

IN THE COUNTY COMMISSION OF WOOD COUNTY, WEST VIRGINIA

IN RE: MINUTES OF MEETING HELD
THURSDAY, JUNE 24, 1999

PRESENT: HOLMES R. SHAVER, PRESIDENT
ROBERT K. TEBAY, COMMISSIONER
DAVID A. COUCH, COMMISSIONER

On this date, the County Commission of Wood County met in regular session. They signed purchase orders, invoices and correspondence.

On this date, the County Commission approved an Erroneous Assessment Application regarding personal property for Larry K. Dotson, in Tygart District for 1997.

At 9:30 A.M., the County Commission held a hearing regarding the Alvin Yeater Estate to have the Sheriff appointed as Executor.

At 10:00 A.M., the County Commission held a hearing regarding the Denzil G. Lanham Estate, with Attorney Thomas Zimmerman.

At 10:30 A.M., the County Commission met with Ginny Conley, Prosecuting Attorney to discuss the Open Governmental Proceedings. After much discussion and many questions, Ginny Conley explained she had attended a meeting in Charleston conducted by Howard Seufer, Attorney, with the law firm of Bowles, Rice, McDavid, Graff & Love. She discussed some of the things that are not covered, such as, general discussions with no intent to lead to action, on site inspections, discussions of meeting logistics and procedures, open/closed meetings expressly and specifically provided by other provisions of law. The act does cover when, where, how for meeting notice; meeting conduct, speakers, good order, voting, media; meeting minutes, executive sessions, violations and education and interpretation. She also discussed the meaning of meeting, meeting notice, meeting conduct, meeting minutes, executive sessions, etc.

On this date, Abbi Anderson, Vicki Davis, Kari Hughes and Brian Merritt were sworn in as temporary part-time employees in the Sheriff's Tax Office.

On this date, the County Commission, upon a motion made by Robert K. Tebay, seconded by David A. Couch and passed, authorized Holmes R. Shaver, as President, to execute the letter requesting a budget revision in regard to the STOP Violence Against Women Program Grant Number 98-VAW-005 in the amount of two thousand five hundred dollars and 00/100ths cents (\$2500.00). An Order was prepared regarding this matter.

On this date, the County Commission, upon a motion made by Robert K. Tebay, seconded by David A. Couch and passed, authorized Holmes R. Shaver, as President, to sign a Partial Release on Lot Number 14 of Woodland Falls Subdivision. An Order was prepared regarding this matter.

On this date, the County Commission was in receipt of Grant Adjustment Notice Number Five (5) from the Division of Criminal Justice Services, Charleston, West Virginia, in regard to the STOP Violence Against Women Grant Number 97-VAW-008. An Order was prepared regarding this matter.

On this date, the County Commission, upon a motion made by Robert K. Tebay, seconded by David A. Couch and made unanimous by Holmes R. Shaver, did EXECUTE the Wood County Correctional Center Letter of Agreement with the Mid-Ohio Valley Health Department. An Order was prepared regarding this matter.

On this date, the County Commission, upon a motion by Robert K. Tebay, seconded by Holmes R. Shaver and made unanimous by David A. Couch, approved the minutes of Monday, March 9, 1998; Thursday, March 12, 1998; Monday, March 16, 1998; Thursday, March 19, 1998; and Monday, March 23, 1998.

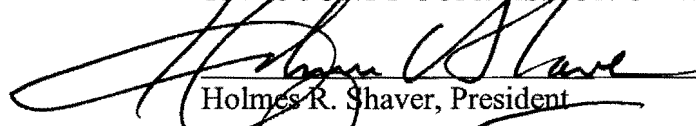
On this date, upon a motion by Holmes R. Shaver, President, seconded by Robert K. Tebay and made unanimous by David A. Couch, did adjourn their regular session to go into Executive Session under the authority and provisions of Chapter 6, Article 9A, Section 4, of the West Virginia Code, as amended.

At 11:59 A.M., the County Commission of Wood County went into Executive Session at the request of Steven A. Grimm, Assessor for Wood County. Mary R. Rader, County Administrator was also in attendance. All those present proceeded to discuss the matter for which the said Executive Session was had, being covered by Commercial Competition of the West Virginia Code Chapter 6, Article 9A, Section 4, of 1931, as amended. The Executive Session adjourned at 12:11 P.M.

Having no other scheduled appointments or any further business to attend to, the County Commission of Wood County adjourned at 12:11 P.M.

Approved:

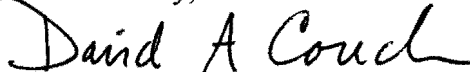
THE COUNTY COMMISSION OF WOOD COUNTY



Holmes R. Shaver, President



Robert K. Tebay, Commissioner



David A. Couch, Commissioner

PURCHASE ORDERS SIGNED JUNE 24, 1999

| | | | |
|-----|-------|------------------------|---------|
| No. | 24441 | PBM Advertising | 276.00 |
| | 24753 | Cornerstone Promotions | 4000.00 |
| | 24795 | State Electric | 120.16 |
| | 24798 | Mahone Tire | 188.44 |
| | 24799 | P A M S | 61.25 |
| | 24808 | Industrial Rubber | 23.56 |
| | 24814 | Miller Communications | 154.00 |
| | 24820 | Astorg Motor | 6.46 |
| | 24824 | Noe Office | 82.60 |

To listen to this tape, please refer to tapes 99 #200 and #201.

