

Chapter 3: Open Meeting Requirement

Chapter 3: Will the meeting, in fact, be open to the public?

(Index Topic 3)

Chapter summary: Section 3-102(c) states the policy that public bodies' meetings must be held "in places reasonably accessible to individuals who would like to attend these meetings." Section 3-102(b) states that the ability of the public, its representatives, and the media to attend, report on, and broadcast . . . ensures the accountability of government to the citizens of the State."

The Act does not define what the right to "attend" a meeting entails. Two sections touch on the subject: § 3-303 requires public bodies to adopt rules of conduct and addresses the role of the presiding officer, and § 3-304, applicable only to State public bodies, addresses the provision of interpreters. The Compliance Board has elaborated on logistical questions, such as, the size of the meeting room and the handling of videotaping. The circumstances under which a public body may meet in closed session are discussed in Chapters 4 and 5.

While this Manual does not address a public body's duties under the Americans with Disabilities Act and analogous State and local laws, those duties should be considered when the public body is choosing a meeting place.

To figure out whether a particular meeting met this requirement, a person needs facts on the public body's arrangements for the meeting and what occurred there.

A. *The right to "attend" a meeting*

Section 3-303(a) provides: "Whenever a public body meets in open session, the general public is entitled to attend." That means that members of the public may come to a meeting and observe it. With one exception pertaining to the closing of a meeting (see Chapter 5), it does not mean that they are entitled to speak. *See City of New Carrollton v. Rogers*, 287 Md. 56, 72 (1980) ("While the Act does not afford the public any right to

participate in the meetings, it does assure the public right to observe the deliberative process and the making of decisions by the public body at open meetings.”). So, unless the public body is governed by laws that require the particular public body to receive public comment, the decision of whether to allow members of the public to speak is up to the public body. Ordinarily, the management of the public comment period is up to the presiding officer. *See, e.g., 9 OMCB Opinions 232, 233 (2015)* (stating that the Act does not regulate the presiding officers’ decisions on whether to allow a member of the public to speak). Complaints about the manner in which a presiding officer conducts a public comment period, thus, do not state Open Meetings Act violations. *8 OMCB Opinions 84, 85 (2012)*.

The ability to “observe” does not mean that the public body must provide to the audience copies of the documents being reviewed by the members. However, the public must be given a grasp of what is being discussed and acted on. The Compliance Board has advised that an oral summary or general description of the documents in question will ordinarily serve this purpose. *See, e.g. 9 OMCB Opinions 206, 212-13 (2015)*. Requests for records fall under the Public Information Act, with the exception of the meeting documents discussed in Chapter 6.

B. Size of the meeting space

Providing a “place reasonably accessible” to people who would like to attend the meeting includes holding the meeting in a room large enough to hold them. *3 OMCB Opinions 118, 120 (2001)*. The Compliance Board has stated that “a public body would violate the Act if it had reason to expect a large crowd but nevertheless deliberately chose to meet in too small a space when a suitable, larger space was available.” *Id.* Public bodies may include in their meeting notices a request that members inform staff of their intention to attend the meeting, and the Compliance Board has recommended that practice for public bodies without regular access to large meeting rooms. *9 OMCB Opinions 206, 211 (2015)*. The Compliance Board’s opinions on the use of overflow space include *10 OMCB Opinions 18 (2016)* and *10 OMCB Opinions 40 (2016)*.

C. Access to the meeting space

As explained by this Office and the Compliance Board, the public must be provided with access to the meeting. A public body, thus, may not meet in a juvenile detention center that does not permit the general public to enter, *see 78 Op. Att’y Gen. 240 (1993)*, or at a private business that likewise is closed to the public. *See 8 OMCB Opinions 188*

(2013), *cf.* *WSG Holdings, LLC v. Bowie*, 429 Md. 598 (2012) (in applying open meetings provisions of a land-use law, holding that members of the public were improperly excluded from site visit to private property). A meeting may be held at a restaurant so long as the public is provided with places to sit and the members' discussion is audible. *See* 8 *OMCB Opinions* 111, 114 (2012) ("the Act does not prohibit a public body from having a meal during a meeting; does not prohibit a public body from meeting in a private meeting space to which there is access to members of the public at no cost to them; and does not regulate the members' choices of food and drink"). Members of the public who attend public meetings may be required to cooperate with the security procedures for the building in which the meeting is held. 9 *OMCB Opinions* 296 (2015).

