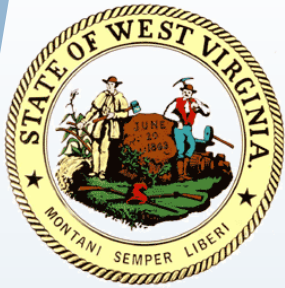
Gifts may only be solicited for a charitable purpose, such as the United Way.



Public agency may impose stricter standards.

Supervisors may not solicit contributions from a subordinate.

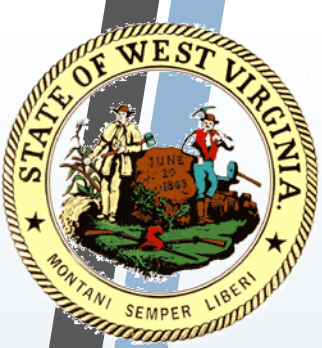
May solicit other public agencies 2019-11



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

The law prohibits state, county and municipal entities from dedicating or naming any public building or public structure for a public official who is currently holding office. W. Va. Code §§ 5-6-4, 7-3-19, and 8-12-22.





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 direct authority or control.





Prohibited Interest in Agency Contracts

W. Va. Code § 6B-2-5(d)

A city paving contract is under the “direct authority” of the Mayor and City Council members.





Control over Agency Contracts

W. Va. Code § 6B-2-5(d)

“Control” over an agency’s decision to enter into a contract may be evidenced by:

- Instigation of the contract
- Close involvement with the ultimate decision
- Supervision or oversight of the contract which will be performed

Advisory Opinions 1992-03, 1995-02 & 1999-02



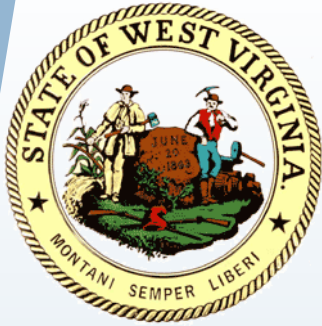


Prohibited Contracts Exceptions

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.



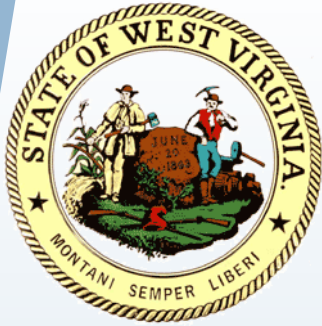


Prohibited County Contracts

W. Va. Code § 61-10-15

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



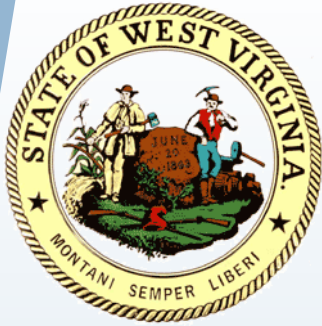


Prohibited County Contracts

W. Va. Code § 61-10-15

W. Va. Code § 61-10-15 applies to a county commissioner and board members, district school officer, secretary of a Board of Education, supervisor or superintendent, principal or teacher of public schools.





Prohibited County Contracts

W. Va. Code § 61-10-15

BOE examples:

Member could work for WVU Extension Services due to small appropriation and lack of power to make appointments to her local extension service committee. 2018-05

Member could work for staffing agency to perform work for a textbook company that markets textbooks and educational materials. AO 2018-10

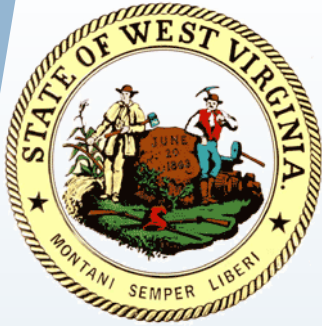
BOE may not contract with a business that leases commercial property from a company owned by the board of education member's spouse. AO 2017-15.



Prohibited County Contracts Exceptions



- Spouses may be employed in the public schools as principals, teachers and service personnel, and may be licensed health care providers at government-owned hospitals. 2023-04 A county commissioner's spouse may be employed by the county ambulance service as a licensed emergency medical technician or paramedic.
- County official may work for a county vendor as a salaried employee if the employee meets the five criteria found in W. Va. Code § 61-10-15(e). (No commission, not owner, etc.)
- County official (and spouses) may work for banks regardless of a county's fiduciary interests in the bank



Prohibited County Contracts

W. Va. Code § 61-10-15

The 2022 new exception permits county officials to have pecuniary interests in contracts for goods and supplies if the county official is the lowest bidder, gets opinion from Commission, and meet other conditions.

But not for services.



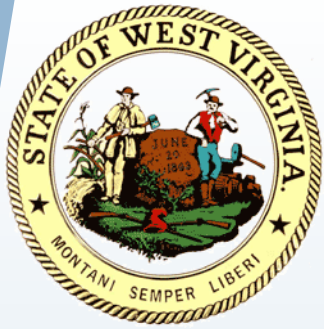


Public Contract

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

Exemptions





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

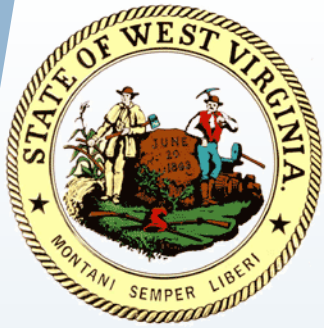


Recusal

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

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





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





Financial Disclosures

W. Va. Code § 6B-2-6

Must file by February 1 annually.

(1) Elected state and county officials and school superintendents.

(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.