West Virginia
Open Governmental Proceedings Act

Howard Seufer
Bowles Rice
McDavid Graff & Love, PLLC

**Open Governmental
Proceedings Act**

West Virginia Code § 6-9A-1 through 12

Open Hospital Proceedings Act

West Virginia Code § 16-5G-1 through 7

The "Sunshine Law"

History

- Enacted in 1975
- Amended in 1978, 1979, 1987, 1993, 1999

The 1999 Amendments

- The 1999 amendments take effect 90 days from March 21, 1999, i.e., on June 19, 1999.

Legislative Intent

§6-9A-1

- The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know.

Legislative Intent

§6-9A-1

- Informed people retain control over the instruments of government.

Legislative Intent

§6-9A-1

- Openness fosters preparation and public input which allow government agencies to more closely tailor actions and policies to public needs.

Legislative Intent

§6-9A-1

- Openness, public access, and a desire to improve government operations do not require nor permit every meeting to be a public meeting.

Judicial Construction

▪ *APCO v. Public Service Commission*,
162 W. Va. 839, 253 S.E.2d 377 (1979)

▪ *McComas v. Board of Education*,
197 W. Va. 188, 475 S.E.2d 280 (1996)

Not Covered

§ 6-9A-4 (A) through (E)

lines 42-47

Gatherings of members which do not constitute meetings:

- Making adjudicatory decisions (looks like a crt proceeding)
 - * ▪ On site inspections
 - Political party caucuses
 - * ▪ General discussions with no intent to lead to action line 52
 - Discussions of meeting logistics and procedures (cancelling mtgs, rearranging etc.)
- not "decisions" may mean polling

work session -
pre-meetings are
still meetings
under this law

* applicable
for us

June 12

Also Not Covered

§ 6-9A-3

- Open/closed meetings expressly and specifically provided by other provisions of law.

The Act Does Cover

- Meeting notice: When, where, how
- Meeting conduct: Speakers, good order, voting, media
- Meeting minutes: Contents and access
- Executive sessions: Grounds and procedure
- Violations: Civil and criminal penalties and consequences
- Education and Interpretation

The Meaning of Meeting

§ 6-9A-2 (4)

- The convening of a governing body
- Of a public agency
- For which a quorum is required to make a decision or deliberate toward a decision on any matter which results in official action
- Telephone meetings *(have to have specific authority to)*

Meeting Notice: When, Where, How

§ 6-9A-3

- Purpose: Intelligent exercise of the right to know depends on notice
- Special rules for state executive branch governing bodies
- Advance notice of meetings: Reasonable time

*Promulgate Rules
red time, place
& agenda
regular & special
new that agenda
is required has
to be specific enough*

*Issue -
Adding to
agenda -
Agenda*

Meeting Conduct: Speakers, Good Order, Voting, Media

§§ 6-9A-3, 8, 9

- Written policy: Where, when
- Regular meeting: Date, time, place, agenda
- Special meetings: Date, time, purpose
- Emergency exception

- Purpose: To require open meetings even when practical problems occur

- Presumption: Open meetings

- Radio and television: Placement and use, pooling

lines 71-73
P. 7
228-241

Don't act on anything that is not on the agenda -
[Web page?] After posted - 24 hrs a day someone can read agenda

Mary - P. 5, line 161

Meeting Minutes: Contents and Access

§ 6-9A-5

- Crowded meetings: Attendance and presentation rules

- Disruption: Right to attend is not the right to disrupt

- 15-Minute rule

- Action by reference; written ballots

- Purpose: Attendees verify that what they think happened did happen, and non attendees learn what happened.

- Minimum contents

- Optional matters

- Executive sessions exception: two schools of thought

NO voting!
(don't have to have minutes like above, but info that can go in should w/o spilling beans re: session session)

reasonable rules -
p. 3/73-75

line 75-77 - disrupt orderly conduct is compromised

Executive Session: Grounds and Procedure

§ 6-9A-4

- Purpose: Carves exceptions to the right to know when exceptions will serve purposes deemed more important.
- No wholly secret meetings
- No decisions, but ...
- Discretion
- Procedure

have to leave open session & go into exec. session & go back out into open session

don't have to go its discretionary - only go when you have to.

line 105 - maj aff. vote

* taping of exec. session was in one part of bill which was taken out before passage

See attached suggestion

General policies - not exec. session - final action - open -

Change in law

Do exec. sessions have to be on Agenda? No - but suby. matter should

me running over on Agenda not on main

- A person's physical or mental health
- Unwarranted invasion of a person's privacy
- Crime investigation or law enforcement
- Security personnel and devices

- Commercial competition if publicity would harm public interest
- Secrecy of prizes and awards
- Settlement
- Matters rendered confidential by law

see p. 147 disclosure limited until after competition is completed (info relied on has to be disclosed)

don't use to vote on settlement in exec. session

(not sure what it means)

Executive Session Justifications

- War and riot (109-110)
- Personnel matters and hearings (specific, not general) unless open mtg requested by ee
- Disciplining a student
- Specific license and certification actions

Discussions not Decisions

lines 98-103

**Individuals may force a public session
in the case of:**

- Personnel matters and hearings
- Disciplining a student
- Specific license and certification actions
- A person's physical or mental health

**Sloppy Language? Intentional
Exceptions to the "No Decision" Rule?**

- Disciplining a student
- Settlement

Consultations with Attorney

§ 6-9A-4 (b) (11)

- "Nothing in this article permits a public agency to close a meeting that otherwise would be open, merely because an agency attorney is a participant."

