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ANNUAL REPORT OF THE OPEN MEETINGS COM-  
PLIANCE BOARD

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# SIXTH ANNUAL REPORT

## OF THE

# OPEN MEETINGS COMPLIANCE BOARD

*Pursuant to State Government Article 810-502.4(c)*

26624-6002

### BOARD MEMBERS

Walter Sondheim, Jr.  
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### COUNSEL, OPEN MEETINGS COMPLIANCE BOARD

Jack Schwartz  
Assistant Attorney General

July 31, 1998

SIXTH 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, 1997, through June 30, 1998.

I

Activities of the Board

A. *Financial and Support Activities*

No funds were specifically appropriated for the Compliance Board in the Budget Bill for fiscal year 1998. Although the Governor has indicated a willingness to make funds available to defray the necessary expenses of the Board, during fiscal year 1998 no such funds were expended. The Attorney General's Office has borne the incidental costs of copying and mailing Board-related documents. The Board is grateful to the Attorney General's Office for this assistance.

Indeed, the Board wishes to acknowledge more generally the ongoing support of the Attorney General's Office, especially the informed and dedicated involvement of Jack Schwartz, Chief Counsel for Opinions and Advice, who was the author of the invaluable *Open Meetings Act Manual* (3d ed. 1997) and who has 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 significant had it been required to obtain these support services elsewhere.

In prior annual reports, the Board had prepared updated topical indices and citators for its opinions. With the assistance of the Attorney General's Office, however, the Board recently published a compilation of its opinions, including an updated topical index and citator. Supplemental volumes will be published periodically.

**B. Complaints and Opinions**

From July 1, 1997 through June 30, 1998, the Compliance Board received 12 complaints alleging violations of the Open Meetings Act. Some of the complaints alleged more than one violation.

Table 1 below indicates that complaint from citizens considerably exceeded complaints from representatives of the news media.

| <b>TYPE OF COMPLAINANTS</b> |               |
|-----------------------------|---------------|
| <b>Type</b>                 | <b>Number</b> |
| Citizens                    | 6             |
| Government Officials        | 2             |
| News Media                  | 4             |

**Table 1**

More complaints involved public bodies in municipalities than in other levels of government, as Table 2 indicates. As the Board has noted in the past, this fact is unsurprising, because there are several times as many municipalities as counties in Maryland. The numbers also reflect the fact that three citizens simultaneously filed separate complaints about a particular municipality. Three complaints involved meetings between county and city councils.

| <b>COMPLAINTS BY TYPE OF PUBLIC BODY</b> |               |
|--|---------------|
| <b>Public Body</b>                       | <b>Number</b> |
| State                                    | 0             |
| County                                   | 4             |
| School Board                             | 0             |
| Municipality                             | 11            |

**Table 2**



During the reporting period, the Board issued seven opinions.<sup>1</sup> In three of these opinions, the Board found one or more violations of the Act. Table 3 below indicates the types of violations found.

| <b>TYPES OF VIOLATIONS</b>     |               |
|--------------------------------|---------------|
| <b>Type</b>                    | <b>Number</b> |
| Unlawful closing               | 1             |
| Improper procedures            | 0             |
| Failure to give proper notice  | 1             |
| Failure to keep proper minutes | 1             |

**Table 3**

The violations involved both county and municipal public bodies, as Table 4 indicates.

| <b>VIOLATIONS BY TYPES OF PUBLIC BODY</b> |               |
|---|---------------|
| <b>Public Body</b>                        | <b>Number</b> |
| State                                     | 0             |
| County                                    | 1             |
| School Boards                             | 0             |
| Municipality                              | 2             |

**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 to estimate the incidence of unreported violations, the Compliance Board believes that the low numbers of known violations reflects overall compliance with the law by public

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<sup>1</sup> One opinion addressed three separate complaints about the same municipality; another opinion responded to two separate complaints about meetings between county and city councils. One of the opinions concerned a complaint that had been filed during the prior fiscal year. One complaint was pending at the end of the fiscal year. One complaint file was closed without an opinion after the public body conceded that it had violated the Act.

bodies at all levels of government. This conclusion is further supported by the fact that only a handful of Open Meetings Act issues have been brought to court.

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). Notice issues have not been a focus of complaints, probably because the Act is quite flexible in allowing a range of notice methods. That is, the Act allows notice to be given by "any ... reasonable method," including posting at a public location near the site of the meeting. 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.<sup>2</sup>

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 originally carried a "sunset" date of June 30, 1994, but is now a permanent part of the law. No issue concerning the expanded definition arose during this reporting period.

## II

### Recommendations

The Compliance Board is to report annually "any recommendations for improvements to the provisions" of the Act. §10-502.4(e)(2)(v). The Compliance Board has two recommendations this year, one substantive, the other housekeeping.

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<sup>2</sup> In addition, the notice requirements of the Act, like the rest of the Act, are entirely inapplicable to an "executive function."

The substantive recommendation is that the Act's definition of "public body" be extended to those entities that, although private corporations in form, are controlled by government and in reality are policymaking instruments of government.

In the 1998 Session of the General Assembly, Senate Bill 340 would have expanded the definition of "public body" so that the Act would apply to nominally private entities if their boards of directors were controlled by the government. The Compliance Board recommended and supported this bill, believing that it would advance the Act's basic premise. The right of the public to observe the decision-making process of these bodies would help "ensur[e] the accountability of government to the citizens of the State." §10-501(b)(1) of the State Government Article.

This principle is undermined if governmental functions are carried out through government-controlled, nominally private corporations that escape the Act. The current definition of "public body" in §10-502(h) focuses on the historic origin of an entity, not its actual functioning or its effective control by government. Thus, the Board reluctantly concluded in one opinion last year that the corporate entity setting tourism policy for Baltimore City was not covered by the Act.

The Board urges passage of a bill like Senate Bill 340 during next year's legislative session.

The housekeeping suggestion is that §10-502.4(e)(2)(iv) be eliminated. As noted above, this provision requires every annual report of the Board to discuss "the impact on State and local governments of the provisions of §10-502(h)(2) of this Article, including a discussion of how the affected entities have adhered to the requirements of this subtitle." The provision referred to is the one that extended the definition of "public body" to include certain citizen advisory panels.

In all likelihood, the Compliance Board's duty to discuss this provision in its annual report was linked to the original sunset provision. The General Assembly wished to ensure that it would have information enabling it to make a judgment about extending or eliminating the sunset provision. Now that the General Assembly has eliminated the sunset provision, there appears to be no sound reason for *requiring* a discussion of the issue annually. Should some particular occurrence in the future merit discussion in an annual report, the Compliance Board will do so. But an annual, required recitation serves no purpose.