COMPLIANCE BOARD OPINION NO. 03-21

December 9, 2003

Wayne M. Parker, CMT
American Massage Therapy Association

The Open Meetings Compliance Board has considered your complaint that the State Board of Chiropractic Examiners violated the Open Meetings Act by refusing to permit videotaping of the Massage Therapy Advisory Committee meeting on October 16, 2003. For the reasons stated below, the Compliance Board finds that the Act was violated.

I

Complaint and Response

The complaint set forth the following series of events: By letter of October 6, 2003, Mr. Parker, Second Vice President and Chairman of the Law and Legislation Committee of the American Massage Therapy Association Maryland Chapter, requested that a Chapter representative be permitted to videotape the October 16, 2003 meeting of the Massage Therapy Advisory Committee, which is an advisory committee within the State Board of Chiropractic Examiners.[1] By letter of October 10, 2003, Ms. Gwen Wheatley, Massage Therapy Program Manager, advised Mr. Parker "that the Board of Chiropractic Examiners has denied your request to videotape the Massage Therapy Advisory Meeting scheduled for ... October 16, 2003." According to the complaint, by the time of the October 16 meeting, the Chapter had not yet received Ms. Wheatley's letter of October 10. Therefore, the Chapter's representative at the meeting orally requested the opportunity to videotape the meeting. This request was denied by reference to the October 10 letter. The complaint alleged that the denial violated the Open Meetings Act.

In a timely response on behalf of the State Board, Assistant Attorney General Richard M. Bloom, Board Counsel, asserted the State Board's belief that "its actions were not unlawful." The response stated that the Board of Chiropractic Examiners "has no outright ban on videotaping or recording the open sessions of its meetings."

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[1] The Advisory Committee, like the State Board itself, is a "public body" subject to the Open Meetings Act. *See* §10-502(h) of the State Government Article, Maryland Code. The State Board of Chiropractic Examiners is created by §3-201 of the Health Occupations Article, Maryland Code; the Massage Therapy Advisory Committee, by §3-5A-04 of that Article.

However, the response essentially confirmed the fact that Mr. Parker had been denied his request to videotape the particular advisory committee meeting. The response did not explain the basis for the denial, although it noted the expectation that "50-60 people would be in attendance in awkwardly configured space that would be crowded with that number of people in attendance." In addition, the response pointed out that the meeting was transcribed and that a copy of the transcript would be made available at no charge to anyone requesting it. The response cited a federal case that rejected a claimed First Amendment right to videotape a public meeting, at least when the public has an alternative means of compiling a record of the meeting. *Whiteland Woods, L.P. v. Township of West Whiteland*, 193 F.3d 177 (3d Cir. 1999).

II

Analysis

The State Board, like any other public body, is directed by the Open Meetings Act to "adopt and enforce reasonable rules regarding the conduct of persons attending its meetings and the videotaping, televising, photographing, broadcasting or recording of its meetings." §10-507(b) of the State Government Article, Maryland Code. The authority to regulate, however, is not tantamount to an authority to prohibit. As we have held, "any attempt by a public body to prohibit videotaping at an open meeting would be unlawful." Compliance Board Opinion No. 95-9 (1995), *reprinted in* 1 *Official Opinions of the Open Meetings Compliance Board* 137.

That is what happened here. An interested citizen sought to videotape the advisory committee meeting on October 16. His request was denied without explanation. The fact that the meeting was expected to be crowded might well have justified restrictions on the camera operator's movements in the room. It did not justify prohibiting the videotaping.

Nor is it an adequate justification that the State Board had a transcript made and provides it upon request. A transcript is not a videotape. It does not capture facial expressions, tones of voice, and other aspects of a meeting that an attendee may wish to memorialize. That a member of the public may have no First Amendment right to videotape under these circumstances is immaterial to the application of the Open Meetings Act. It is impermissible under the Act for the State Board to deny a reasonable request to videotape merely because it will offer a transcript.[2]

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[2] In the analogous, converse situation, we have twice ruled that a public body does not satisfy its obligation to provide minutes by making audiotapes available instead. *See* Compliance Board Opinions 99-18 and 99-19 (1999), *reprinted in* 2 *Official Opinions of the Open Meetings Compliance Board* 87 and 92.

III

Conclusion

The State Board of Chiropractic Examiners violated the Open Meetings Act when it denied a request to allow videotaping of the October 16, 2003, meeting of the Massage Therapy Advisory Committee.

OPEN MEETINGS COMPLIANCE BOARD

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