**Violations: Civil and Criminal
Penalties and Consequences**

§§ 6-9A-3, 6, 7

- Purpose: To insure compliance with the Act.

*Talking
to Administrator
or County
Commissioner
President*

Civil Remedies

120-4 mos

- Compel compliance, enjoin noncompliance
- Nullify decisions
- Order future compliance
- Attorney fees and expenses
- Bond issue exception
- Recorded in governing body's minutes

Criminal Penalties

1r
199

- Misdemeanor
- First offense: fine not to exceed \$500
- Subsequent offenses: fine of between \$100 and \$1,000

Education and Interpretation

§§ 6-9A-10, 11, 12

- Purpose: To facilitate compliance with the Act.
- Committee on Open Governmental Meetings: binding opinions; good faith reliance
- Confidentiality
- Attorney General compilation
- Secretary of State et al distribution

West Virginia's Open Governmental Proceedings Act

**BOWLES RICE
McDAVID GRAFF & LOVE, PLLC**

600 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301
TELEPHONE 304-347-1100

1000 TECHNOLOGY DRIVE, SUITE 2310
FAIRMONT, WEST VIRGINIA 26554
TELEPHONE 304-368-4000

105 WEST BURKE STREET
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE 304-263-0836

WRITER'S DIRECT DIAL NUMBER
304-420-5511

ATTORNEYS AT LAW

5TH FLOOR, UNITED SQUARE

501 AVERY STREET

POST OFFICE BOX 48

PARKERSBURG, WEST VIRGINIA 26102

TELEPHONE 304-485-8500

FACSIMILE 304-485-7973

www.bowlesrice.com

7000 HAMPTON CENTER SUITE K
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-599-1390

1200 WORLD TRADE CENTER
333 WEST VINE STREET
LEXINGTON, KENTUCKY 40507
TELEPHONE 606-225-8700

E-MAIL
hseufer@bowlesrice.com

June 19, 1999

House Bill 2005
Revision of the Open Governmental Proceedings Act (the "Sunshine Law")
In Effect 90 Days from March 21, 1999

The legislation makes significant changes to the Sunshine Law. Among other changes, House Bill 2005:

1. amends the Act's preamble to make clear that not every contact or discussion by a public official requires a public meeting. West Virginia Code § 6-9A-1.
2. excludes from the definition of covered "meetings" general discussions among the members of a governing body on public issues held in social, educational, training, informal, ceremonial, and similar settings, where there is no intent to conduct public business, and, if a quorum is present, there is no intent for the discussion to lead to an official action. West Virginia Code § 6-9A-2 (4) (D).
3. also excludes from the definition of covered "meetings" discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting. West Virginia Code § 6-9A-2 (4) (E).
4. requires governing bodies to make agendas of regular meetings available, in advance, to the public. West Virginia Code § 6-9A-3.
5. clarifies the "personnel matters" justification for executive sessions, disallowing executive sessions to discuss general personnel policy issues, and reiterating that final action on a personnel matter must occur in open session. West Virginia Code §§ 6-9A-4 (b) (2) (A), (B).
6. replaces the "adversely affects the reputation" justification for executive sessions with one which allows an executive session to discuss material which, if disclosed, would constitute an unwarranted invasion of an individual's privacy. West Virginia Code § 6-9A-4 (b) (6).
7. requires the disclosure of information considered in executive session concerning commercial competition once the commercial competition has been completed, unless the information is not subject to release under the Freedom of Information Act. West Virginia Code §§ 6-9A-4 (b) (9).

BOWLES RICE
MCDAVID GRAFF & LOVE, PLLC

8. provides that an attorney's presence does not, itself, justify an executive session. West Virginia Code § 6-9A-4 (b) (11).

9. confuses the issue of considering settlements in executive session, indicating that governing bodies may approve settlements in executive session as long as the terms of such settlements are reported and entered into the minutes after the settlement is concluded. West Virginia Code § 6-9A-4 (b) (11).

10. creates new executive session justifications concerning matters made confidential by other laws and matters which are not public records under the Freedom of Information Act. West Virginia Code § 6-9A-4 (12).

11. singles out for civil and criminal penalties private meetings intentionally held to transact public business in secret. West Virginia Code § 6-9A-6.

12. revises the sanction for violation of the Act. In the case of civil penalties for intentional violations, compensatory and punitive damage have been eliminated. In the area of criminal penalties for willful and knowing violations, incarceration has been eliminated as a possible sanction and fines for second and subsequent offenses have been increased. West Virginia Code § 6-9A-7 (a).

