

Open Meetings Compliance Board

Meeting of September 17, 2003

Minutes

The meeting was called to order by Chairman Walter Sondheim, Jr. at 10:10 a.m., with Board member Courtney McKeldin present. Board member Tyler Webb arrived shortly after the meeting convened. Also present were Assistant Attorneys General Jack Schwartz and William Varga and the Board's Administrator, also from the Attorney General's Office, Kathleen Izdebski. Three members of the public observed the meeting and were invited to comment at appropriate times.

Mr. Varga summarized, for informational purposes, a recent decision by the Maryland Court of Appeals applying the notice provisions of the Act to a meeting of the Baltimore City Council.

Mr. Schwartz then highlighted selected data from Part I of Board's draft annual report. The Board accepted this portion of the report by consensus. The balance of the meeting concerned possible legislative recommendations for inclusion in Part II of the report.

1. The Board discussed a recent decision in which the Circuit Court for Howard County dismissed an Open Meetings Act petition for lack of standing. The court held that, in order to meet the Act's requirement that a plaintiff be "adversely affected," a plaintiff needed evidence of "a specific interest or property right which has been specially affected in a way different from that suffered by the public generally." The decision is on appeal. The Board was concerned that, if this barrier is maintained by the courts, an important corrective for violations of the Act will be undermined. The Board agreed unanimously that, although no legislative recommendation was to be included in the annual report, the Board's staff would explore with the leadership of the General Assembly whether a legislative clarification of the provision on standing would be appropriate at this time.

2. The Board agreed unanimously to recommend in the report legislation to broaden the Act's application to citizen advisory panels. Specifically, the Board adopted a proposal that § 10-502(h)(2)(i) of the Act be amended to read as follows: "Public body' includes any multimember board, commission, or committee appointed by an official of the executive branch of the State or of a political subdivision of the State, if the entity includes within its membership at least 2 individuals not employed by the State or a political subdivision of the State."

3. The Board agreed unanimously to recommend in the report legislation to improve the Board's ability to review pertinent material prior to issuing its opinions. The Board decided not to propose any further augmentation of its authority. Specifically, the Board adopted a proposal that § 10-502.5(c)(2) be amended to read as follows:

(i) The public body shall file a written response to the complaint within 30 days of its receipt of the complaint.

(ii) Upon request of the Board, the public body shall include with its written response any notice of a session, written statement made before a closed session, minutes, and tape recordings that relate to the action of the public body identified in the complaint.

(iii) The Board shall maintain the confidentiality of any minutes and tape recordings submitted by a public body that are sealed in accordance with § 10-509(c)(3)(iii) of this subtitle.

4. Although the Board reiterated its view that the "executive function" exclusion in the Act was highly problematic, the Board agreed unanimously that it could advance no legislative recommendation at this time.

5. The Board agreed unanimously not to include in the report a recommendation regarding any increase in the amount of the civil penalty in § 10-511.

The meeting of the Compliance Board was adjourned at 11:30 a.m.