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MARYLAND. OPEN MEETINGS COMPLIANCE  
BOARD.

Annual report of the Open Meetings Compliance Board.

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FIFTEENTH ANNUAL REPORT  
OF THE  
OPEN MEETINGS COMPLIANCE BOARD

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October 2007

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Pursuant to:  
State Government § 10-502.4(e)

FIFTEENTH 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, 2006, through June 30, 2007.

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 2006. 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 Attorneys General Jack Schwartz and William Varga, who have 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, with outstanding professionalism, 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.

**B. *Complaints and Opinions***

From July 1, 2006 through June 30, 2007, the Compliance Board received 24 complaints alleging violations of the Open Meetings Act.<sup>1</sup> Many of the complaints alleged more than one violation. Six complaints were pending on June 30, 2007; the opinions in response were issued later. Four opinions were issued about complaints received prior to July 1, 2006.

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<sup>1</sup> Two of these complaints were closed prior to issuance of an opinion.

Table 1 below indicates the categories of complainants.

| <b>TYPE OF COMPLAINANTS</b> |               |
|-----------------------------|---------------|
| <b>Type</b>                 | <b>Number</b> |
| Citizens                    | 15            |
| Government Officials        | 0             |
| News Media                  | 9             |

Table 1

As Table 2 indicates, entities at every level of government were involved with complaints.

| <b>COMPLAINTS BY TYPE OF ENTITY</b> |               |
|-------------------------------------|---------------|
| <b>Jurisdiction</b>                 | <b>Number</b> |
| State                               | 3             |
| County                              | 6             |
| County School Board                 | 3             |
| Municipality                        | 12            |

Table 2

During the reporting period, the Board issued 20 opinions. In 10 of these, the Board found a violation of the Act. Violations tended to concern the Act's procedural requirements for closing a meeting and its requirements for preparing minutes. All of the Board's opinions are available at this Internet location:<sup>2</sup> <http://www.oag.state.md.us/Opengov/Openmeetings/board.htm>

As we have previously observed, 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. Overall compliance is undoubtedly furthered by the ongoing educational efforts of the

<sup>2</sup> We thank the Attorney General's Office for its maintenance of the Board's web page, which is an important source of information and guidance.

Academy for Excellence in Local Governance, the Maryland Association of Counties, the Maryland Municipal League, and the Office of the Attorney General. The continued interest of the press in asserting rights under the Act also has a salutary deterrent effect.

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 or, as of July 1, 2007, on an Internet website. 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>3</sup> 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. Issues about notice were discussed in the following opinions: 5 *OMCB Opinions* 70 (2006), 5 *OMCB Opinions* 83 (2006), 5 *OMCB Opinions* 105 (2007), 5 *OMCB Opinions* 117 (2007), and 5 *OMCB Opinions* 139 (2007).

## II

### Legislative 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 Board has no legislative recommendations of its own this year. We have been asked by a member of the public, Ms. Michelle Fluss, to consider endorsing two amendments to the Act:

(1) With respect to public bodies that carry out an advisory function, require the public body to maintain on the website of the appointing authority current information about the public body's membership, purpose, reporting obligations, location of meeting notices, contact information, and activities.

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<sup>3</sup> In addition, the notice requirements of the Act, like the rest of the Act, are entirely inapplicable to an "administrative function," formerly called an "executive function."

Compliance Board recommendation: We take no position on this proposal. Although the Compliance Board is sympathetic to the objectives underlying this proposal, we note that most of the disclosures which Ms. Fluss seeks concern matters other than the conduct of meetings and so are outside our role in making legislative recommendations. Moreover, as previously noted, the Act already allows all public bodies, including those carrying out advisory functions, to use the Internet for meeting notices. We have reservations about the wisdom of transforming this grant of authority into an across-the-board mandate.

Ms. Fluss also proposed a more far-reaching legislative change.

(2) Again with respect to public bodies that carry out an advisory function, require that the charter document establish membership that is "fairly balanced" about the interests represented and the functions to be performed by such a public body .... In addition, a State statute should parallel provisions of the federal Advisory Committee Act aimed at insulating the public body from inappropriate political influence and ensuring independent judgment.

Compliance Board recommendation: This suggestion is beyond the purview of the Compliance Board. We take no position on it.

Finally, a journalist, Mr. Craig O'Donnell, offered a comment about an existing provision and a (perhaps half-serious) request for a change. Under §10-502.4(d), the Board, in conjunction with the Office of the Attorney General, is to develop and conduct educational programs on the requirements of the open meetings law for the staffs and attorneys of public bodies generally, the Maryland Municipal League, and the Maryland Association of Counties. This we do, through our counsel. As far as the Board is aware, our counsel have accepted every training invitation received and have even recorded a DVD to facilitate in-house training sessions.

Mr. O'Donnell laments, however, that the promiscuous use of the term "executive session" as synonymous with any closed session "confounds the very distinctions that the Act's 14 exceptions are supposed to make and doesn't comply with the most recent changes in statute."<sup>4</sup> In other words, he contends, the educational strategy is not working. So, he concludes, "It may be that the State needs to offer a cash reward for every successful complaint. The 'bounty system' has a long and honored tradition in America beginning with wolf's heads and crows."

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<sup>4</sup> He is referring to Chapter 584 of the Laws of Maryland 2006, which deleted the term "executive function" in favor of "administrative function."

Compliance Board recommendation: Evocative as the analogy is, the Compliance Board does not view public bodies' inexact usage, or even violations of the Act, as a public nuisance. Nor does the Board want to see its advisory opinion process turned into a contest with money stakes. We will continue to pursue every possible educational opportunity, but we do not favor a monetary reward for successful compliance.