13. prohibits discussion and votes by reference to letters, numbers, or other designations which confuse the public, except that action by reference to an agenda is permitted if the agenda is clearly worded and made available to the public before the meeting. West Virginia Code § 6-9A-8.

14. bans governing bodies from voting by secret or written ballot. West Virginia Code § 6-9A-8.

15. entitles radio and television stations to broadcast all or any part of any open meeting, subject to reasonable regulations about placement, use, and, in some cases, pooling of equipment. West Virginia Code § 6-9A-9.

16. establishes an Ethics Commission Committee on Open Governmental Proceedings to render written advisory opinions, and allows the Commission's executive director to give oral advice, on open meeting questions from governing bodies and their members. West Virginia Code §§ 6-9A-10, 11 (a).

17. immunizes governing bodies and their members from civil and criminal liability when acting in good faith reliance on a written advisory opinion which they sought and received from the Committee on Open Governmental Proceedings. West Virginia Code § 6-9A-11 (b).

18. requires the Attorney General to prepare, and the Secretary of State and other officers to distribute to all elected officials, a compilation of the statutory and case law about the Open Governmental Proceedings Act. West Virginia Code § 6-9A-12.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

(Effective ninety days from March 21, 1999)

1 §6-9A-1. Declaration of legislative policy.

2 The Legislature hereby finds and declares that public agencies in this state exist for the
3 singular purpose of representing citizens of this state in governmental affairs, and it is,
4 therefore, in the best interests of the people of this state for the proceedings of public
5 agencies be conducted openly, with only a few clearly defined exceptions. The Legislature
6 hereby further finds and declares that the citizens of this state do not yield their sovereignty
7 to the governmental agencies that serve them. The people in delegating authority do not
8 give their public servants the right to decide what is good for them to know and what is not
9 good for them to know. The people insist on remaining informed so that they may retain
10 control over the instruments of government created by them.

11 Open government allows the public to educate itself about government decision-making
12 through individuals' attendance and participation at government functions, distribution of
13 government information by the press or interested citizens, and public debate on issues
14 deliberated within the government.

15 Public access to information promotes attendance at meetings, improves planning of
16 meetings, and encourages more thorough preparation and complete discussion of issues
17 by participating officials. The government also benefits from openness because better
18 preparation and public input allow government agencies to gauge public preferences
19 accurately and thereby tailor their actions and policies more closely to public needs. Public
20 confidence and understanding ease potential resistance to government programs.

21 Accordingly, the benefits of openness inure to both the public affected by governmental
22 decision making and the decision makers themselves. The Legislature finds, however, that
23 openness, public access to information and a desire to improve the operation of
24 government do not require nor permit every meeting to be a public meeting. The
25 Legislature finds that it would be unrealistic, if not impossible, to carry on the business of
26 government should every meeting, every contact and every discussion seeking advise and
27 counsel in order to acquire the necessary information, data or intelligence needed by a
28 governing body were required to be a public meeting. It is the intent of the Legislature to
29 balance these interests in order to allow government to function and the public to
30 participate in a meaningful manner in public agency decision making.

31 §6-9A-2. Definitions.

32 As used in this article:

33 (1) "Decision" means any determination, action, vote or final disposition of a motion,
34 proposal, resolution, order, ordinance or measure on which a vote of the governing body
35 is required at any meeting at which a quorum is present.

36 (2) "Executive session" means any meeting or part of a meeting of a governing body
37 which is closed to the public.

38 (3) "Governing body" means the members of any public agency having the authority to
39 make decisions for or recommendations to a public agency on policy or administration, the
40 membership of a governing body consists of two or more members; for the purposes of this
41 article, a governing body of the Legislature is any standing, select or special committee,
42 except the commission on special investigations, as determined by the rules of the
43 respective houses of the Legislature.

44 (4) "Meeting" means the convening of a governing body of a public agency for which a
45 quorum is required in order to make a decision or to deliberate toward a decision on any
46 matter which results in an official action. Meetings may be held by telephone conference
47 or other electronic means. The term meeting does not include:

48 (A) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial,
49 administrative or court of claims proceeding;

50 (B) Any on-site inspection of any project or program;

51 (C) Any political party caucus;

52 (D) General discussions among members of a governing body on issues of interest to the
53 public when held in a planned or unplanned social, educational, training, informal,
54 ceremonial or similar setting, without intent to conduct public business even if a quorum
55 is present and public business is discussed but there is no intention for the discussion to
56 lead to an official action; or

57 (E) Discussions by members of a governing body on logistical and procedural methods
58 to schedule and regulate a meeting.

59 (5) "Official action" means action which is taken by virtue of power granted by law,
60 ordinance, policy, rule, or by virtue of the office held.

61 (6) "Public agency" means any administrative or legislative unit of state, county or
62 municipal government, including any department, division, bureau, office, commission,
63 authority, board, public corporation, section, committee, subcommittee or any other agency
64 or subunit of the foregoing, authorized by law to exercise some portion of executive or
65 legislative power. The term "public agency" does not include courts created by article eight
66 of the West Virginia constitution or the system of family law masters created by article four,
67 chapter forty-eight-a of this code.

