

Does your County's Personnel Agenda Comply with the Open Governmental Proceedings Act?

March 1, 2011

[Jason S. Long](#), [Denise M. Spatafore](#)

As we wind down from another busy personnel season, a question that seems to come up often concerns the listing of individual employee names on county board of education agendas. Many administrators are, understandably, concerned about revealing the names of employees who are recommended for various personnel actions, such as reductions in force ("RIF") and transfers, while still complying with the [West Virginia Open Governmental Proceedings Act](#).

As we all know, the RIF and transfer process in particular is a difficult and scary experience for many employees, and publicizing it, even if legally required, may seem to add insult to injury for some. In order to spare their employees the embarrassment associated with some personnel actions, many boards provide employees' names only to board members, with the public board agenda only stating the actions recommended, minus individual names.

A pertinent provision of the Act, [West Virginia Code 6-9A-8\(a\)](#), provides:

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

[The West Virginia Ethics Commission](#) has advised [by opinion](#) that a county board of education does not have the authority to conceal the identity of persons being recommended by the superintendent for any type of personnel action. The basis for the opinion is simple in that there is no statutory provision which precludes the public from knowing the identity of the person the superintendent is recommending to hire, transfer, grant of a leave of absence, or acceptance of a resignation or application to retire. Therefore, a county board has two options in order to comply with the Act.

It may publish an agenda that states the names of individuals and the recommended personnel action; OR it may publish a listing of proposed personnel actions, without individual names, but the names of each person recommended must be announced in open session BEFORE any board vote.

In cases of a disciplinary matter, such as dismissal or suspension for cause, which may be discussed in executive session, the meeting agenda provided to the public may exclude the person's name, unless the employee requests an open meeting. This issue was addressed in the [November 2010 Education Law Alert](#).

Should you have any questions on this issue or any issues please feel free to contact a member of Dinsmore & Shohl's [Education Law Practice Group](#).