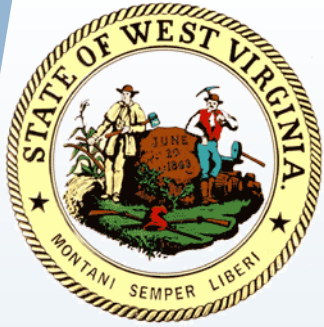
Disclosure of \$1 million dollar State Contracts

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



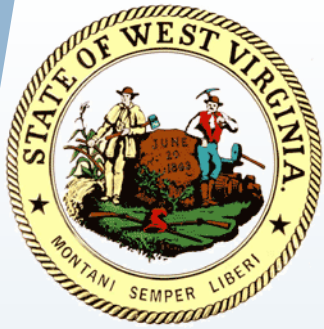


Sanctions

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.





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.





Topics of Open Meetings Act

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



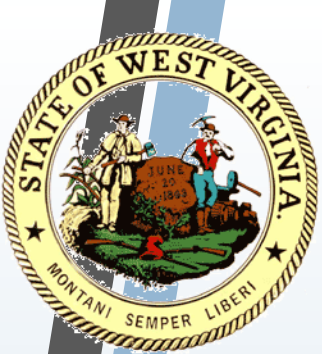


Meeting defined

A meeting is subject to OMA when:

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





Meetings NOT Subject to OMA

Logistical matters

e.g., creating the agenda

2019-03

Adjudicatory

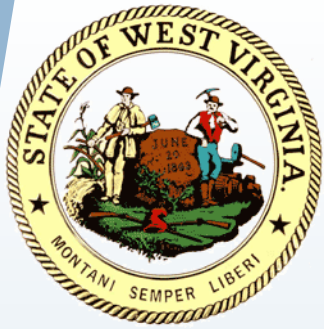
e.g. suspending a license

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



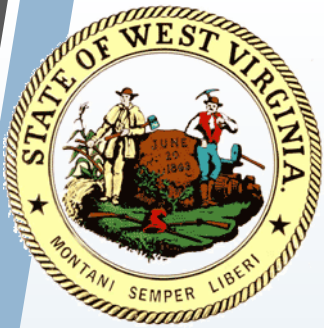


In-person Meeting

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 posting advance notice of the

- date
- time
- place of the meeting



Meeting Notice/Agenda Time

- Promulgate Rules or
- Regular meeting notice = **3** business (unless you meet every week, then 2 days)
- 'Special meeting' = **2** business days





Emergency Meeting

W. Va. Code § 6-9A-2-(2)

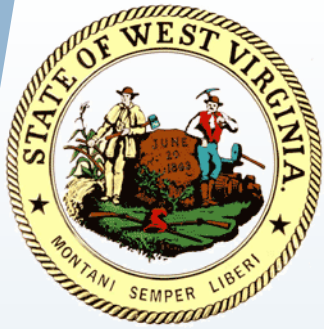
(2) addressing an **unexpected event** which requires **immediate attention** because it poses:

(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



Don't take up
agenda.

issues not on the

Hold them over for next agenda.



Be Specific on Agenda

Put the public on notice of intended action.

Vague headings are insufficient, *e.g.*,

Old Business

New Business

Personnel

Opening sealed bids



Instead, use *"fill position of office manager,"* or *"open sealed bids for city hall roof repair project."*



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 state “executive session,” but must identify 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).





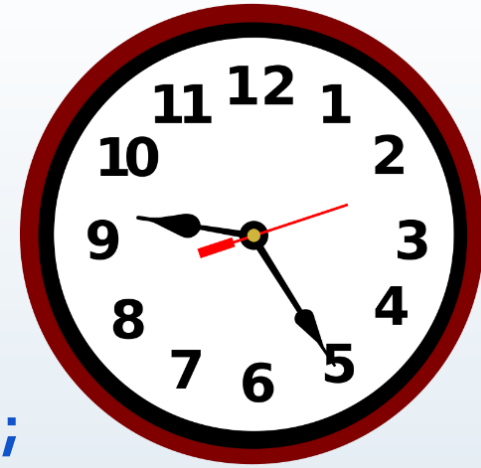
Executive Session

Reasons -W. Va. Code § 6-9A-4

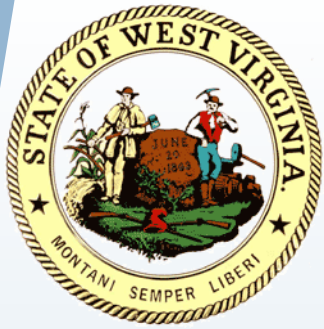
- Personnel matters of a particular public official or employee. But must vote in public and announce employee's name. OMAO 99-10
- Involving commercial competition, which if made public, might adversely affect a public financial or other interest
- Confidential - by express provision of federal law or state statute or rule of court
- Student disciplining, suspension or expulsion in a public school or public college or university, unless the student requests an open meeting



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.

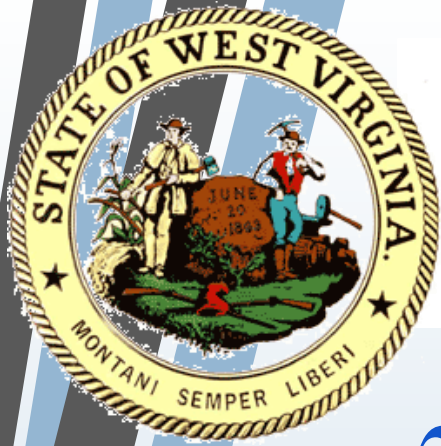


Violations

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

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