68 (7) "Quorum" means the gathering of a simple majority of the constituent membership of
69 a governing body, unless applicable law provides for varying the required ratio.

70 **§6-9A-3. Proceedings to be open; public notice of meetings.**

71 Except as expressly and specifically otherwise provided by law, whether heretofore or
72 hereinafter enacted, and except as provided in section four of this article, all meetings of
73 any governing body shall be open to the public. Any governing body may make and
74 enforce reasonable rules for attendance and presentation at any meeting where there is
75 not room enough for all members of the public who wish to attend. This article does not
76 prohibit the removal from a meeting of any member of the public who is disrupting the
77 meeting to the extent that orderly conduct of the meeting is compromised: Provided, That
78 persons who desire to address the governing body may not be required to register to
79 address the body more than fifteen minutes prior to time the scheduled meeting is to
80 commence. \

81 Each governing body shall promulgate rules by which the date time, place and agenda
82 of all regularly scheduled meetings and the date time, place and purpose of all special
83 meetings are made available, in advance, to the public and news media, except in the
84 event of an emergency requiring immediate official action.

85 Each governing body of the executive branch of the state shall file a notice of any
86 meeting with the secretary of state for publication in the state register. Each notice shall
87 state the date time, place and purpose of the meeting. Each notice shall be filed in a
88 manner to allow each notice to appear in the state register at least five days prior to the
89 date of the meeting.

90 In the event of an emergency requiring immediate official action, any governing body of
91 the executive branch of the state may file an emergency meeting notice at any time prior
92 to the meeting. The emergency meeting notice shall state the date time, place and purpose
93 of the meeting and the facts and circumstances of the emergency.

94 \Upon petition by any adversely affected party any court of competent jurisdiction may
95 invalidate any action taken at any meeting for which notice did not comply with the
96 requirements of this section. \

97 **§6-9A-4. Exceptions.**

98 (a) The governing body of a public agency may hold an executive session during a
99 regular, special or emergency meeting, in accordance with the provisions of this section.
100 During the open portion of the meeting, prior to convening an executive session, the
101 presiding officer of the governing body shall identify the authorization under this section for
102 holding the executive session and present it to the governing body and to the general
103 public, but no decision may be made in the executive session.
104

105 (b) An executive session may be held only upon a majority affirmative vote of the
106 members present of the governing body of a public agency. A public agency may hold an

107 executive session and exclude the public only when a closed session is required for any
108 of the following actions:

109 (1) To consider acts of war, threatened attack from a foreign power, civil insurrection or
110 riot;

111 (2) To consider:

112 (A) Matters arising from the appointment, employment, retirement, promotion, transfer,
113 demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer
114 or employee, or prospective public officer or employee unless the public officer or
115 employee or prospective public officer or employee requests an open meeting; or

116 (B) For the purpose of conducting a hearing on a complaint, charge or grievance against
117 a public officer or employee, unless the public officer or employee requests an open
118 meeting. General personnel policy issues may not be discussed or considered in a closed
119 meeting. Final action by a public agency having authority for the appointment, employment,
120 retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or
121 compensation of an individual shall be taken in an open meeting;

122 (3) To decide upon disciplining, suspension or expulsion of any student in any public
123 school or public college or university, unless the student requests an open meeting;

124 (4) To issue, effect, deny, suspend or revoke a license, certificate or registration under
125 the laws of this state or any political subdivision, unless the person seeking the license,
126 certificate or registration or whose license, certificate or registration was denied,
127 suspended or revoked requests an open meeting;

128 (5) To consider the physical or mental health of any person, unless the person requests
129 an open meeting;

130 (6) To discuss any material the disclosure of which would constitute an unwarranted
131 invasion of an individual's privacy such as any records, data, reports, recommendations
132 or other personal material of any educational, training, social service, rehabilitation,
133 welfare, housing, relocation, insurance and similar program or institution operated by a
134 public agency pertaining to any specific individual admitted to or served by the institution
135 or program, the individual's personal and family circumstances;

136 (7) To plan or consider an official investigation or matter relating to crime prevention or
137 law enforcement;

138 (8) To develop security personnel or devices;

139 (9) To consider matters involving or affecting the purchase, sale or lease of property,
140 advance construction planning, the investment of public funds or other matters involving

141 commercial competition, which if made public, might adversely affect the financial or other
142 interest of the state or any political subdivision: Provided, That information relied on during
143 the course of deliberations on matters involving commercial competition are exempt from
144 disclosure under the open meetings requirements of this article only until the commercial
145 competition has been finalized and completed. Provided, However, that information not
146 subject to release pursuant to the West Virginia freedom of information act does not
147 become subject to disclosure as a result of executive session;

148 (10) To avoid the premature disclosure of an honorary degree, scholarship, prize or
149 similar award;

150 (11) Nothing in this article permits a public agency to close a meeting that otherwise
151 would be open, merely because an agency attorney is a participant. If the public agency
152 has approved or considered a settlement in closed session, and the terms of the
153 settlement allow disclosure, the terms of that settlement shall be reported by the public
154 agency and entered into its minutes within a reasonable time after the settlement is
155 concluded;

156 (12) To discuss any matter which, by express provision of federal law or state statute or
157 rule of court is rendered confidential, or which is not considered a public record within the
158 meaning of the freedom of information act as set forth in article one, chapter twenty-nine-b
159 of this code;

160 §6-9A-5. Minutes.

