

OPEN MEETINGS COMPLIANCE BOARD
Minutes of October 21, 2009 Annual Meeting

Attendance / Opening Remarks

The Open Meetings Compliance Board met on Wednesday, October 21, 2009, at 10:30 a.m. in the offices of the Attorney General, 200 Saint Paul Place, Baltimore, Maryland. In attendance were Compliance Board members Elizabeth Nilson, Courtney McKeldin, and Julio Morales; Assistant Attorney General William Varga, counsel to the Compliance Board, and Kathleen Izdebski, also with the Attorney General's Office.

Members of the public in attendance were Thomas Marquardt, Executive Editor of *The Capital* and *Gazette* newspapers, representing the Maryland-Delaware-D.C. Press Association; Jack Murphy of the Maryland-Delaware-D.C. Press Association; and Thomas Reynolds of the Maryland Municipal League.

Ms. Nilson called the meeting to order, welcomed those in attendance and invited those present to introduce themselves. Ms. Nilson expressed her appreciation to Mr. Varga and Ms. Izdebski for their continued support and efforts on behalf of the Compliance Board, particularly in light of the expanded volume of work required this past year. Ms. Nilson then asked Mr. Varga to discuss the Draft 17th Annual Report of the Open Meetings Compliance Board he had prepared for the Compliance Board's review.

Activities of the Board

Mr. Varga summarized the activity of the Compliance Board during the past year. Mr. Varga adverted to the tables showing complaint activity during the period July 1, 2008 to June 30, 2009 and noted that these figures represented an increase from the prior year. Furthermore, Mr. Varga indicated that more complainants appear to be submitting additional correspondence after viewing the public body's response. As a result, the process is slowed considerably because, on receipt of further correspondence, the Compliance Board offers the public body an opportunity to respond. During the past year, we received a significant number of complaints in a short period. Given the volume and competing workload, a significant backlog resulted. Staff's current goal is to eliminate any backlog and complete a new edition of the *Open Meetings Act Manual* published by the Office of the Attorney General.

Ms. Nilson called for comments; there being none, she then asked Mr. Varga to discuss legislative matters.

Recent Developments

Mr. Varga described legislation enacted during the 2009 session, expanding the definition of "public body" under the Act. He also described a recent Court of Appeals

decision that might lead to questions as to application of the Act as a result of *dicta* referencing the lower courts' decisions. A memorandum initially prepared for principal counsel with the Attorney General's Office addressing these matters was distributed.

Proposed Legislation

- ***Notice Issues***

The Compliance Board revisited its recommendation to the General Assembly last year that would require that a notice of a meetings that is posted on a website or bulletin board reflect the date that the notice was actually posted. (Legislation on this issue was never introduced.) Discussion expanded to notice issues generally, namely, whether the Act's current provisions are in keeping with open government policy underlying the Act. Mr. Marquardt offered as an example a case where a public body that normally provided notice *via* its website instead provided notice *via* a bulletin board in advance of a particular meeting. Although technical compliance was achieved, the reality was that the public was never aware that the meeting was scheduled.

Both Mr. Marquardt and Mr. Murphy offered alternatives, including options such as requiring website notice, blast e-mails, requiring public bodies to adopt policies on alerting the public of regular and emergency meetings. Mr. Reynolds cautioned that not every municipality has a website. In some cases, local government have established a website, but have been unable to keep the site current.

The Compliance Board decided to recommend that the Act's notice requirement be modified. Specifically, it was decided that a public body that maintains a website must post notices of its meetings online. Those public bodies that do not maintain a website should be required to post notice at a predetermined location. In the Compliance Board's view, both options are practical options for dealing with emergency meetings scheduled on short notice. The legislation should make clear that the required method would not preclude providing notice by any additional method. The Compliance Board also decided to incorporate last year's suggestion that the notice must reflect the date that the notice was posted.

- ***Minutes***

The Compliance Board received a letter from Ms. Holly Joseph concerning when a summary of a closed meeting must be made public as part of a public body's minutes. Mr. Varga pointed out that, in practice, many public bodies provide the required summary as part of the publicly-available minutes for a public session held the same date. However, technically, the information need not be included until the public body adopts minutes of its subsequent public meeting. He also pointed out that the public

body that prompted Ms. Joseph's complaint, the State Board of Elections has agreed to modify its practice to ensure that the summary would be available the next meeting.

After discussion, the Compliance Board decided not to recommend legislation on this issue.

- ***Compliance Board Process - Limitations Period***

Mr. Varga addressed concerns about complaints addressing meetings held over a year earlier. In some cases, it is apparent that the underlying motive is not concerns about the Open Meetings Act, but some collateral matter on which the complainant is not happy with the public body. Furthermore, the Act requires a public body to maintain records under the Act for a one-year period. After discussing this issue, the Compliance Board decided to recommend that the Compliance Board process include a one-year limitations period.

Miscellaneous

Mr. Marquardt asked the Compliance Board about the application of the Open Meetings Act to ethics committees and meetings closed for purposes of investigations. Mr. Varga pointed out that in carry out such investigations, an ethics committee's sessions would not be governed by the Act in that the sessions would involve an administrative function or possibly a quasi-judicial function.

Adjournment at 11:45 a.m.

Approved November 23, 2009

Elizabeth L. Nilson
Chair