

8 Official Opinions of the Compliance Board 86 (2012)

- ◆ Closed Session Procedures
 - ◇ Voting – vote to close must be held in open session
 - ◆ Closed Session Procedures
 - ◇ Written Statement – failure to prepare written statement
 - ◆ Exceptions Permitting Closed Sessions
 - ◇ Legal Advice, §10-508(a)(7)
 - Outside exception – counsel not present
 - ◆ Exceptions Permitting Closed Sessions
 - ◇ Personnel, §10-508(a)(1)
 - Outside exception, discussion of:
 - ◆ policies or actions affecting classes of employees
 - ◆ Minutes
 - ◇ Closed Session Statement
 - Practices in violation
 - ◆ failure to include summary of closed session in minutes of open session
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July 2, 2012

Re: Somerset County Board of Education (J.K. Phoebus, Esq.)

We have considered the complaint of John K. Phoebus, Esq. (“Complainant”) that the Somerset County Board of Education (“County Board”) violated the Open Meetings Act (“the Act”) with respect to over fifteen meetings it closed to the public in 2011 and early 2012. Complainant alleges that the County Board did not prepare the statutorily-required written statement of its basis for closing each session, improperly closed sessions for the stated purpose of consulting with counsel when, in fact, counsel did not appear to be present on those days, and did not provide in its minutes the statutorily-required information about the discussions held in the sessions.¹ Complainant further states that he endeavored to

¹ These allegations implicate, respectively, State Government Article (“SG”) § 10-508 (d)(2)(ii) (requiring the presiding officer to complete a written statement before the public body meets in closed session, to cite the statutory authority for closing the meeting, and to specify the topics to be discussed and reasons for closing the meeting) and § 10-509(c)(2) (requiring the public body to

(continued . . .)

bring the requirements of the Act to the attention of the County Board before he submitted his complaint to us.

The County Board does not dispute the allegations. Instead, its counsel explains, it acted on the complaint by engaging his law firm to review its policies, practices, and procedures for closing meetings to the public. Counsel states that while the County Board's written policy conforms to the Act, the County Board had not been following the correct procedures. The County Board has now been advised on what it must do to close a meeting in compliance with the Act. Specifically, counsel informs us, the County Board will now meet in an open session to vote on whether to close a session to the public, will issue meetings notices that correctly state the County Board's anticipated reason for holding a closed session,² and will include in the minutes of the next open session a proper summary of the discussion held in the closed session. Counsel has confirmed to our counsel that the County Board will prepare the requisite written statement before closing a meeting. Finally, counsel states that the County Board in fact had only closed sessions for reasons permitted by the Act.

In light of the advice given to the County Board by its counsel and the County Board's reported undertaking to comply with the Act, we need not discuss the matter further. We commend the Complainant's effort to bring his allegations to the County Board's attention before invoking our complaint process. We commend the County Board's decision to retain counsel not merely to respond to the allegations, but also to review its procedures; we also encourage the County Board to provide the public with

specify the topics discussed and actions taken in the closed session in the minutes of its next open session). For an explanation of the procedures required of a public body wishing to close a meeting to perform a function covered by the Act, *see, e.g., 7 OMCB Opinions 225 (2011)*, available at <http://www.oag.state.md.us/Opinions/Open2010/7omcb225.pdf>.

² The Act does not require a public body to specify in a meeting notice the reason for which it expects to close a meeting, for the simple reason that an additional reason for the closing might arise during the meeting itself. SG § 10-506(b) thus merely requires a public body to include in its notice, when appropriate, that "a part or all of a meeting may be conducted in closed session." If the County Board continues its practice of including in its meetings notices the reasons for which it expects to close a meeting, we encourage the County Board to also state that those reasons are subject to change.

some form of disclosure of the topics discussed and actions taken in the closed sessions cited here.³

Open Meetings Compliance Board

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³ After the County Board responded to the complaint, Complainant supplemented it with additional information on the topics discussed in meetings closed under the exception applicable to the discussion of personnel matters. *See* SG §10-508(a)(1). Complainant states correctly that the exception applies to discussions about individual employees and not to the consideration of policies or actions affecting classes of employees or the continuation of positions. *See* 6 *OMCB Opinions* 180 (2009).