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NINTH ANNUAL REPORT OF THE OPEN
MEETINGS COMPLIANCE BOARD

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NINTH ANNUAL REPORT
OF THE
OPEN MEETINGS COMPLIANCE BOARD

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October 10, 2001

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Pursuant to State Government § 10-502.4(e)

NINTH 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, 2000, through June 30, 2001.

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 2001. Although the Governor has indicated a willingness to make funds available to defray the necessary expenses of the Board, during fiscal year 2001 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 Assistant Attorney General Jack Schwartz, who was the author of the invaluable *Open Meetings Act Manual* (4th ed. 2000) 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 and Ms. Carol O'Brocki, 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.

B. *Complaints and Opinions*

From July 1, 2000 through June 30, 2001, the Compliance Board received 28 complaints alleging violations of the Open Meetings Act. Some of the complaints alleged

more than one violation. One complaint was withdrawn before an opinion was issued, and five complaints were pending on June 30, 2001.

In addition, the Board received an oral complaint from a newspaper editor in advance of a town council meeting, alleging that the meeting was to be closed unlawfully. Pursuant to §10-502.6, the Attorney General's Office, on behalf of the Board, investigated the matter and determined that the meeting could properly be closed under the "executive function" exclusion from the Act.

Table 1 below indicates that, as in prior years, complaints from citizens predominated.

TYPE OF COMPLAINANTS	
Type	Number
Citizens	20
Government Officials	2
News Media	6

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.

COMPLAINTS BY TYPE OF PUBLIC BODY	
Public Body	Number
State	1
County	7
School Board	9
Library Board	1
Municipality	11

Table 2

During the reporting period, the Board issued 17 opinions.¹ In about half of these opinions, the Board found a violation of the Act. Violations included unlawfully closing meetings, failing to follow the Act's procedural requirements, giving inadequate meeting notice, and failing to prepare minutes in a timely way.

Although it is impossible to estimate the incidence of unreported violations, the Compliance Board believes that the low number of known violations reflects overall compliance with the law by public 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). In general, 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.² Public bodies do face notice problems, however, when they call a meeting on short notice, delay a previously scheduled meeting, or decide to open a meeting that had previously been scheduled as a closed meeting. The Compliance Board's guidance is that the public should be told of unexpected scheduling developments as soon as practicable, by whatever means are feasible under the circumstances.

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,

¹ One opinion combined a response to two complaints about a board of county commissioners.

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

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). As in prior years, the Compliance Board recommends 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.