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ANNUAL REPORT OF THE OPEN MEETINGS COM-  
PLIANCE BOARD

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**THIRD ANNUAL REPORT  
OF THE**

**OPEN MEETINGS COMPLIANCE BOARD**

*Pursuant to State Government Article § 10-502.4(e)*

**BOARD MEMBERS**

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**July, 1995**

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**THIRD ANNUAL REPORT  
OF THE  
OPEN MEETINGS COMPLIANCE BOARD**

Pursuant to §10-502.4(e) of the State Government Article, the Board submits this annual report, covering the period July 1, 1994, through June 30, 1995.

**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 1995. Although the Governor has indicated a willingness to make funds available to defray the necessary expenses of the Board, during fiscal year 1995 no such funds were expended. 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 Jack Schwartz, Chief Counsel for Opinions & Advice, who was the author of the invaluable *Open Meetings Act Manual* and 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 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.

With the assistance of Mr. Schwartz and Ms. Izdebski, the Board has prepared an updated topical index and citator for its opinions. These are attached as appendices to this report. We believe that these research aids will be of benefit to those who work with the Act, and we shall continue to issue updates periodically.

**B. *Complaints and Opinions***

From July 1, 1993 through June 30, 1994, the Compliance Board received nine complaints alleging violations of the Open Meetings Act. Some of the complaints alleged more than one violation; two complaints involved the same alleged violation. Four of these complaints were pending at the end of the fiscal year.

The Board notes that, for the first time, it suspended processing of complaints (two about the same alleged violation) because, after the complaints were filed, the Open Meetings Act issue was raised in litigation. The Board believes that it ought not to issue its own opinion on an issue to be resolved in court. In the instance of these complaints, the case was decided on other grounds. The Board then restored the complaints to its active docket.

Table 1 below indicates that the majority of the complainants have been members of the public who believed that a public body had violated the Act. The same government official filed both complaints in this category of complainant. The two journalists complained separately about the same alleged violation.

TYPE OF COMPLAINANTS	
Type	Number
Citizen	5
Government Officials	2
Journalists	2

Table 1

Most of the complaints have involved public bodies in municipalities, as Table 2 indicates. As the Board has noted in the past, this fact is unsurprising, because there are several times as many municipalities as counties in Maryland.

<b>COMPLAINTS BY TYPE OF PUBLIC BODY</b>	
<b>Public Body</b>	<b>Number</b>
State <sup>1</sup>	2
County	0
School Board	0
Municipality	7

**Table 2**

During the reporting period, the Board issued nine opinions.<sup>2</sup> In four of these opinions, the Board found one or more violations of the Act. Table 3 below indicates the types of violations found.

<b>TYPES OF VIOLATIONS</b>	
<b>Type</b>	<b>Number</b>
Unlawful closing	22
Improper notice	1
Improper closing procedures	7
Improper minutes	1

**Table 3**

All except one violation involved municipal public bodies, as Table 4 indicates. In fact, one municipality accounted for twenty-six violations.

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<sup>1</sup> The State agencies were boards of supervisors of elections.

<sup>2</sup> Four of the opinions concerned complaints that had been filed during the prior fiscal year.

VIOLATIONS BY TYPES OF PUBLIC BODY	
Public Body	Number
State	1
County	0
School Boards	0
Municipality	30

Table 4

Considering the many hundreds of public bodies in Maryland, and therefore the many thousands of meetings that took place during the reporting period, both the number of complaints and the number of violations found seem to the Compliance Board to be relatively low (particularly since the numbers are skewed by the twenty-six violations of one municipality). Although it is impossible, of course, to estimate the incidence of unreported violations, the Compliance Board believes that the low numbers 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 court.

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). 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. 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.<sup>3</sup>

The Act also calls on the Board to discuss "the impact on State and local governments of the provision of §10-502(h)(2) of this article, including a discussion of how the affected entities had adhered to requirements of this subtitle." In §10-502(h)(2), the General Assembly

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<sup>3</sup> In addition, the notice requirements of the Act, like the rest of the Act, are entirely inapplicable to an "executive function."

extended the definition of "public body" to include "any multimember board, commission, or committee appointed by the Governor or the chief executive authority of a political subdivision of the State, if the entity includes in its membership at least 2 individuals not employed by the State or a political subdivision of the State." This provision originally carried a "sunset" date of June 30, 1994.

The Board received no complaints that an entity covered by this extended definition of "public body" had violated the Act. Again, although the Board cannot know of violations that are not brought to its attention, the dearth of complaints in this regard suggests that these public bodies have recognized their obligations and are complying.

As the Board recommended in its first annual report, the General Assembly has eliminated the sunset date for this provision. Chapter 473 of the Laws of Maryland 1994.

## II

### Recommendations

The Compliance Board is to report annually "any recommendations for improvements to the provisions" of the Act. §10-502.4(e)(2)(v). The Compliance Board has but one specific recommendation this year: to eliminate §10-502.4(e)(2)(iv).

As noted above, this provision requires every annual report of the Board to discuss "the impact on State and local governments of the provisions of §10-502(h)(2) of this Article, including a discussion of how the affected entities have adhered to the requirements of this subtitle." The provision referred to is the one that extended the definition of "public body" to include certain citizen advisory panels.

In all likelihood, the Compliance Board's duty to discuss this provision in its annual report was linked to the sunset provision. The General Assembly wished to ensure that it would have information enabling it to make a judgment about extending or eliminating the sunset provision. Now that the General Assembly in fact has eliminated the sunset provision, there appears to be no sound reason for *requiring* a discussion of the issue annually. Should some

particular occurrence in the future merit discussion in an annual report, the Compliance Board will do so. But an annual, required recitation serves no purpose.

In the Board's second annual report, we indicated an intention to propose an amendment transforming the "executive function" exclusion from the Act into an exception. However, we were unable to develop a consensus in support of this idea; some local government officials argued persuasively about the burden that this change would impose, particularly on very small jurisdictions. The Compliance Board will continue its effort to explore how this troublesome aspect of the Act can be reformed.

WP/KMI:Third

# OPEN MEETINGS COMPLIANCE BOARD

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