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ANNUAL REPORT OF THE OPEN MEETINGS
COMPLIANCE BOARD

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SEVENTH ANNUAL REPORT

OF THE

OPEN MEETINGS COMPLIANCE BOARD

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

BOARD MEMBERS

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August 25, 1999

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B. Complaints and Opinions

From July 1, 1998 through June 30, 1999, the Compliance Board received 12 complaints alleging violations of the Open Meetings Act. Some of the complaints alleged more than one violation. Three complaints were pending on June 30, 1999.

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

TYPE OF COMPLAINANTS	
Type	Number
Citizens	7
Government Officials	2 ¹
News Media	4

Table 1

More complaints involved public bodies in municipalities than in other levels of government, as Table 2 indicates.² 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 three citizens simultaneously filed separate complaints about a particular municipality. Three complaints involved meetings between county and city councils.

¹ One complaint was submitted jointly by a citizen and a government official.

² One complaint concerned both municipal and county public bodies; both are included in Table 2. Another complaint concerned the student government association of a State college, which the Compliance Board held was not a "public body" subject to the Act; this entity is omitted from Table 2.

COMPLAINTS BY TYPE OF PUBLIC BODY	
Public Body	Number
State	4
County	4
School Board	0
Municipality	7

Table 2

During the reporting period, the Board issued eleven opinions.³ In only one of these opinions did the Board find a violation of the Act, relating to a town board's rescheduling of a meeting without proper notice. In two other opinions, the Compliance Board had an insufficient factual basis to reach a conclusion about alleged violations.

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 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). 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. 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

³Two of the opinions concerned complaints that had been filed during the prior fiscal year. One complaint was pending at the end of the fiscal year.

the notice requirement.⁴ Public bodies do face notice problems, however, when they call a meeting on short notice or delay a previously scheduled 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.

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. No issue concerning the expanded definition arose during this reporting period.

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). As in prior years, the Compliance Board recommends 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.

⁴ In addition, the notice requirements of the Act, like the rest of the Act, are entirely inapplicable to an "executive function."

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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July 1, 1992 - June 30, 1999

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Advice from town attorney on individual compliance with ethics law falls within exception for advice from counsel, §10-508(a)(7) 92-1

Legal advice exception permits participation in closed session by non-lawyer who supplies information pertinent to counsel's formulation of legal advice 92-1

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EXECUTIVE FUNCTION

The following were held to fall within the exclusion:

Meeting conducted by county commissioners with board of non-profit hospital, when commissioners have oversight responsibility over hospital 92-2

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preparation of compensation and benefit plans 98-7

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The following were held to be outside the exclusion:

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LEGISLATIVE FUNCTION

- Entire process by which City Council considers ordinance, including briefing about the ordinance, falls within legislative function and therefore is subject to the Act 93-6
- Making an appointment, rather than approval of a proposed appointment, falls outside legislative function 95-5

LICENSING MATTERS

- Regulatory body’s conduct of occupational licensing examination, even if within executive function, nevertheless subject to act as part of the process of granting a license 92-4

“MEETING”

- When quorum of public body attends meeting of an entity that is not a public body, applicability of Act depends on whether public body is itself considering public business 92-2, 94-9, 95-4, 95-10, 96-3, 96-10, 98-8
- Information-gathering at the earliest stages of policy formulation is part of the consideration of public business and therefore is a meeting 93-2, 93-6, 95-7, 97-2
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Opportunity for a public body’s quorum to explore issues as a group and exchange comments and reactions is “the consideration or transaction of public business” and is therefore a meeting 98-2

MINUTES

Closed session statement

Level of detail in statement need not compromise goals of confidentiality that led to session being closed in the first place 92-5, 94-5, 95-1

While “topics of discussion” disclosed in minutes of next open session would ordinarily be the same as “topics to be discussed” in written statement prior to closed session, nothing in the Act prevents a public body from discussing less than it anticipated 93-9

Statement that fails to cite authority for closing a session or to list the topic of discussion and the persons present violates the Act 94-2

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Minutes must reflect item of business conducted 94-2

Minutes must reflect specific statutory authority for closing a session 94-5

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Act allows a public body a reasonable amount of time to review draft minutes for accuracy and to approve them 98-3

Public is not entitled to inspect draft, unapproved minutes 98-3

Act does not prevent a public body from disclosing minutes of a meeting closed to discuss a specific personnel matter, but sound practice suggests that affected employee be given opportunity to object 98-4

NOTICE REQUIREMENTS

Content

Notice need not describe particular agenda items that are expected to be discussed at meeting 92-5, 94-4, 95-1, 98-9, 99-7

One-time publication of schedule of anticipated meeting times, if coupled with posted notice of each meeting, complies with the Act 94-4

Prince George's County Council need not differentiate its role as District Council in announcing time of meeting 98-9

Method

If public is told of the practice, notice through posting in a single location complies with the Act 92-3, 93-4, 98-5

Announcement of future meeting at open meeting attended by press is a "reasonable method" of public notice 93-5

Public body is accountable for staff's clerical error resulting in failure to post notice 93-8

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Scheduling of meeting on short notice requires best public notice feasible under
the circumstances 93-7, 98-3, 99-3

Prompt scheduling of meeting does not excuse failure to provide notice 96-10

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Public must be informed when time of meeting is changed 99-7

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Act does not regulate the manner in which a public body makes decisions at an
open session 92-5

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happened upon the session would have been admitted 93-8

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not exclude public 94-6, 96-4

Act is not violated if public body immediately recognizes that newly raised
topic may not be discussed in closed session and does not discuss topic
further 95-3

Public body may not prohibit videotaping of audience at meeting 95-9

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- Public body violates Act by conducting discussion after announcing adjournment of open session 96-4, 96-9
- Public has no entitlement under Act to comment on public body's decisions 97-7
- People with disabilities must be accommodated at meeting, but meeting need not be held in barrier-free facility 97-9, 97-11

PUBLIC BODY

Factors to be considered:

- Receipt of public funds is irrelevant to public body status 96-11, 97-3

Determined to be a public body:

- Committees comprising town residents appointed by resolution of city council 94-4
- Board of legislatively created corporation, intended by the General Assembly to be a governmental entity 97-3

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- Board of directors of a private, non-profit hospital 92-2
- City, county, or school board staff members 92-2, 98-8, 99-2
- Municipal officials and individual members of city council 93-6
- County department heads and county commissioners in a county in which commissioners are executive head of county government 93-10
- Private, voluntary association of public officials and others 95-4
- Subcommittees not formally created 94-4
- Private corporation's board of directors, albeit appointed by the mayor 96-14

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Informally created committee consisting of two jurisdictions' officials 98-2

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QUASI-JUDICIAL FUNCTION

If, under municipal charter, city council has appellate role in dispute over referendum petition, activity is a quasi-judicial function excluded from the Act 98-1

QUASI-LEGISLATIVE FUNCTION

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Amendment of employment contract is a quasi-legislative function 95-5

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SCOPE OF ACT

Activity by public body that falls within none of the defined functions is covered by the Act 94-7, 94-10, 95-2

ZONING MATTERS

Zoning does not include planning for purposes of the Act 92-3