161 Each governing body shall provide for the preparation of written minutes of all of its
162 meetings. Subject to the exceptions set forth in section four of this article, minutes of all
163 meetings except minutes of executive sessions, if any are taken, shall be available to the
164 public within a reasonable time after the meeting and shall include, at least, the following
165 information:

166 (1) The date, time and place of the meeting;

167 (2) The name of each member of the governing body present and absent;

168 (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the
169 name of the person proposing the same and their disposition; and

170 (4) The results of all votes and, upon the request of a member, pursuant to the rules,
171 policies or procedures of the governing board for recording roll call votes, the vote of each
172 member, by name.

§6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.

The circuit court in the county where the public agency regularly meets has jurisdiction to enforce this article upon civil action commenced by any citizen of this state within one hundred twenty days after the action complained of was taken or the decision complained of was made. Where the action seeks injunctive relief, no bond may be required unless the petition appears to be without merit or made with the sole intent of harassing or delaying or avoiding return by the governing body.

The court is empowered to compel compliance or enjoin noncompliance with the provisions of this article and to annul a decision made in violation this article. An injunction may also order that subsequent actions be taken or decisions be made in conformity with the provisions of this article: Provided, That no bond issue that has been passed or approved by any governing body in this state may be annulled under this section if notice of the meeting at which the bond issue was finally considered was given at least ten days prior to the meeting by a Class I legal advertisement published in accordance with the provisions of article three, chapter fifty-nine of this code in a qualified newspaper having a general circulation in the geographic area represented by that governing body.

In addition to or in conjunction with any other acts or omissions which may be determined to be in violation of this Act, it is a violation of this Act for a governing body to hold a private meeting with the intention of transacting public business, thwarting public scrutiny and making decisions that eventually become official action.

Any order which compels compliance or enjoins noncompliance with the provisions of this article, or which annuls a decision made in violation of this article shall include findings of fact and conclusions of law and shall be recorded in the minutes of the governing body.

§6-9A-7. Violation of article; criminal penalties; attorney fees and expenses in civil actions.

(a) Any person who is a member of a public or governmental body required to conduct open meetings in compliance with the provisions of this article and who willfully and knowingly violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars: Provided, That a person who is convicted of a second or subsequent offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars.

(b) A public agency whose governing body is adjudged in a civil action to have conducted a meeting in violation of the provisions of this article may be liable to a prevailing party for fees and other expenses incurred by that party in connection with litigating the issue of whether the governing body acted in violation of this article, unless the court finds that the

210 position of the public agency was substantially justified or that special circumstances make
211 an award of fees and other expenses unjust.

212 (c) Where the court, upon denying the relief sought by the complaining person in the
213 action, finds that the action was frivolous or commenced with the primary intent of
214 harassing the governing body or any member thereof or, in the absence of good faith, of
215 delaying any meetings or decisions of the governing body, the court may require the
216 complaining person to pay the governing body's necessary attorney fees and expenses.

217 **§6-9A-8. Acting by reference; written ballots.**

218 (a) Except as otherwise expressly provided by law, the members of a public agency may
219 not deliberate, vote, or otherwise take official action upon any matter by reference to a
220 letter, number or other designation or other secret device or method, which may render it
221 difficult for persons attending a meeting of the public agency to understand what is being
222 deliberated, voted or acted upon. However, this subsection does not prohibit a public
223 agency from deliberating, voting or otherwise taking action by reference to an agenda, if
224 copies of the agenda, sufficiently worded to enable the public to understand what is being
225 deliberated, voted or acted upon, are available for public inspection at the meeting.

226 (b) A public agency may not vote by secret or written ballot.

227 **§6-9A-9. Broadcasting or recording meetings.**

228 (a) Except as otherwise provided in this section, any radio or television station is entitled
229 to broadcast all or any part of a meeting required to be open.

230 (b) A public agency may regulate the placement and use of equipment necessary for
231 broadcasting, photographing, filming or recording a meeting, so as to prevent undue
232 interference with the meeting. The public agency shall allow the equipment to be placed
233 within the meeting room in such a way as to permit its intended use, and the ordinary use
234 of the equipment may not be declared to constitute undue interference: Provided, That if
235 the public agency, in good faith, determines that the size of the meeting room is such that
236 all the members of the public present and the equipment and personnel necessary for
237 broadcasting, photographing, filming and tape-recording the meeting cannot be
238 accommodated in the meeting room without unduly interfering with the meeting and an
239 adequate alternative meeting room is not readily available, then the public agency, acting
240 in good faith and consistent with the purposes of this article, may require the pooling of the
241 equipment and the personnel operating it.

