♦ **Notice Requirements**
◇ *Method, practices in violation*
Notice only to people on distribution list

***Topic headings correspond to those in the Opinions Index (2010 edition) at http://www.oag.state.md.us/opengov/openmeetings/appf.pdf**

August 8, 2013

Re: Coastal and Watershed Resources
Advisory Committee ("CWRAC")
Michele J. Fluss (Complainant)

We have considered the third complaint of Michele J. Fluss ("Complainant") concerning the Coastal and Watershed Resources Advisory Committee ("CWRAC"), an advisory body that is located administratively under the Maryland Department of Natural Resources ("DNR"). As in the complaints she submitted in 2010 and 2011, Complainant alleges that CWRAC violated the provisions of the Open Meetings Act ("Act") that require public bodies to provide the general public with "reasonable advance notice" of their meetings.[1] We conclude, as we did in 2010, that CWRAC violated those provisions.

Background

Complainant alleges that CWRAC did not provide the general public with notice of four meetings in 2012 (April 27, June 12, August 12, and November 12) and one in 2013 (April 26). She states that she and approximately 104 other people received notice of the meetings by e-mail only because they had asked to be on CWRAC's e-mail notification list. Complainant states that CWRAC does not publish the existence of the notification list and did not post these meetings on the events calendar that appears on DNR's website. She points out that we gave CWRAC guidance on its notices practices in 2010 and 2011, *see* 7 *OMCB Opinions* 18 (2010) and 7 *OMCB Opinions* 259 (2011), and that CWRAC responded to her 2010 complaint by undertaking to post its notices on DNR's online events calendar. She further states that CWRAC's webpage, as of the date of her complaint, did not reflect the fact that CWRAC has new staff.

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[1] For the Act's notice provisions, see § 10-506 of the State Government Article ("SG") of the Maryland Code.

DNR's online services manager responded for CWRAC. He states that DNR has a procedure for posting notices on its events calendar, but that, in effect, CWRAC had not used that procedure. He states that the following corrective measures are now underway at DNR:

- First, DNR has now designated the online services manager to serve as DNR's Open Meetings Coordinator.
- Second, DNR is reviewing its list of boards and commissions to make sure the list is current.
- Third, DNR is assigning a DNR employee to each board or commission for open meetings compliance purposes. DNR will require each designee to take the online course posted on the Attorney General's website and will list the designee on the particular public body's webpage.
- Fourth, DNR's unit directors will inform the online services manager of personnel changes affecting any designee, so that the online services manager can make sure that the successor designee takes the online course and understands the need to publish meetings notices.

Discussion

We explained the controlling principles in 7 *OMCB Opinions* 18 (2010) and 7 *OMCB Opinions* 259 (2011) and need not repeat those opinions.[2] In brief, a public body violates the Act whenever it fails to publish its meeting notices to the general public. We find that CWRAC failed to publish its meeting notices to the general public on four of the five occasions alleged and therefore violated the Act on those four occasions. As to the fifth meeting, CWRAC gave notice of its April 2012 meeting both by e-mailing the people on its notification list and by posting it in the April newsletter located on the Chesapeake and Coastal Service page on DNR's website. While we do not find that the CWRAC violated the Act by using the newsletter instead of the events calendar, we continue to encourage CWRAC to use its events calendar, or another designated method, consistently and therefore predictably.

Although we do not know what caused the violations here, we have seen in other matters that the ministerial tasks associated with giving notice can fall too easily between the cracks for public bodies without offices of their own, especially when there has been a change in technical staff. *See* 8 *OMCB Opinions* 188, 191 (2013) (addressing violations that occurred during "administrative transitions" involving the city agency employee who staffed a task force). DNR's corrective measures appear to address this

[2] Both opinions can be found at http://www.oag.state.md.us/Opinions/Open2010/10index.htm.

risk. Nonetheless, we will repeat the advice we gave the task force at issue in 8 *OMCB Opinions* 188: the members of a public body might avoid unwittingly participating in an illegal meeting by satisfying themselves beforehand that meaningful notice has been given. To that end, the presiding officer might consider including on the agenda of each meeting a notation of how notice was given for that meeting.

Conclusion

In conclusion, we find that CWRAC violated the Act on four occasions by not posting its meeting notices in a location accessible to the general public. The corrective measures that DNR has described to us will likely reduce the risk that CWRAC repeats these violations.

Open Meetings Compliance Board

Elizabeth L. Nilson, Esquire
Courtney J. McKeldin