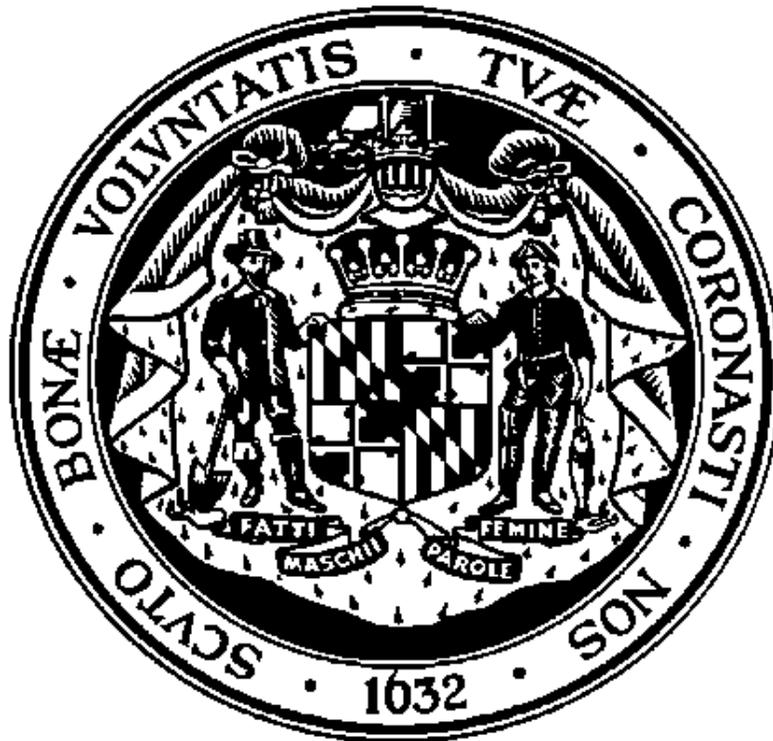


SEVENTEENTH ANNUAL REPORT
OF THE
OPEN MEETINGS COMPLIANCE BOARD



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October 2009

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Pursuant to §10-502.4(e) of the State Government Article, the Open Meetings Compliance Board submits this annual report, covering the period July 1, 2008, through June 30, 2009.

I

Activities of the Board

A. *Financial and Support Activities*

No funds were specifically appropriated for the Compliance Board in the Budget Bill for fiscal year 2009. The Attorney General's Office has borne the incidental costs of copying and mailing Board-related documents. The Board is grateful to the Attorney General's Office for this assistance.

Indeed, the Board wishes to acknowledge more generally the ongoing support of the Attorney General's Office, especially the informed and dedicated involvement of Assistant Attorney General William Varga, who has provided the Board with essential advice and guidance. In addition, all of the recordkeeping and other clerical and administrative support for the Board are provided, with outstanding professionalism, by Ms. Kathleen Izdebski, of the Opinions and Advice Division of the Attorney General's Office. The cost to the Board would have been significant had it been required to obtain these support services elsewhere.

B. *Complaints and Opinions*

From July 1, 2008 through June 30, 2009, the Compliance Board received 23 complaints alleging violations of the Open Meetings Act. Many of the complaints alleged more than one violation. Nine complaints were pending on June 30, 2009; the opinions in response were issued later. Four opinions were issued this fiscal year about complaints received prior to July 1, 2008.

Table 1 below indicates the categories of complainants.

TYPE OF COMPLAINANTS	
Type	Number
Citizens	18
Government Officials	1
News Media	4

Table 1

As Table 2 indicates, entities at every level of government were involved with complaints.

COMPLAINTS BY TYPE OF ENTITY	
Jurisdiction	Number
State	5
County	2
Local School Board	6
Municipality	10

Table 2

During the reporting period, the Board issued 20 opinions. In 10 of these, the Board found a violation of the Act. Violations tended to concern the Act's procedural requirements such as procedures for closing a meeting and its requirements for preparing minutes. There are occasions where the record does not allow us to reach a definitive conclusion. All of the Board's opinions are available at this Internet location: <http://www.oag.state.md.us/Opengov/Openmeetings/board.htm>.¹

As we have previously observed, although it is impossible to estimate the incidence of unreported violations, the Compliance Board believes that the low number of known violations reflects overall compliance with the law by public bodies at all levels of government. This conclusion is further supported by the fact that only a handful of Open Meetings Act issues have been brought to

¹ We thank the Attorney General's Office for its maintenance of the Board's web page, which is an important source of information about the Open Meetings Act generally and about the Compliance Board's procedures.

court. Overall compliance is undoubtedly furthered by the ongoing educational efforts of the Academy for Excellence in Local Governance, the Maryland Association of Counties, the Maryland Municipal League, and the Office of the Attorney General. The continued interest of the press in asserting rights under the Act also has a salutary deterrent effect.

The Act calls upon us to discuss in particular "complaints concerning the reasonableness of the notice provided for meetings." §10-502.4(e)(2)(iii). In general, notice issues have not been a focus of complaints, probably because the Act is quite flexible in allowing a range of notice methods. That is, the Act allows notice to be given by "any ... reasonable method," including posting at a public location near the site of the meeting or, as of July 1, 2007, on an Internet website. Thus, the General Assembly left considerable discretion to each public body as to the method of public notice. As long as a public body posts the notice or takes one of the other steps set out in the law in a timely manner, the Board will not find a violation of the notice requirement. Public bodies do face notice problems, however, when they call a meeting on short notice, delay a previously scheduled meeting, or decide to open a meeting that had previously been scheduled as a closed meeting. The Compliance Board's guidance is that the public should be told of unexpected scheduling developments as soon as practicable, by whatever means are feasible under the circumstances. Issues about notice were discussed in the following opinions: 6 *OMCB Opinions* 41 (2008), 6 *OMCB Opinions* 47 (2008), 6 *OMCB Opinions* 85 (2009), 6 *OMCB Opinions* 89 (2009), and 6 *OMCB Opinions* 110 (2009).

