

## *8 Official Opinions of the Compliance Board 73 (2012)*

- ◆ Public Body
    - ◇ Determined not to be a public body
      - ◆ Procurement panel put together by staff
  
  - ◆ Public Body
    - ◇ Determined not to be a public body
      - ◆ Private group formed by member of the public
  
  - ◆ Compliance Board – Authority and Procedures
    - ◇ Jurisdictional limits
      - ◆ Open Meetings Act issues only
  
  - ◆ Compliance Board – Authority and Procedures
    - ◇ Complaint
      - ◆ Should be limited to requirements of the Act
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*June 12, 2012*

### **Re: Baltimore Development Corporation (Laura Perkins)**

We have consolidated and considered the complaints of Laura Perkins (“Complainant”) that the now-defunct Senator Theatre Advisory Panel, (the “Panel”), and the Senator Theatre Strategy Group (“the Group”) violated the Open Meetings Act (“the Act”) with respect to meetings held in 2009 and 2010. The Baltimore Development Corporation (“BDC”) responded that neither was a “public body” subject to the Act.

#### *A. The Panel*

The parties agree that the BDC formed the Panel to review the proposals submitted to the BDC in response to a request for proposal issued by the BDC for the purchase or lease of the Senator Theatre for certain purposes. As explained by the BDC, the Panel’s task was to “provide input” to a BDC committee which would then make its own recommendation to the BDC’s Board. In early 2010, the BDC held a public meeting at which the four

offering entities presented their concepts. Shortly thereafter, the Panel met twice in meetings not open to the public.

The Act applies only to a “public body.” State Government Article (“SG”) § 10-505. The facts before us do not establish that the Panel was a “public body” as that term is defined in the Act, as it was not created by one of the means described in SG § 10-502(h)(1) and does not appear to have been appointed by an official or entity falling into the categories set forth in SG § 10-502(h)(2). The Panel instead appears to have been the type of procurement evaluation panel we recently addressed in 8 *OMCB Opinions* 63, 64-65 (2012): a group put together by the public body’s staff to evaluate offers and make a recommendation. As explained there, even an entity subject to the Act may properly close a meeting to conduct certain discussions pertaining to a competitive procurement. *Id.* at 65-66. In any event, the Panel was not subject to the Act and therefore did not violate it. The Panel did not include a quorum of the members of the BDC itself, and so the BDC also did not violate the Act with respect to any actions by the Panel.

We do not address the Complainant’s other allegations because we lack the authority to address matters not involving Open Meetings Act violations. *See* SG § 10-502.5(a) (stating this Board’s authority to issue a written opinion on “the application of [the Act] to the action of a public body covered by [the Act]”). Particularly, our procedures are not a means of obtaining documents; a person wishing to obtain documents from a public body should instead submit a request under the Public Information Act.

### *B. The Group*

Complainant states that the Group was “formed at the direction of” a person who, at the time, was a deputy mayor of the City of Baltimore. BDC explains that a member of the public spoke with the deputy mayor about the future of the theater and volunteered her expertise by forming a group to investigate options. BDC further states that the deputy mayor suggested names of City officials who could contribute to the investigation and that the volunteer selected the members of the Group and coordinated its activities. The members of the Group did not include a quorum of the BDC or of any other public body. Most of the twelve members were not City employees, and only one was a member of the BDC. The volunteer also was not employed by the City or BDC. The Group submitted its recommendations in a letter to the deputy mayor.

We conclude that the Group was not a public body. Although the deputy mayor may have participated in its formation by recommending members from the City government and posing questions, he did not appoint its members. The Group thus does not appear to have been appointed by an official falling into the categories set forth in SG § 10-502(h)(2)(i). Further, it was not created by one of the legal instruments described in State Government Article (“SG”) § 10-502(h)(1).

Complainant also “poses a series of questions,” which, she states, “if answered by the various participants in [the Group], may help to determine if the secrecy of the meetings was used as a cover for a criminal conspiracy to deprive a private property owner of his rights . . . .” These matters go beyond our authority under SG § 10-502.5.

In sum, the entities named in the complaint were not subject to the Act and therefore did not violate it.

*Open Meetings Compliance Board*

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