COMPLIANCE BOARD OPINION 01-16

July 23, 2001

Ms. Catherine Hollingsworth
Gazette-Star Newspapers

The Open Meetings Compliance Board has considered your complaint concerning a closed meeting held by the Bowie City Council on May 7, 2001. We conclude that the Council failed to comply with one of the procedural requirements of the Open Meetings Act for closing a meeting. The Council has acknowledged that its prior practice fell short of the Act's requirements and has modified its procedures to ensure future compliance.

I

Complaint and Response

Your complaint concerned a May 7, 2001, closed meeting of the Bowie City Council involving redistricting. Specifically, your complaint was that the Council "failed to provide a written summary of a controversial [closed] session...." The complaint indicated that "[n]ormally, [these] summaries appear in the city manager's weekly status report/memo." We interpret your complaint as alleging the Council's failure to comply with §10-508(d)(2)(ii),[1] which requires the presiding officer of a public body to prepare a publicly available, written statement explaining the reason and justification for a closed meeting prior to the public body's meeting in closed session.[2]

In a timely response on behalf of the City Council, Elissa D. Levan, Esquire, acknowledged that the Council held a closed meeting following its public session on May 7.[3] According to Ms. Levan, the purpose of the closed meeting was to allow

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[1] All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

[2] A public body has a separate obligation under §10-509(c)(2) to include, within the minutes of the subsequent open meeting, certain information about the preceding closed meeting. According to the Council's response, preparation of the pertinent minutes has been delayed due to City Clerk's absence from the office both for personal reasons and City business over the course of the last several weeks.

[3] Apparently, the closed session actually started at midnight and continued to 12:20 a.m., May 8, 2001.

the Council "to obtain legal advice from counsel regarding its obligations with respect to election redistricting." Apparently, an announcement was made to this effect during the open portion of the meeting, and a vote was taken to go into closed session. Ms. Levan indicated that the vote would be reflected in the minutes of that meeting; however, as of the date of the response, the minutes had not yet been transcribed.[4]

Ms. Levan outlined the City Council's procedures for conducting a closed meeting under the Open Meetings Act. The Council uses a form suggested by the Office of the Attorney General,[5] stating the reasons and legal basis for meeting in closed session and the topics to be discussed. The response acknowledged, however, that past practice has been for personnel in the City Manager's Office to complete the form *after* the meeting. This practice was followed with respect to the May 7 meeting and, according to Ms. Levan, the form is available to you upon request. Ms. Levan indicated that the Council will modify its practice so that the presiding officer will complete the written statement prior to closing a meeting.

II

Analysis

The Open Meetings Act allows a public body to meet in a closed session to obtain legal advice from its counsel. §10-508(a)(7). When closing a meeting on this basis, however, or for any of the reasons enumerated in §10-508(a), a public body must satisfy certain procedural requirements. First, the public body must begin its meeting in a session open to the public, at which a majority of members present and voting support a motion to go into closed session. §10-508(d)(1) and (2)(i). Second, *before* the public body goes into closed session, the presiding officer is required to "make a written statement of the reason for closing the meeting, including a citation of the authority under [§10-508], and a listing of the topics to be discussed." §10-508(d)(2)(ii). *See, e.g.,* Compliance Board Opinion 92-4 (November 17, 1992), *reprinted in* 1 *Official Opinions of the Maryland Open Meetings Compliance Board* 13, 14 (written statement must be available at time public body makes its decision to go into closed session). This written statement is a matter of public record. §10-508(d)(4).

These procedural requirements must be satisfied immediately prior to the closed session. Compliance Board Opinion 00-2 (April 10, 2000), slip op. at 3. As we have indicated previously, the required timing is to ensure that those who

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[4] *See* note 2 above.

[5] *See* Office of the Attorney General, *Open Meetings Act Manual* Appendix C (4th ed. 2000).

participate in the closed session are accountable for the decision. Id. Furthermore, a member of the public has a right to object to the closing of a session. §10-508(d)(3).[6] Failure of the presiding officer to conduct a vote or to establish, in a timely fashion and as part of the public record, the justification for closing the meeting compromises the public's ability to evaluate the propriety of the public body's action.

The Bowie City Council violated the Act by the presiding officer's failure to complete the written statement required under §10-508(d)(2)(ii) prior to the Council's meeting in closed session. The City Council has acknowledged that its procedures did not comply with this aspect of the Act, and we commend the Council for its decision to take corrective action.[7]

III

Conclusion

The Open Meetings Compliance Board finds that the Bowie City Council violated the procedural requirements of the Open Meetings Act by the failure of the presiding officer to provide a written statement in accordance with §10-508(d)(2)(ii) prior to the Council's meeting in closed session following its public meeting on May 7, 2001.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
Tyler G. Webb, Esquire

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[6] A public body can proceed to meet in closed session notwithstanding the objection; however, if an objection is lodged, the public body is required to send a copy of the required written statement to the Compliance Board.

[7] In your complaint, you suggested that the meeting in question involved a discussion of establishment of a "Blue Ribbon redistricting panel or task force." However, the City Council's response suggested that the purpose of the closed meeting was to obtain legal advice from its counsel regarding its obligations with respect to redistricting. We limit our opinion to the procedural matter discussed above for two reasons: First, the Council's response did not provide us with sufficient information to evaluate whether, in light of the substance of discussion at the closed meeting, the limits of the exception had been exceeded; and second, your complaint appeared to focus on compliance with the procedural requirements of the Act.