II

Legislative Recommendations

The Compliance Board is to report annually "any recommendations for improvements to the provisions" of the Act. §10-502.4(e)(2)(v). Notwithstanding our discussion of notice issues in the preceding paragraph, based on discussion at our annual meeting, we recommend that the Act be amended to alter the manner public bodies must give notice of meetings and that a limitations period be added to the Compliance Board's process.

◆ Notice information

The Compliance Board is concerned whether the Open Meetings Act's notice provisions adequately fulfill the policy underlying the Act. Today, many public bodies rely on websites to give notice of their meetings, an option not

available when the Act was first enacted. However, a public body could schedule a particular meeting, providing notice solely on a bulletin board, notwithstanding its regular practice of using its website, and technically comply with the Act. Of course, notice in this manner is meaningless for those accustomed to monitoring the website. In our view, regular reliance on a public body's website is perhaps the most effective means of providing notice. Nevertheless, we recognize that not every public body has created a website or is able to regularly maintain a website. Thus, we recommend that the General Assembly require a public body to regularly post notice of its meetings on a website or, if no website is available, by posting notice at a predetermined convenient location. Both options would allow notice to be given even for emergency meetings scheduled on short notice. Nor would this requirement preclude a public body from providing notice by any additional method.

We also recommend that the notice reflect the date it was actually posted in order to allow an assessment of whether the length of notice was "reasonable." Unlike notice in a newspaper or in the *Maryland Register*, it is not possible to determine the date notice was given absent inclusion of such information.

To accomplish these two goals, we would recommend that § 10-506 of the Act be amended as follows:

Article - State Government

10-506.

(a) Before meeting in a closed or open session, a public body shall give reasonable advance notice of the session.

(b) **[Whenever reasonable, a notice] NOTICE** under this section shall **INCLUDE:**

(1) **[be in writing;**

(2) **include] the date, time, and place of the session; [and]**

(2) THE DATE THAT THE NOTICE UNDER SUBSECTION (C)(1) OF THIS SECTION IS POSTED; AND

(3) if appropriate, **[include]** a statement that a part or all of a meeting may be conducted in closed session.

(c)**(1)** A public body **[may] SHALL** give notice under this section **[as follows]:**

[(1) if a public body is a unit of the State government, by publication in the Maryland Register;

(2) by delivery to representatives of the news media who regularly report on sessions of the public body or the activities of the government of which the public body is a part;

(3) if the public body previously has given public notice that this method will be used:

(i) by posting or depositing the notice at a convenient public location at or near the place of the session; or

(ii) by posting the notice on an Internet website ordinarily used by the public body to provide information to the public; or

(4) by any other reasonable method]

(I) BY POSTING THE NOTICE ON AN INTERNET WEBSITE ORDINARILY USED BY THE PUBLIC BODY TO PROVIDE INFORMATION TO THE PUBLIC; OR

(II) IF THE PUBLIC BODY DOES NOT REGULARLY MAINTAIN A WEBSITE OR HAVE ACCESS TO A WEBSITE TO PROVIDE INFORMATION TO THE PUBLIC, BY POSTING THE NOTICE AT A CONVENIENT LOCATION ACCESSIBLE TO THE PUBLIC AND REGULARLY USED BY THE PUBLIC BODY FOR POSTING NOTICES.

(2) IN ADDITION TO PROVIDING NOTICE IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION, A PUBLIC BODY MAY GIVE NOTICE OF A MEETING BY ANY OTHER METHOD THAT THE PUBLIC BODY CONSIDERS APPROPRIATE.

(d) A public body shall keep a copy of a notice provided under **SUBSECTION (C)(1) OF** this section for at least 1 year after the date of the session.

◆ **Compliance Board Process - Limitations Period**

The Compliance Board is concerned about complaints filed against public bodies pertaining to meetings that occurred more than a year earlier. Considering that opinions of the Compliance Board are strictly advisory, in our view, the key value of our opinions is to assist public bodies in ensuring future compliance with the Act. Thus, the value of looking back longer than one year is limited. Perhaps more significantly, the Act requires public bodies to maintain records required under the Act for a one-year period. Thus, we recommend that § 10-502.5(b) of the Act be amended as follows to institute a one-year limitations period:

Article - State Government

10-502.5.

(b) **(1)** The complaint shall:

[(1)] (I) be signed by the person making the complaint; and

[(2)] (II) identify the public body, specify the action of the public body, the date of the action, and the circumstances of the action.

(2) A COMPLAINT SHALL BE FILED WITHIN ONE YEAR AFTER THE ACTION OCCURRED THAT IS THE BASIS FOR THE COMPLAINT.

◆ **Minutes**

We have been asked by a member of the public, Ms. Holly Joseph, to recommend that §10-509(c)(2) be amended to require that a summary of a closed session appear in any minutes “prepared” for its next open session. Under current law, the report of a closed meeting must be included in the minutes for its next open session, meaning the disclosure may not actually be made until the second meeting following a closed session, the time when the minutes for the “next open session” are normally approved. Ms. Joseph’s proposal would *require* that this information appear in minutes considered at the next meeting

In practice, many public bodies include the required information in the minutes of a public session held the same date as a closed meeting – a practice the Compliance Board has approved, provided the public is aware of the public body’s practice. We have not heard similar complaints as to this issue. Furthermore, the public body that prompted Ms. Joseph to contact us has agreed to modify its practice to ensure the information is available at the next regular meeting. Thus, we decline to recommend any change to the Act as to this issue.