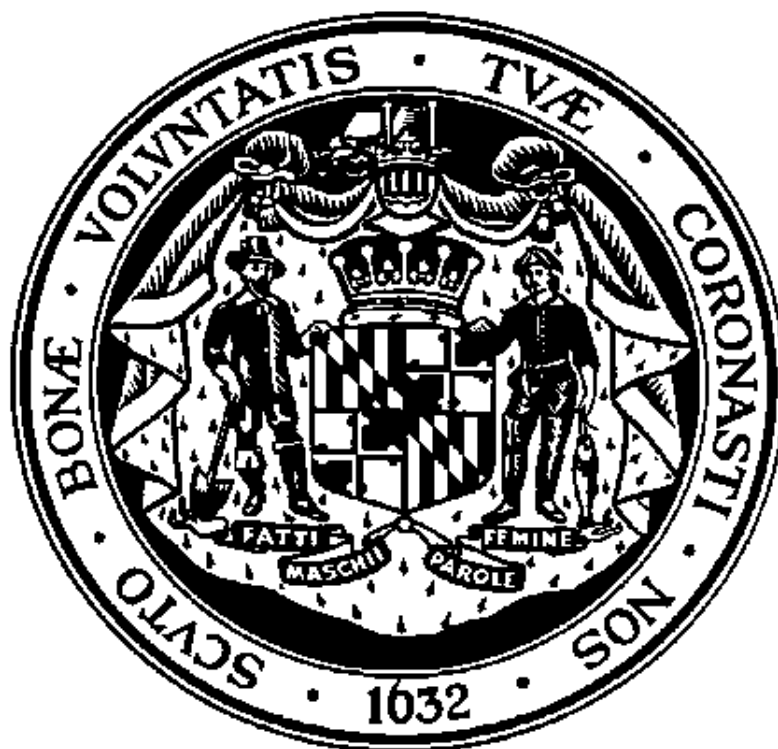


TWELFTH ANNUAL REPORT
OF THE
OPEN MEETINGS COMPLIANCE BOARD



BOARD MEMBERS

Walter Sondheim, Jr., Chairman
Courtney McKeldin
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October 2004

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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, 2003, through June 30, 2004.

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 2004. 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 Attorneys General Jack Schwartz and William Varga, who have 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, 2003 through June 30, 2004, the Compliance Board received 15 complaints alleging violations of the Open Meetings Act. Some of the complaints alleged more than one violation. One complaint was pending on June 30, 2003; the opinion about it was issued in July 2004. One other complaint was later withdrawn.

Table 1 below indicates that, for the first time, more complaints were received from reporters and editors than any other source.

TYPE OF COMPLAINANTS	
Type	Number
Citizens	6
Government Officials	2
News Media	7

Table 1

As Table 2 indicates, more than half of the complaints involved municipalities. The others involved statewide entities (one of which was found not to be a public body) and those at the county level, including community college and school boards.

COMPLAINTS BY TYPE OF ENTITY	
Jurisdiction	Number
Statewide	2
County	1
Community College	2
School Board	1
Municipality	9

Table 2

During the reporting period, the Board issued 20 opinions.¹ In 14 of these, the Board found a violation of the Act. Violations tended to concern the Act’s procedural requirements for closing a meeting and its requirements for

¹ Seven of the opinions were in response to complaints filed during the preceding year.

preparing minutes. In four instances, however, the Board found that discussion in a closed meeting should have been open.

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 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.² 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. 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 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. In one instance during the reporting period, the Compliance Board held that notice of a hastily scheduled meeting was defective because it omitted key information. 4 *Official Opinions of the Maryland Open Meetings Compliance Board* 51 (2004).

² We thank the Attorney General's Office for its maintenance of the Board's web page, which is an important source of information and guidance.

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

II**Legislative Changes**

The Compliance Board is to report annually "any recommendations for improvements to the provisions" of the Act. §10-502.4(e)(2)(v). We have two specific recommendations this year and are attempting to develop consensus on a third.

Issue: Standing to sue

We supported last session's bill to clarify the Act's provision on standing to file suit, to ensure that anyone who is denied access to a meeting can get his or her day in court. Because we continue to believe that the public policy in favor of open government is best served by allowing full access to the courts, and because we do not foresee an excessive litigation burden resulting from clarification of the standing provision, we recommend enactment of this legislation.

Issue: Exemptions for economic development corporations

A second recommendation has to do with partial exemptions from the Act enjoyed by several economic development entities. In a recent opinion, we construed and applied the exemption for the PenMar Development Corporation, which is essentially identical to exemptions for the Maryland Economic Development Corporation, the Maryland Technology Development Corporation, and the Bainbridge Development Corporation. 4 *Official Opinions of the Maryland Open Meetings Compliance Board* 88 (2004).

The Open Meetings Act reflects a delicate balance between the public's interest in open government and the need to ensure confidentiality in limited circumstances. This balance is upset by the exemptions outside the Open Meetings Act for these specific entities. In our view, there is no compelling policy justification for these entities to be treated differently from other public bodies. If they were subject to the Act but needed to conduct some specific economic development work in closed session, they could invoke the Act's fourth exception, which allows a closed meeting to "consider a matter that concerns the proposal for a business or industrial organization to locate,

expand, or remain in the State." We recommend that the Legislature review these provisions with an eye toward their repeal.

Issue: Executive function

Finally, we return yet again to the perennial and vexing issue of the executive function exclusion from the Act. We are consulting with local government and other groups to gauge their reaction to a tentative proposal that would, for the first time, require limited documentation of meetings closed under the executive function exclusion. We shall provide further information after this consultation process has concluded.