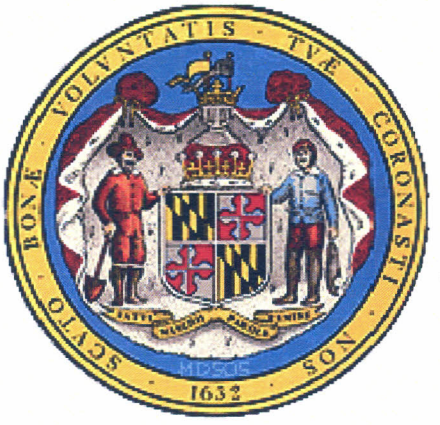
NINETEENTH ANNUAL REPORT

OF THE

OPEN MEETINGS COMPLIANCE BOARD



BOARD MEMBERS

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October 2011

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Pursuant to §10-502.4(e) of the State Government Article, the Open Meetings Compliance Board submits this annual report, covering the period July 1, 2010, through June 30, 2011.

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 2011. 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 Robert N. McDonald, Chief Counsel, Opinions and Advice, former Assistant Attorney General William Varga and Assistant Attorney General Ann MacNeille, 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, from the docketing of every complaint to the indices and publication of every opinion, 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

Fifteen complaints filed in FY 2010 were pending on June 30, 2010. From July 1, 2010 through June 30, 2011, the Compliance Board received 40 additional complaints alleging violations of the Open Meetings Act. Altogether, 55 complaints were pending before the Compliance Board in FY 2011. Seven complaints were withdrawn. Most complaints alleged more than one violation.

During the reporting period, the Board issued 32* opinions. In 19 of these, the Board found one or more violations of the Act. The type of violations

varied. In several instances, public bodies had met without complying with the Act at all, on the mistaken belief that the exception of some of their functions from the Act exempted them entirely. Many complaints involved a public body's discussion of a topic not falling within the exception cited for the closings or exceeding that exception, as by discussing broadly applicable zoning changes in meetings closed to discuss a business proposal to locate in a county. Violations also concerned the Act's procedural requirements, such as procedures for closing a meeting and its requirements for preparing minutes. In a few cases, the record did not allow us to reach a definitive conclusion. The Board addressed only two complaints regarding the adequacy of notice given by a public body: 7 *OMCB Opinions* 42 (2010) (finding that, in most regards, various committees of the General Assembly complied with the Act's notice provisions) and 7 *OMCB Opinions* 237 (2011) (finding that a town did not provide the best notice feasible under the circumstances when it changed its usual methods of giving notice and held its monthly meeting earlier than usual). All of the Board's opinions are available at this Internet location: http://www.oag.state.md.us/Opengov/Openmeetings/board.htm.[1]

Table 1 below indicates the categories of complainants.

TYPE OF COMPLAINANTS	
Type	**Number**
Citizens	19
Government Officials	2
News Media	19

Table 1**

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

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[1] We thank the Attorney General's Office for its maintenance of the Board's web page, which is an important source of information about the Open Meetings Act generally and about the Compliance Board's procedures.

* The number of opinions is lower than the number of complaints because one was withdrawn, others were variously consolidated or settled in conference with the parties, and seven were carried over to the next fiscal year.

** Certain complaints reflected more than a single complainant or government entity.

COMPLAINTS BY TYPE OF ENTITY	
Jurisdiction	**Number**
State	8
County	16
Local School Board	9
Municipality	7

Table 2**

As we have observed in previous years, it is impossible to estimate the incidence of unreported violations. The Compliance Board believes, however, that the low number of known violations, given the countless meetings held by Maryland's many public bodies, broadly reflects the understanding by most public bodies of their obligation to operate transparently and in accordance with the Act. Overall compliance has undoubtedly been furthered by the ongoing educational efforts of the Academy for Excellence in Local Governance, the Maryland Association of Counties, the Maryland Municipal League, and the Office of the Attorney General, and by use of the Act as an information-gathering tool by the press.

