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MARYLAND. OPEN MEETINGS COMPLIANCE BOARD

First annual report of the Open Meetings
Compliance Board

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STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE BOARD

July 1, 1993

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The Honorable William Donald Schaefer
Governor
State House
Annapolis, Maryland 21401

The Honorable R. Clayton Mitchell, Jr.
Speaker of the House
Kentmore Park
Kennedyville, Maryland 21645

The Honorable Thomas V. "Mike" Miller
President of the Senate
107 State House
Annapolis, Maryland 21401

JUL 06 1993

Dear Governor Schaefer, Senator Miller, and Delegate Mitchell:

We are pleased to provide you with the first annual report of the Open Meetings Compliance Board, submitted to you pursuant to §10-502.4(e) of the State Government Article. In it we review the activities of the Board under the amended Maryland Open Meetings Act for the period July 1, 1992 through June 30, 1993.

We are grateful for the support that you have offered us and look forward to continued service to the State.

Very truly yours,

Walter Sondheim, Jr.
Walter Sondheim, Jr.

Tyler G. Webb
Tyler G. Webb, Esquire

Courtney McKeldin
Courtney McKeldin

DIRECT ALL INQUIRIES TO:

ASSISTANT ATTORNEY GENERAL JACK SCHWARTZ, BOARD COUNSEL
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FIRST ANNUAL REPORT OF THE

OPEN MEETINGS COMPLIANCE BOARD

Pursuant to §10-502.4(e) of the State Government Article, the Board submits this annual report, covering the period July 1, 1992 through June 30, 1993.

I

Activities of the Board

A. *Educational Activities*

The most important initial task of the Board was to help State and local government officials learn about their new responsibilities resulting from the 1991 amendments to the Open Meetings Act, which became effective on July 1, 1992. The Board's belief was, and remains, that most public officials will conform to the requirements of the law once they are aware of what the law calls for.

To help achieve its educational objective, the Compliance Board held a series of forums throughout Maryland. The forums, held in cooperation with the Maryland Association of Counties, the Maryland Municipal League, and the Maryland Association of Boards of Education, included brief presentations about the role of the Board and the changes in the law and afforded public officials and other interested persons the opportunity to ask questions. These forums were held as follows:

June 17, 1992, at College Park
June 24, 1992, at Annapolis
July 22, 1992, at Salisbury
July 29, 1992, at Cumberland
August 5, 1992, at Chestertown

These forums were generally well attended and well received.

In addition, members of the Board and Assistant Attorney General Jack Schwartz, Counsel to the Board, separately spoke to a number of groups to help achieve greater awareness and therefore a greater level of compliance. The audiences for these separate presentations included municipal officials, municipal lawyers, assistant attorneys general, members of the Administrative Law Section of the Maryland State Bar Association, and community college officials.

Finally, well before the amendments to the Act became effective on July 1, 1992, Attorney General J. Joseph Curran, Jr. issued a very useful *Open Meetings Act Manual*. This publication contains a narrative about the law, answering many of the interpretive questions; the full text of the amended law; and a compliance check list, to help public bodies remember their obligations. With the support of the Maryland Chapter of the Society of Professional Journalists, the manual has been republished and widely distributed to public officials, journalists, and members of the public.

B. Financial and Support Activities

No funds were specifically appropriated for the Compliance Board in the Budget Bill for fiscal year 1993. With the cooperation of the Governor and the Chief of Financial Administration for the Governor's Office, Mr. Charles M. Stevenson, some funds have been made available to defray the expenses of the Board. During fiscal year 1993, the Board spent \$2,667.86 on costs such as mileage expenses, stationery, and the copying and mailing of manuals.

The Board wishes to acknowledge the ongoing support of the Office of the Attorney General, especially the informed and dedicated involvement of Jack Schwartz, Chief Counsel for Opinions & Advice, who was the author of the invaluable *Open Meetings Act Manual* and who 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 by Ms. Kathleen Izdebski, of the Opinions and Advice Division of the Attorney General's Office. The

cost to the Board would have been dramatically increased had it been required to obtain these support services elsewhere.

C. Opinion Activity

The work of the Compliance Board in connection with its opinion function will be discussed in Part II of this report.

II

Complaints and Opinions

From July 1, 1992 through June 30, 1993, the Compliance Board received 20 complaints alleging violations of the Open Meetings Act. Some of the complaints alleged more than one violation. Of these 20 complaints, two were withdrawn and three are presently pending. The others all resulted in opinions from the Compliance Board.

Table 1 below indicates that most of the complainants have been members of the public who believed that a public body had violated the Act. The Board received fewer complaints from journalists than it had anticipated — only one.¹

TYPE OF COMPLAINANTS	
Number	Type
17	Citizen
2	Government Officials
1	Journalists

Table 1

Most of the complaints have involved public bodies in municipalities, as Table 2 indicates. This fact is unsurprising, because there are several times as many municipalities as

¹ The Attorney General's Office received many more inquiries that never resulted in complaints. During the year covered by this report, the Attorney General's Office logged 120 inquiries, about half of them from journalists.

counties in Maryland. We are pleased to report that, to date, no complaint has been filed against a State agency.

