

OPEN MEETINGS COMPLIANCE BOARD
Minutes of October 21, 2010 Meeting

Attendance / Opening Remarks

The Open Meetings Compliance Board met on Thursday, October 21, 2010, at 10:00 A.M. at the Office of the Attorney General, 200 St. Paul Place, Baltimore, Maryland. In attendance were: Compliance Board members Elizabeth Nilson, Courtney McKeldin, and Julio Morales and the Board's staff, Kathleen Izdebski and William Varga.

Members of the public in attendance were Jack Murphy, Executive Director of the Maryland-Delaware-D.C. Press Association, and Leslie Knapp, Associate Director of the Maryland Association of Counties.

Ms. Nilson called the meeting to order, welcomed those in attendance, and invited those present to introduce themselves.

Open Meetings Act Manual

Ms. Nilson announced that the Attorney General's Office recently released a new edition of the *Open Meetings Act Manual* which is available online through the Attorney General's website.¹ Discussion turned to the significant number of inquiries about open meetings issues that the Attorney General's Office receives. A question was asked whether the Attorney General's Office monitors the number of hits the *Manual* receives; Ms. Izdebski indicated she would need to check with the Office's webmaster. Mr. Varga noted that the Press Association had requested an opportunity to review a draft copy of the *Manual* before it was released. But the Office of the Attorney General was eager to get a current edition out. Nonetheless, the Press Association and others were encouraged to provide any comments which would be considered before any updates to the current edition or as part of a subsequent edition of the *Manual*.

Activities of the Board

The Compliance Board next turned to activities of the Board for Fiscal Year 2010, as reported in Part I of the draft annual report. Staff also briefed the Compliance Board on the significant backlog currently existing and the problem with individual complainants repeatedly filing complaints. Mr. Varga pointed out that, given the limited resources of the Attorney General's Office, he has taken the liberty of holding some complaints when a public body has not had an opportunity to submit a response and the Compliance Board has not yet

¹ The *Open Meetings Act Manual* is available at <http://www.oag.state.md.us/Opengov/Openmeetings/support.htm>.

issued an opinion involving the public body in an effort to manage the work flow. Mr. Varga also noted that it was not fair to other members of the public who file a complaint if a single complainant has unreasonably monopolized the staff's time through numerous, unfocused complaints. Mr. Varga also expressed concern about complainants filing extensive replies to a public body's response - a step the Open Meetings Act does not contemplate. Mr. Varga indicated that he no longer automatically sends such replies to the public body for consideration.

The Compliance Board discussed these concerns and concurred with staff's approach. The Compliance Board also discussed complaints about how it addresses cases where the public body acknowledges noncompliance issues. The Compliance Board confirmed its view that the goal in issuing advisory opinions is to assist public bodies achieve compliance with the Act, not keep score of the number of violations it might potentially identify. The Compliance Board noted that it receives no funding from the State, but it was not an appropriate time to seek additional resources. Ms. Nilson expressed her view that, given its limited resources and volume of complaints, the Compliance Board and staff is doing a good job carrying out its mission.

Proposed Legislation

Discussion turned to legislation that Delegate Morhaim introduced during this year's legislative session on behalf of the Compliance Board, House Bill 211 (2010). The notice provisions of the bill were amended by the House and Government Operations Committee. The bill passed the House, but it died in the Senate at the close of the Session. After extensive discussion about available alternatives as to how adequate notice might be achieved, the consensus was to recommend that the bill be reintroduced in 2011 in the same posture as it passed the House this year.

Mr. Knapp indicated that Delegate Morhaim planned to reintroduce the bill in 2011. Staff was instructed to consult with Delegate Morhaim as to whether the Compliance Board should also explore whether it ought to identify a Senate sponsor in order that the bill could be cross-filed.

Miscellaneous

The Compliance Board reviewed a letter from Ms. Michele Fluss to Robert N. McDonald, Chief Counsel for Opinions and Advice at the Office of the Attorney General. Mr. Varga indicated that the letter focused mainly with a suggestion for the *Manual*. Because the Manual does not include a detailed discussion as to the Compliance Board's practices, Ms. Fluss's suggestions were not incorporated into the current addition.

The Compliance Board also reviewed a suggestion from Mr. John Medlin requesting that the Board recommend an amendment to § 10-510 of the Act to provide that attorney fees could only be awarded to a plaintiff in an action brought under the Act, not to the public body. In Mr. Medlin's view, the current provision may discourage people filing a judicial action. Mr. Varga pointed out that he was not aware of any litigation under the Act where the Court awarded attorney fees to the government. The consensus was that the Compliance Board would decline to take a position on Mr. Medlin's suggestion.

Based on the Compliance Board discussions, staff was asked to revise the draft report and circulate it to the Board members before submission to the Governor and General Assembly.

Meeting adjourned at 11:45 A.M.

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