

8 Official Opinions of the Compliance Board 84 (2012)

- ◆ Administrative Function
 - ◇ Within Exclusion, discussion of:
 - ◆ Pursuant to statute, filling vacancy on council

 - ◆ Open Session Requirement
 - ◇ Practices permitted
 - ◆ deciding whether to allow public participation
-

June 13, 2012

Re: Mayor and Town Council of Hurlock (Monroe Quailes, Jr.)

We have considered the complaint of Monroe Quailes, Jr. (“Complainant”) that the Mayor and Town Council (“Council”) of Hurlock violated the Open Meetings Act (the “Act”). We have also considered the response submitted by the Town Clerk.

Complainant alleges that the Council violated the Act in early 2010 by meeting in closed session to discuss the appointment of a person to a vacancy on the Council, by not following the Act’s procedures for either giving notice of, or holding, a closed meeting, by not providing a summary of the closed sessions in open-session minutes, and by not keeping minutes properly. He concludes that “every decision voted on . . . should be overturned, because [the] councilman . . . was seated illegal[ly].” He further asserts, “Town residents are not afforded the right to get on the agenda”

We find that the Act did not apply to the meetings the Council held to discuss its appointment of a new council member. The Act does not apply when a public body holds a stand-alone closed session to perform an administrative function. *See* State Government Article (“SG”) § 10-503 (providing that the Act does not apply to a public body “when it is carrying out . . . an administrative function”; imposing certain reporting requirements when the public body has recessed an open session to carry out that function). As relevant here, the Act defines “administrative

function” to include the “administration of . . . a law of a political subdivision.” The term excludes the advisory, legislative, quasi-judicial, and judicial functions. SG § 10-502(b). We have long concluded that a public body is fulfilling an administrative function when it convenes to fulfill its own statutory duty to make an appointment. *See, e.g., 1 OMCB Opinions 252 (1997) (Mayor and Council of Chestertown were performing their administrative function when meeting to fill Council vacancy); 6 OMCB Opinions 53 (2008) (Mayor and Council of Betterton were performing their administrative function when meeting to fulfill their duty under the town charter to appoint the clerk-treasurer). Hurlock’s charter similarly required the Council to fill the vacancy left by the departure of one of its members. The Council did not recess open meetings to discuss the appointment. The Act thus did not apply to the meetings in question.*¹

We turn to Complainant’s assertion that “Town residents are not afforded the right to get on the agenda.” The Act entitles a member of the public to observe the public body’s meeting, but neither to participate in it nor to control the agenda. *See* SG § 10-507 (providing that persons may “attend” an open session and that “if the presiding officer determines that the behavior of an individual is disrupting an open session, the public body may have the individual removed.”). The Act does not confer the right claimed by Complainant.

In sum, the Act did not apply to the closed meetings and did not create a right to speak at the open meetings, so the Council did not violate it.

Open Meetings Compliance Board

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¹ Not every discussion touching on an appointment within the public body’s own powers falls within the definition of “administrative function.” For example, a public body’s discussion of whether to form outside committees to broaden participation in the appointment process falls more into the realm of forming policy, a quasi-legislative function. *See 7 OMCB Opinions 264 (2011).* That was not the case here.