COMPLAINTS BY TYPE OF PUBLIC BODY	
Number	Public Body
0	State
5	County
1	School Boards
14	Municipality

Table 2

During the reporting period, the Board issued 12 opinions.² In six of these opinions, the Board found one or more violations of the Act. Table 3 below indicates the types of violations found.

TYPES OF VIOLATIONS	
Type	Number
Unlawful closing	4
Improper notice	0
Improper closing procedures	5
Improper minutes	3

Table 3

Since most of the complaints were filed against municipal public bodies, not surprisingly most of the violations found by the Compliance Board were those of municipal public bodies, as Table 4 indicates.

² Although most of the opinions responded to one complaint, one of the Board's opinions consolidated three complaints from the same complainant, and another opinion consolidated two complaints from another complainant.

VIOLATIONS BY TYPES OF PUBLIC BODY	
Public Body	Number
State	0
County	2
School Boards	0
Municipality	8

Table 4

Considering the many hundreds of public bodies in Maryland, and therefore the many thousands of meetings that took place during the reporting period, both the number of complaints and the number of violations found seem to the Compliance Board to be relatively low. Although it is impossible, of course, to estimate the incidence of unreported violations, the Compliance Board is hopeful that the low numbers of known violations reflects overall compliance with the law by public bodies at all levels of government.

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). We received three complaints alleging that the notice for a meeting was not properly provided. One complaint, for example, suggested that notice of a meeting should have been published in a newspaper circulated among the residents of a town. But because the Act allows notice to be given by "any ... reasonable method," including posting at a public location near the site of the meeting, the Board was unable to conclude that this or any other specific method of notice had to be adhered to.

In other words, the Act does not require that the best form of notice necessarily be provided. The form of notice calculated to get word of a meeting to the greatest number of people might be too expensive or otherwise too burdensome. 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

³ In addition, as the Board pointed out to one complainant, the notice requirements of the Act, like the rest of the Act, are entirely inapplicable to an "executive function."

The Act also calls on the Board to discuss "the impact on State and local governments of the provision of §10-502(h)(2) of this article, including a discussion of how the affected entities had adhered to requirements of this subtitle." In §10-502(h)(2), the General Assembly extended the definition of "public body" to include "any multimember board, commission, or committee appointed by the Governor or the chief executive authority of a political subdivision of the State, if the entity includes in its membership at least 2 individuals not employed by the State or a political subdivision of the State." This provision will "sunset" on June 30, 1994, unless it is extended by the General Assembly.

The Board received no complaints that an entity covered by this extended definition of "public body" had violated the Act. Again, although the Board cannot know of violations that are not brought to its attention, the dearth of complaints in this regard suggests that these public bodies have recognized their obligations and are complying. Inquiries to the organizations that represent county, municipal, and school board officials suggest that the expanded definition of "public body" for the most part has not had a "chilling effect" on the citizen volunteers that serve on these kinds of boards and commissions, although the Maryland Association of Counties reports some concern about citizen volunteers complying with the administrative requirements of the amended Act. In MACO's view, "this added complexity to a citizen volunteering for public service impedes participation in these bodies."

III

Recommendations

The Compliance Board is to report annually "any recommendations for improvements to the provisions" of the Act. §10-502.4(e)(2)(v). After but a single year of activity under the amended Act, the Board believes that it would be premature to offer any recommendations at this time. Certain aspects of the Act do bear watching — in particular, the troublesomely vague definition of "executive function," which excludes many meetings from the scope of the Act. In addition, the Maryland Association of Counties and others have expressed concern about the provision of the Act that opens the deliberations of quasi-judicial bodies to public observation when these bodies are considering licensing and zoning matters. The Board may well offer legislative recommendations in this regard in its next annual report. But the Board prefers to have at least another year's worth of experience to offer to the Governor and the General Assembly before proposing changes to the law.

On one issue, however, the Board perceives a need to make a recommendation now. As discussed above, the section of the Act that extends the definition of "public body" to include certain volunteer boards not previously covered by the Act, §10-502(h)(2), will "sunset" on June 30, 1994, unless the provision is reenacted by the General Assembly. If the extended definition of "public body" is to remain in the law, the General Assembly will have to act at its 1994 session.

The Compliance Board believes that the General Assembly should either eliminate the sunset provision altogether or extend the sunset date for another two years. The overall objective of the Act — that public policy be made in an open manner — is advanced by applying the Act to boards that often play an important advisory role in policy formulation. Although some volunteers might initially be daunted by the prospect of compliance with the Act, once people become familiar with its requirements, compliance is not hard. There is no specific evidence that the activities of these bodies have been impaired through application of the Open Meetings Act. Therefore, the Compliance Board recommends that the current definition of "public body" be retained.