Still, we believe that our educational efforts should both reach a wider audience and be continuously available. We have noticed that a number of public bodies substantially delegate Act compliance to staff. The Act makes some of that delegation inappropriate, as we stated in 7 *OMCB Opinions* 216, 224 (2011) and 7 *OMCB Opinions* 225 (2011). However, many functions are appropriately performed by staff, and we should make our training available to those unable to attend the programs of the organizations mentioned above. Continuity is also a concern; every public body has its own schedule for the addition of new members. To meet both of these needs, our staff at the Attorney General's Office is working with the Institute for Governmental Services and Research at the University of Maryland ("IGSR"), to produce an online training course to be posted on the website of IGSR and the Office of the Attorney General. The course will contain lessons on each component of the

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Act and review questions. Early testing suggests that it will take about two hours to complete. We appreciate the technological and pedagogical expertise that IGSR has applied to the material our staff has supplied.

II

Legislative Recommendations

2011 Legislation

House Bill 48, proposed by the Board and by Delegate Morhaim and others, would have imposed a one-year statute of limitations on complaints to the Board and required meeting notices to be posted on a website if the public body uses one. The bill did not pass.

House Bill 47, introduced by Delegate O'Donnell, proposed mandatory online training, to be developed by the Board and Office of the Attorney General, for all employees, officers, or members of a public body, as designated by the respective public bodies. The bill did not pass.

House Bill 766, introduced by numerous sponsors and signed into law by the Governor, creates a joint Legislative Committee on Transparency and Open Government for the purpose of increasing constituent access to government actions. The Legislature declared its intent to increase transparency and created the committee to consider policies, proposals, and the increased use of websites. The legislation also allows all public bodies to substitute live and archived video or audio streaming of an open session for written minutes. Votes on legislation may be disclosed by a prompt posting on the internet and need not be recorded in written minutes.

B. Recommendations and concerns from members of the public and public bodies – listed without Board comment.

We received various recommendations and concerns. We have paraphrased them and list them here *without comment*.

1. The distinction drawn in the Act between a committee created by resolution (a "public body") and a committee created by informal consensus encourages public bodies to circumvent the Act by creating committees informally. The definition should be clarified.

2. The Act should be amended to include a requirement that minutes, both written and in the form of live, streaming and archived video/audio, report the presence of a quorum.

3. When minutes take the form of audio or video as permitted under the 2011 amendments to the Act, a person should be able to ascertain the identity of each speaker and either hear the words spoken or read subtitles. The Act should impose these requirements.

4. The 2011 amendments may have created some ambiguity about how to handle the reporting of closed session actions when a public body has substituted live audio or video for written minutes. The statute should be clarified to ensure that a public body reports those actions.

5. A public body's by-laws permit it to take action without a quorum, subject to "ratification" by the missing members. The practice evades the Act and should be disallowed.

6. To add weight to the Compliance Board opinions, upon the Board's finding of a violation, the public body should be required to schedule a public meeting within 30 days to review the complaint, response, and opinion, to outline remedial steps, and address questions from the public.

7. A public body's decision to unseal minutes should be disclosed. Further, that decision should be made in open session, even if administrative under 5 OMCB Opinions 105 (2007), because the public has the right to hear the discussion. Without disclosure, the public has no way of knowing that the minutes are available for inspection.

8. Complainants should be able to submit complaints by e-mail with a scanned signature.

9. Complainants should be required to put all of their allegations about a particular meeting in the complaint so that the respondent can file a complete response, once; new allegations about the same meeting should not be entertained when made on reply to the entity's response to the original complaint.

10. The Act should be amended to permit a public body which accepts donations from the public to meet with a donor in closed session to solicit or discuss a gift.

11. The public body should be required to provide copies of minutes at no cost.

12. Public bodies should be required to put their meeting notices in a conspicuous place on their websites.

C. Recommendations for the 2012 Legislative Session

The Board looks forward to working with the Joint Committee on Transparency and Open Government on ways in which to further the goals of the Act.