



State of West Virginia
Office of the Attorney General

Patrick Morrissey
Attorney General

April 27, 2017

(304) 558-2021
Fax (304) 558-0140

Mr. F. Cody Pancake, III
Prosecuting Attorney
Office of the Prosecuting Attorney of Mineral County
P.O. Drawer 458
Keyser, WV 26726

Dear Prosecutor Pancake:

You have asked for an Opinion of the Attorney General regarding whether volunteer fire departments are required to conduct meetings under the Open Meetings Act (the "Act"). This Opinion is being issued pursuant to West Virginia Code § 5-3-2, which provides that the Attorney General "may consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office." To the extent this Opinion relies on facts, it is based solely upon the factual assertions set forth in your correspondence with the Attorney General's Office.

In your letter, you explain that Jason R. Sites, Esquire wrote you to request an opinion from this Office as to whether local volunteer fire departments are required to conduct meetings under the Open Meetings Act. You note that the volunteer fire departments receive public funds, and explain that you think that the departments are subject to the Act. In his letter to you, Mr. Sites explains that many of the local volunteer fire departments want their meetings to be open to members only except for a period of public comment designated on the agenda. He explains that he has reviewed the West Virginia Open Meetings Act and is of the opinion that the fire departments are not required to conduct open meetings because they are not public agencies or governing bodies under West Virginia Code § 6-9A-2. Mr. Sites explains that he also reviewed Chapter 29 of the Code relating to fire departments and could not find any guidance on fire department meetings.

Your letter raises the following specific legal question:

Does the West Virginia Open Meetings Act require local volunteer fire departments to conduct open meetings?

After a review of the relevant law, we recommend that that the Mineral County volunteer fire departments seek one or more written advisory opinions from the Open Governmental Meetings Committee of the West Virginia Ethics Commission about whether they must conduct open meetings pursuant to the Open Meetings Act.

The Open Meetings Act provides that “[e]xcept as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public.” W. Va. Code § 6-9A-3(a). The Code defines a “governing body” as consisting of “two or more members” of “any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration.” W. Va. Code § 6-9A-2(4). It further defines “[p]ublic agency” [as] any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power.” W. Va. Code § 6-9A-2(7).

In 1999, the Legislature amended the statute to create the Open Governmental Meetings Committee of the West Virginia Ethics Commission (“the Committee”). W. Va. Code § 6-9A-10. Under the statute, “[a]ny governing body or member thereof subject to the provisions of this article may seek advice and information from the executive director of the West Virginia Ethics Commission or request in writing an advisory opinion from the West Virginia Ethics Commission Committee on Open Governmental Meetings as to whether an action or proposed action violates the provisions of this article.” W. Va. Code § 6-9A-11(a). Any governing body or member “that seeks an advisory opinion and acts in good faith reliance on the opinion” or in good faith reliance on an opinion requested by another “has an absolute defense to any civil suit or criminal prosecution for any action taken in good faith reliance on the opinion.” *Id.* § 6-9A-11(b)-(c).

We have identified two of the Committee’s advisory opinions that are relevant to your question. In the first opinion, the Committee concluded that the Whitesville Volunteer Fire Department was subject to the Act. The Committee reasoned that the department was “established by town ordinance,” is a “subunit of [the] city council” that receives funds from the municipality, and exercises the executive authority to “enforce[e] the fire prevention code, recommend[] modifications in individual cases and provid[e] firefighting services to the public.” Open Meetings Advisory Opinion No. 99-03.¹

In the second opinion, the Committee determined that the McClellan District Volunteer Fire Department was not subject to the Act. That department was incorporated as a non-profit private organization that received funds from private contributions, as well as the State and Doddridge County. The Committee reasoned that the McClellan fire department was not a public

¹ The Committee’s advisory opinions from 1999 to present are available at <http://www.ethics.wv.gov/advisoryopinion/Pages/OpenMeetingsOpinions.aspx#agency>.

Mr. F. Cody Pancake, III

April 27, 2017

Page 3

agency subject to the Act because it had not been created as a public entity, unlike the Whitesville fire department, which had been established by town ordinance. Rather, the McClellan fire department “was initially formed as a not-for-profit corporation years before the [Open Meetings] Act became law” and thus “exists independent of state authorization.” Open Meetings Advisory Opinion No. 2007-04 at 1–2. The advisory opinion further explained that “an organization’s receipt of state or local funds” is not “a factor in determining whether an organization is a public corporation” subject to the Act. *Id.* at 2.

The answer to your question thus depends on facts specific to each volunteer fire department and which we have not been provided. Specifically, the Committee opinions appear to establish that volunteer fire departments are subject to the Open Meetings Act if they been “created by state or local authority to carry out a governmental function.” *Id.* But where a volunteer fire department “exists independent of state authorization,” it is not subject to the Act. *Id.* The receipt of governmental funding does not appear to be relevant to the applicability of the Act.

Even if we had the relevant facts, we would recommend that the Mineral County volunteer fire departments seek one or more written advisory opinion from the Committee about whether they must conduct open meetings pursuant to the Open Meetings Act. The Act provides for an “absolute defense to any civil suit or criminal prosecution for any action taken in good faith reliance on” an opinion issued by the Committee. W. Va. Code § 6-9A-11. An Opinion from this Office interpreting and applying the Committee’s opinions does not have the same effect.

Sincerely,



Patrick Morrisey
Attorney General

Elbert Lin
Solicitor General

Erica N. Peterson
Assistant Attorney General