242 **§6-9A-10. Open governmental meetings committee.**

243 The West Virginia ethics commission, pursuant to subsection (j), section one, article two,
244 chapter six-b of this code, shall appoint from the membership of the commission a
245 subcommittee of three persons designated as the West Virginia ethics commission

committee on open governmental meetings. The chairman shall designate one of the persons to chair the committee. In addition to the three members of the committee, two additional members of the commission shall be designated to serve as alternate members of the committee.

The chairman of the committee or the executive director shall call meetings of the committee to act on requests for advisory opinions interpreting the West Virginia open government meetings act. Advisory opinions shall be issued in a timely manner, not to exceed thirty days.

§6-9A-11. Request for advisory opinion; maintaining confidentiality.

(a) Any governing body or member thereof subject to the provisions of this article may seek advise 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. The executive director may render oral advise and information upon request. The committee shall respond in writing and in an expeditious manner to a request for an advisory opinion. The opinion shall be binding on the parties requesting the opinion.

(b) Any governing body or member thereof that seeks an advisory opinion and acts in good faith reliance on the opinion has an absolute defense to any civil suit or criminal prosecution for any action taken in good faith reliance on the opinion unless the committee was willfully and intentionally misinformed as to the facts by the body or its representative.

(c) The committee and commission may take appropriate action to protect from disclosure information which is properly shielded by an exception provided for in section four of this article.

§6-9A-12. Duty of attorney general, secretary of state, clerks of the county commissions and city clerks or recorders.

It is the duty of the attorney general to compile the statutory and case law pertaining to this article and to prepare appropriate summaries and interpretations for the purpose of informing all public officials subject to this article of the requirements of this article. It is the duty of the secretary of state, the clerks of the county commissions, joint clerks of the county commissions and circuit courts, if any, and the city clerks or recorders of the municipalities of the state to provide a copy of the material compiled by the attorney general to all elected public officials within their respective jurisdictions. The clerks or recorders will make the material available to appointed public officials. Likewise, it is their respective duties to provide a copy or summary to any newly appointed or elected person within thirty days of the elected or appointed official taking the oath of office or an appointed person's start of term.

CHAPTER 16. PUBLIC HEALTH.
ARTICLE 5G. OPEN HOSPITAL PROCEEDINGS.
(Effective ninety days from March 21, 1999)

§16-5G-1. Declaration of legislative policy.

The legislature hereby finds and declares that hospitals owned or operated by nonprofit corporations, nonprofit associations or local governmental units are relied on by the citizens of this State for services essential to their health and well-being. The legislature further finds and declares that public funds from various sources and by various means contribute significantly to the revenues and operations of such institutions. Therefore, it is in the best interest of the people of this State for all proceedings of the boards of directors or other governing bodies of such hospitals to be conducted in an open and public manner so that the people can remain informed of the decisions and decision making processes affecting the health services on which they so vitally depend and which they help support through tax exemptions, public funding and other means.

§16-5G-2. Definitions.

As used in this article:

(1) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order or measure on which a vote of the governing body is required at any meeting at which a quorum is present;

(2) "Executive session" means any meeting or part of a meeting of a governing body of a hospital that is closed to the public;

(3) "Governing body" means the board of directors or other group of persons having the authority to make decisions for or recommendations on policy or administration to a hospital owned or operated by a nonprofit corporation, nonprofit association or local governmental unit, the membership of which governing body consists of two or more members;

(4) "Hospital" means any hospital owned or operated by a nonprofit corporation, nonprofit association or local governmental unit;

(5) "Meeting" means the convening of a governing body of a hospital for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter: Provided, That a medical staff conference is not a meeting; and

(6) "Quorum" means, unless otherwise defined by applicable law, a simple majority of the constituent membership of a governing body.

31 **§16-5G-3. Proceedings to be open; public notice of meetings.**

32 Except as expressly and specifically otherwise provided by law, and except as provided
33 in section four of this article, all meetings of a governing body of a hospital shall be open
34 to the public. Any governing body may make and enforce reasonable rules and regulations
35 for attendance and presentation at any meeting where there is not room enough for all
36 members of the public who wish to attend. This article does not prohibit the removal from
37 a meeting of any member of the public who is disrupting the meeting to the extent that
38 orderly conduct of the meeting is compromised: Provided, That persons who desire to
39 address the governing body may not be required to register to address the body more than
40 fifteen minutes prior to time the scheduled meeting is to commence.

41 Each governing body shall promulgate rules by which the date time and place of all
42 regularly scheduled meetings and the date time, place and purpose of all special meetings
43 are made available, in advance, to the public and news media, except in the event of an
44 emergency requiring immediate official action.

45 Each governing body shall file a notice of any meeting by causing a notice of the meeting
46 to be printed in a local newspaper: Provided, That the governing body may otherwise
47 provide by rule or regulation an alternative procedure that will reasonably provide the public
48 with notice. Each notice shall state the date time, place and purpose of the meeting.

49 In the event of an emergency requiring immediate official action, any governing body may
50 provide an emergency meeting notice at any time prior to the meeting. The emergency
51 meeting notice shall state the date time, place and purpose of the meeting and the facts
52 and circumstances of the emergency.