The ability to gain access to the meeting space must be provided to all who wish to attend. Thus, "a public body may not deny, through its choice of meeting site, the right of a person with a disability to observe an open meeting," 1 *OMCB Opinions* 237, 239 (1997), may not restrict attendance to people who pay an admission fee, 8 *OMCB Opinions* 18, 25 (2012), may not restrict attendance to people on an invitation list, 7 *OMCB Opinions* 49 (2010), and may not exclude the press. 2 *OMCB Opinions* 67 (1999); *see also* 9 *OMCB Opinions* 290, 291 (2015) (meetings to be open to press and public "on equal terms"). The Court of Appeals has explained that "any action taken by the public body which discourages public attendance at the meeting to any substantial degree would likely violate the Act's provisions." *City of New Carrollton v. Rogers*, 287 Md. 56, 69 (1980).

When the meeting "place" is a conference call, the public may be provided access either via a call-in number or by access to a meeting room with a speakerphone. 8 *OMCB Opinions* 111, 113 (2012). Some states limit public bodies' use of conference call meetings; for example, California law requires at least one member to be present in a meeting room. *See* Cal Gov't Code § 11123(b)(1)(F). Maryland does not limit the use of conference-call meetings. Still, the members of public bodies that meet by teleconference should identify themselves and speak audibly so as to assure that the meeting, is in fact, "open" to the public. It may also be advisable for each member to tell the group whether anyone is with the member at the time.¹

¹ The California open meetings statute sets several ground rules to ensure that members of the public can truly "attend" teleconference meetings. Votes must be by roll call, agendas must be provided in the room provided to the public, and the discussion must be "audible" to members of the public who listen in on the meeting. Cal Gov't Code § 11123(b)(1). The Texas open meetings law requires that minimum standards be set for the audio signal and requires that it be of "sufficient quality" that the public can "hear the voice of each participant." Tex. Gov't Code Ann. § 551.127 (West). Only regional or statewide governmental bodies may meet by teleconference, and, even then, one member must be present at a meeting room open to the public. *See id.* ("A meeting of a state governmental body or a governmental body that extends into three or more counties may be held by videoconference call only if the member of the governmental body

The only Maryland case relevant to teleconferences is *Tuzeer v. Yim, LLC*, 201 Md. App. 443, 468 (2011). There, the court held that the presence of one member by telephone counted towards a quorum and that the meeting met the Act's "accessibility" requirement because "there was no indication that anyone was unable to hear her comments." *Id.* at 471. Not at issue, and not discussed, was the question of whether a meeting conducted entirely by telephone meets the Act's requirement that the public be "allowed to observe" the conduct of public business. *See* § 3-102(a) (2).

D. Regulation of videotaping and recording; meeting rules

Section 3-303 requires public bodies to "adopt and enforce reasonable rules regulating the conduct of persons attending its meetings and the videotaping, televising, photographing, broadcasting, or recording of its meetings." The Compliance Board has found that a prohibition on videotaping is not a "reasonable rule" and that public bodies violate the Act when they refuse to permit videotaping. 3 *OMCB Opinions* 356 (2003). The Compliance Board has also found that public bodies may not prohibit the videotaping of members of the public who are at the meeting. *See* 1 *OMCB Opinions* 137, 140 (1995) ("There is no right to be protected against the gaze of an observer in a public forum, or against the lens of the observer's camera.").

The Compliance Board deems a rule on the use of video recording equipment "reasonable" if the rule "(1) is needed to protect the legitimate rights of others at the meeting; and (2) does so by means that are consistent with the goals of the Act." 5 *OMCB Opinions* 22, 24-25 (2006). An example of a rule found "reasonable," if adequately posted beforehand, is a requirement that people wishing to videotape a meeting check in with staff before the meeting so that staff may tell them where they may stand. *Id.* Public bodies must afford members of the public and reporters access to an open meeting on equal terms. *Id.*, citing 2 *OMCB Opinions* 67 (1999).

For the Compliance Board's summary of the principles applicable to videotaping, along with citations to its opinions on the subject, *see* 8 *OMCB Opinions* 128, 131-33 (2013).

Model rules are posted under "Sample Forms and Checklists" at www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx. Public bodies that allow public comment may wish to include additional rules about such matters

presiding over the meeting is physically present at one location of the meeting that is open to the public during the open portions of the meeting.").

as time limits, advance registration if required, and the presiding officer's conduct of the session. The Open Meetings Act, however, does not require public comment periods and does not regulate them.

E. Role of the presiding officer; disruptions

Under § 3-303(c)(1), the public body may “have [an] individual removed” if the “presiding officer determines that the behavior of [the] individual is disrupting an open session.” *Id.* The Compliance Board has also noted that the presiding officer has the discretion to ask that videotaping be done from an unobtrusive location. *See 8 OMCB Opinions* at 133 (“A presiding officer thus has the authority to determine that a person’s conduct is disruptive and, by implication, to address that problem by asking her to move.”). A person making a presentation to the public body does not have the authority to order photographers to move. *Id.*

As above, the presiding officer ordinarily manages the meeting and any public comment period. *See also* Robert’s Rules of Order (10th ed.), p. 434 (describing presiding officer’s duties).