

MINUTES OF THE ANNUAL MEETING OF THE OPEN MEETINGS COMPLIANCE BOARD
September 20, 2013, at 10:00 a.m.
Office of the Attorney General
200 St. Paul Street
Baltimore, Maryland 21202

In attendance:

Board and Board staff:

Elizabeth L. Nilson, Esq., Board Chair
Courtney J. McKeldin, Board Member
Ann MacNeille, Board Counsel
Deborah P. Spence, Board Administrator

Others:

James Peck, Maryland Municipal League
Thomas J. Curtin, Maryland Municipal League
Sheila R. Finlayson, Esq., Corporate Secretary, Washington Suburban Sanitary Commission
Charlita Wye, Ethics/Fair Practices Officer, Washington Suburban Sanitary Commission
Nuala McCarthy, Frederick County School Board
John J. Murphy, Maryland-Delaware-D.C. Press Association

Call to order and welcoming remarks

The Chair called the meeting to order at 10:50 a.m. and welcomed the guests. She introduced Board member Courtney McKeldin and explained that Board member Julio A. Morales, Esq. could not attend because his presence was required at an emergency hearing in court in Prince George's County. The Chair invited those present to introduce themselves and to offer comments during the meeting. She then thanked the Board Administrator, counsel, and Jeffrey L. Darsie, Esq., all of the Office of the Attorney General, for their work over the last year. Ms. McKeldin concurred and thanked people for coming.

Discussion

The Chair reviewed the events of the last year, which she described as an especially busy one. She discussed her work on behalf of the Board during the 2013

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legislative session, when she went to Annapolis to speak with legislators about the Board's position on the bills that had been introduced. She also commented on the relative complexity of the complaints received during the year; some involved multiple meetings and violations, and one required an understanding of a local government's tax increment financing procedures.

Board Counsel commented on the increasing number of complaints received by the Board over the last six months, on the increased participation in the process by members of the press, and on a seemingly increasing proportion of the complaints focused on substantial violations such as the actual exclusion of the public from a meeting, as opposed to reporting violations that intruded less on the public's right to observe. Counsel wondered whether the increase may have arisen from the publicity surrounding several public bodies' exclusion of the press from meetings on particularly controversial issues. Mr. Murphy noted that he had recommended the online course to members of the press and that the increase might also have been caused by their understanding of the rights that the Act affords them. The Chair stated that, despite the heavier workload for the Board, the use of the Board's procedures by more members of the press was a good sign.

Counsel reported on staff activities during the year. Ms. Spence has handled numerous inquiries about the new online training requirement and has received numerous public bodies' designations of a member, officer, or employee to take the training. The Institute for Governmental Service and Research is now updating the online course to include the 2013 legislation, which will take effect on October 1. Ms. Wye noted that the course has been taken offline, with a notice that it will be available on October 1. Counsel reported that the Open Meetings Act Manual, which is posted on the Open Meetings page on the Attorney General's website, will not be updated this year, because the Open Meetings Act will probably be placed in a new volume of the Maryland Code in 2014, and its provisions will be assigned new section numbers.

The Chair summarized the 2013 legislation. She stated that the new provisions should help members of public bodies realize that it is their responsibility to conduct public business openly. Mr. Peck noted past measures to strengthen the Act.

The group discussed the suggestions from the public listed in the Annual Report. As to whether to define the "administrative function" exclusion more narrowly, the Chair noted that the problem with the definition needed careful thought, perhaps over the next year. She observed that the application of the exception was fact-specific and stated that

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a complaint-by-complaint approach was best for now. She welcomed comments from the public on the question. As to whether to require public bodies to complete, for each meeting, the “Compliance Checklist” posted on the Open Meetings webpage, it was noted that the list was general in nature and might not address every consideration that might arise in a particular meeting. There was a concern that public bodies might substitute the checklist for the more specific provisions of the Act. As to whether the Act should require that bodies take all actions in meetings, Mr. Murphy inquired into the current state of the law on whether public bodies could meet by telephone. Counsel noted that the Court of Special Appeals issued an opinion in which it decided that a member who participates in a meeting by speakerphone is “present” for purposes of the Act. Also, the Board has deemed a public body to be “meeting” under the Act when the members are communicating contemporaneously, as would happen with a meeting held by telephone. Counsel noted that, given the General Assembly’s definition of “meeting,” the Board has not deemed the members of a public body to be “meeting” when they exchange sequential e-mails, but the Board has not addressed a case involving practically contemporaneous communications.

There was some discussion about whether the public is able to “observe” the conduct of public business when the public cannot see whether the members who are participating by telephone are in the company of other people during the meeting. Ms. Finlayson and Ms. McCarthy noted their organizations’ practice, for closed sessions, of asking each person participating by telephone to state that he or she is alone so that the persons present for the session can be properly disclosed in the summary of the session. It was agreed that the practice was a good one. It was observed that a public body must provide the public with either a call-in number or access to a speakerphone when a meeting is held entirely by telephone. Ms. Finlayson asked whether the Act required the physical presence of at least one member at each meeting when the group meets by telephone. It was noted that other states have such a requirement, but Maryland does not. Ms. Finlayson stated that the WSSC commissioners sometimes need to meet in emergencies when it is difficult to get to the office.

The Board decided that it will not propose new legislation this year and that it will designate the Chair as the member to take the online training course to satisfy the new training requirement of all public bodies.

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Closing remarks and adjournment

Ms. Nilson thanked the group for the discussion and adjourned the meeting at 11:15 a.m.