53 Upon petition by any adversely affected party, any court of competent jurisdiction may
54 invalidate any action taken at any meeting for which notice did not comply with the
55 requirements of this section.

56 **§16-5G-4. Exceptions.**

57 (a) This article does not prevent the governing body of a hospital from holding an
58 executive session during a regular, special or emergency meeting, after the presiding
59 officer has identified the authorization under this article for the holding of such executive
60 session and has presented it to the governing body and to the general public, but no official
61 action shall be made in such executive session.

62 (b) An executive session may be held only upon a majority affirmative vote of the
63 members present of the governing body of a hospital as defined in this article for the
64 following:

65 (1) The appointment, employment, retirement, promotion, demotion, disciplining,
66 resignation, discharge, dismissal or compensation of any officer or employee, or other

67 personnel matters, or for the purpose of conducting a hearing on a complaint against an
68 officer or employee, unless the officer or employee requests an open meeting;

69 (2) The disciplining, suspension or expulsion of any student or trainee enrolled in a
70 program conducted by the hospital, unless the student or trainee requests an open
71 meeting;

72 (3) Investigations and proceeding involving the issuance, denial, suspension or
73 revocation of the authority or privilege of a medical practitioner to use the hospital and to
74 engage in particular kinds of practice or to perform particular kinds of operations, unless
75 the person seeking the authority or privilege or whose authority or privilege was denied,
76 suspended or revoked requests an open meeting;

77 (4) Matters concerning the failure or refusal of a medical practitioner to comply with
78 reasonable regulations of a hospital with respect to the conditions under which operations
79 are performed and other medical services are delivered;

80 (5) To consider the work product of the hospital's attorney or the hospital administration;

81 (6) The physical or mental health of any person, unless the person requests an open
82 meeting;

83 (7) Matters which, if discussed in public, would be likely to affect adversely the reputation
84 of any person;

85 (8) Any official investigation or matters relating to crime prevention or law enforcement;

86 (9) The development of security personnel or devices; or

87 (10) Matters involving or affecting the purchase, sale or lease of property, advance
88 construction planning, the investment of public funds or other matters involving competition
89 which, if made public, might adversely affect the financial or other interest of the state or
90 any political subdivision or the hospital.

91 **§16-5G-5. Minutes.**

92 Each governing body shall provide for the preparation of written minutes of all of its
93 meetings. Subject to the exceptions set forth in section four of this article, minutes of all
94 meetings except minutes of executive sessions, if any are taken, shall be available to the
95 public within a reasonable time after the meeting and shall include, at least, the following
96 information:

97 (1) The date, time and place of the meeting;

98 (2) The name of each member of the governing body present and absent;

99 (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the
100 name of the person proposing the same and their disposition; and

101 (4) The results of all votes and, upon the request of a member, pursuant to the rules,
102 policies or procedures of the governing board for recording roll call votes, the vote of each
103 member, by name.

104 **§16-5G-6. Enforcement by injunctions; actions in violation of article voidable.**

105 The circuit court in the county where a hospital is located has jurisdiction to enforce this
106 article upon civil action commenced by any citizen of this state within one hundred twenty
107 days after the action complained of was taken or the decision complained of was made.
108 Where the action seeks injunctive relief, no bond may be required unless the petition
109 appears to be without merit or made with the sole intent of harassing or delaying or
110 avoiding return by the governing body.

111 The court is empowered to compel compliance or enjoin noncompliance with the
112 provisions of this article and to annul a decision made in violation of this article. An
113 injunction may also order that subsequent actions be taken or decisions be made in
114 conformity with the provisions of this article.

115 Any order which compels compliance or enjoins noncompliance with the provisions of this
116 article, or which annuls a decision made in violation of this article shall include findings of
117 fact and conclusions of law and shall be recorded in the minutes of the governing body.

118 Upon entry of an order, the court may, where the court finds that the governing body
119 intentionally violated the provisions of this article, order the governing body to pay the
120 complaining person's necessary attorney fees and expenses. Where the court, upon
121 denying the relief sought by the complaining person in the action, finds that the action was
122 frivolous or commenced with the primary intent of harassing the governing body or any
123 member thereof or, in the absence of good faith, of delaying any meetings or decisions of
124 the governing body, the court may require the complaining person to pay the governing
125 body's necessary attorney fees and expenses.

126 Any person who intentionally violates the provisions of this article is liable in an action for
127 compensatory and punitive damages not to exceed a total of five hundred dollars.

128 **§16-5G-7. Violation of article; penalties.**

129 (a) In addition to or in conjunction with any other acts or omissions which may be
130 determined to violate this Act, it is a violation of this Act for a governing body to hold a
131 private meeting with the intention of transacting public business, thwarting public scrutiny
132 and making decisions that eventually become official action.

133 (b) Any person who is a member of a governing body of a hospital required to conduct
134 open meetings in compliance with the provisions of this article and who willfully and
135 knowingly violates the provisions of this article is guilty of a misdemeanor and, upon
136 conviction thereof, shall be fined not less than one hundred dollars nor more than five
137 hundred dollars, or confined in jail not more than ten days, or both fined and confined.

6/10/99