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ANNUAL REPORT OF THE OPEN MEETINGS
COMPLIANCE BOARD

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FIFTH ANNUAL REPORT

OF THE

OPEN MEETINGS COMPLIANCE BOARD

Pursuant to State Government Article § 10-502~~2~~.4(e)

BOARD MEMBERS

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August 1997

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

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Pursuant to §10-502.4(e) of the State Government Article, the Board submits this annual report, covering the period July 1, 1996, through June 30, 1997.

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 1997. Although the Governor has indicated a willingness to make funds available to defray the necessary expenses of the Board, during fiscal year 1997 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 and Advice, who was the author of the invaluable *Open Meetings Act Manual* (2d ed. 1995) 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.

In prior annual reports, the Board has prepared updated topical indices and citators for its opinions. We have refrained from doing so in this report, however, because the Attorney General's Office plans to issue a revised edition of the *Open Meetings Act Manual* in the near future, and the manual will contain an updated topical index and citator.

B. Complaints and Opinions

From July 1, 1996 through June 30, 1997, the Compliance Board received 19 complaints alleging violations of the Open Meetings Act. Some of the complaints alleged more than one violation.

Table 1 below indicates that complaint from citizens considerably exceeded complaints from representatives of the news media.

TYPE OF COMPLAINANTS	
Type	Number
Citizens	15
Government Officials	0
News Media	4

Table 1

More complaints involved public bodies in municipalities than in other levels of government, 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. The numbers also reflect the fact that one citizen filed five separate complaints about a particular municipality.

COMPLAINTS BY TYPE OF PUBLIC BODY	
Public Body	Number
State	1
County ¹	7
School Board	1
Municipality	10

Table 2

¹ Two of the complaints involved entities in Baltimore City, which we categorized as a county for this tabulation. Also, one complaint involved a joint meeting of a county governing body and a school board; this complaint is counted twice in this table.

During the reporting period, the Board issued 19 opinions.² In nine of these opinions, the Board found one or more violations of the Act. Table 3 below indicates the types of violations found.

The violations involved both county and municipal public bodies, as Table 4 indicates.

TYPES OF VIOLATIONS	
Type	Number
Unlawful closing	4
Improper procedures	4
Failure to give proper notice	2
Failure to keep proper minutes	1

Table 3

The violations involved both county and municipal public bodies, as Table 4 indicates.

VIOLATIONS BY TYPES OF PUBLIC BODY	
Public Body	Number
State	0
County	3
School Boards	0
Municipality	3

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

² One of the opinions concerned a complaint that had been filed during the prior fiscal year. One complaint was pending at the end of the fiscal year.

and the number of violations found seem to the Compliance Board to be relatively low. Although it is impossible 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.³ In two opinions issued this past year, however, the Board found a violation when public bodies had failed to give proper notice at all.

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 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, but is now a permanent part of the law.

In one opinion, the Board considered whether this provision applied to a private corporation, the Baltimore Area Convention and Visitors Association, Inc., that was managed by a board of directors appointed by the Mayor of Baltimore. Despite the Mayor's appointment power, the Board concluded that §10-502(h)(2) was intended to apply only to governmental boards and commissions, not the board of directors of a private corporation.

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

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 two recommendations this year, one substantive, the other housekeeping.

The substantive recommendation is that the Act's definition of "public body" be extended to those entities that, although private corporations in form, are controlled by government and in reality are policymaking instruments of government.

In the 1997 Session of the General Assembly, a bill was introduced that would have expanded the definition of "public body" so that the Act would apply to any entity that received public funds. The Compliance Board opposed this bill, believing that it swept much too broadly and was inconsistent with the Act's basic premise that the right of the public to observe the decision-making process of public bodies "ensures the accountability of *government* to the citizens of the State." §10-501(b)(1) of the State Government Article.

Yet this same principle is undermined if governmental functions are carried out through nominally private corporations that escape the Act. The current definition of "public body" in §10-502(h) focuses on the historic origin of an entity, not its actual functioning or its effective control by government. Thus, the Board reluctantly concluded in one opinion that the corporate entity setting tourism policy for Baltimore City was not covered by the Act.

The Compliance Board is soliciting comment from a broad group of interested persons concerning the exact language to implement this recommendation. The Board hopes to recommend a specific bill prior to next year's legislative session.

The housekeeping suggestion that §10-502.4(e)(2)(iv) be eliminated. 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 original 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 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.

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