COMPLIANCE BOARD OPINION No. 02-11

July 12, 2002

Jim Lee, Editor
Carroll County Times

The Open Meetings Compliance Board has considered your complaint of May 13, 2002, regarding an alleged meeting conducted in violation of the Open Meetings Act by two members of the Carroll County Board of Commissioners. Based on the information provided us by the County, we are unable to conclude that a violation of the Act occurred.

I

Complaint and Response

Your complaint requests that we require the Carroll County Commissioners "to divulge the topic of an unadvertised, secret meeting" held on March 18, 2002, and require them to provide a list of those present at the meeting. On March 18, the three members of the Board of County Commissioners held a public hearing on, as the complaint puts it, "a controversial zoning ordinance that had been adopted and had met with strong resident disapproval." The complaint alleges that, following this meeting, Commissioners Donald I. Dell and Robin Bartlett Frazier met privately with Mr. Edward Primoff at a local restaurant. According to the complaint, "Mr. Primoff was on the committee that recommended the controversial zoning changes, and he has submitted plans for a development that would gain additional lots had the zoning changes stood as originally adopted." Although a quorum of the Board was present, the complaint alleges that no notice of the session was provided nor were minutes produced in connection with the meeting at the restaurant.

In a timely response on behalf of the Board, Kimberly A. Millender, the attorney for Carroll County, indicated that following receipt of your complaint, she spoke with Commissioners Frazier and Dell. They acknowledged that they had dinner with Mr. and Mrs. Primoff that evening. Although neither Commissioner could recall the exact contents of their conversation at the restaurant, they both agreed that the dinner was merely a social occasion and no public business was

discussed. Therefore, Ms. Millender concluded that, because there was no "meeting" as defined in §10-502(g),[1] no violation occurred.

II

Discussion

A. Compliance Board Authority

Prior to addressing the merits of your complaint, we shall briefly review the limited authority of the Compliance Board. Pursuant to the Open Meetings Act, we are charged with issuing advisory opinions. We lack authority to require a public body to take any specific action. §10-502.5(i); *see also* Compliance Board Opinion 00-5 (June 28, 2000), slip op. at 8. Therefore, even if we found that a violation occurred, we would be unable to compel the County Commissioners to produce the information you requested.

Furthermore, the Compliance Board is not an adjudicatory body with compulsory process or other tools for conducting a factual investigation. Compliance Board Opinion 99-4 (April 20, 1999), *reprinted in* 2 *Official Opinions of the Maryland Open Meetings Compliance Board* 43 at 44. We simply have no way of independently determining facts regarding an alleged meeting. We are limited to considering the record before us, typically comprising the facts presented in a complaint and the response submitted by the public body. §10-502.5(d).[2] Because we must address a complaint based on the record before us, sometimes we must issue an opinion on factual assertions that might generate a healthy sense of skepticism.

B. Dinner Gathering

According to the County Attorney's response, Commissioners Frazier and Dell acknowledged having dinner with Mr. Primoff on March 18, 2002. Although neither Commissioner could recall the contents of their conversation during dinner, both Commissioners agreed it was merely a social occasion and no public business was discussed. This last assertion is a claim that, exercising remarkable self-restraint, the dinner company did not discuss the very matter that had just been the

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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] Even in those cases where we schedule an informal conference with a public body under §10-502.5(e), we are limited to additional information voluntarily provided at the conference.

subject of a public hearing and in which Mr. Primoff is alleged to have had a direct interest.

Subject to limited exceptions, the Open Meetings Act applies to meetings involving a quorum of a public body "for the consideration or transaction of public business." §10-502(g). Conversely, the Act does not apply to a "social gathering, or other occasion that is not intended to circumvent [the Act.]" §10-503(a)(2). Thus, the Act does not preclude a quorum of a public body from socializing among themselves or with others, provided that public business is not considered. *See, e.g,* Compliance Board Opinion 99-13 (August 26, 1999), *reprinted in* 2 *Official Opinions of the Maryland Open Meetings Compliance Board* 74 at 75-76.

Had the two Commissioners and Mr. Primoff discussed the zoning ordinance that was the subject of the public hearing, or any other matter that would have been subject to the Open Meetings Act, there is no doubt that they would have violated the Act. §10-503(b)(2). The dinner was neither open to public observation nor conducted in accordance with the procedural requirements of the Act.

Nevertheless, given the Commissioners' denial that any public business was discussed and our inability to develop an independent record of what occurred, we have no basis on which to find that the Act was violated because, for purposes of the Act, no "meeting" occurred during the dinner in question. We must point out, however, that our conclusion in no way condones the action of a quorum of the Commissioners in creating what was, at the least, an appearance of impropriety.

III

Conclusion

Given the County Commissioners' description of the dinner at the restaurant, the Compliance Board is unable to find that a violation of the Open Meetings Act occurred.

OPEN MEETINGS COMPLIANCE BOARD

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