

OPEN MEETINGS COMPLIANCE BOARD
Meeting of October 19, 2004
MINUTES

Attendance / Opening Remarks

The meeting was called to order by Chairman Walter Sondheim at 11:10 a.m. In attendance were: Chairman Sondheim and Board members Courtney McKeldin and Tyler Webb. Also in attendance were Compliance Board staff, Assistant Attorney General William Varga and Kathleen Izdebski.

Members of the public in attendance were Tom Marquardt, with *The Capital*, and James Keat, both representing the Maryland-Delaware D.C. Press Association. Tom Reynolds, with the Maryland Municipal League, arrived shortly after the meeting convened.

Chairman Sondheim welcomed those in attendance and invited their participation in discussions. He addressed the effectiveness of the Compliance Board notwithstanding its limited authority. Other members of the Compliance Board shared opening comments and recognized the staff for their role in the process.

Litigation

Staff provided an overview of the settlement of the lawsuit brought against the Compliance Board. The provisions of the settlement in large part reflected the Compliance Board's current practices. To the extent that the settlement modified existing practices, the changes (including the development of guidelines now available through the Attorney General's website) will benefit both the public and public bodies in their dealings with the Compliance Board.

Open Meetings Act Manual / Revised Web Site

The Compliance Board complimented the new edition of the Open Meetings Act Manual prepared by Assistant Attorney General Jack Schwartz. Copies of select pages from the Attorney General's web site addressing Open Meetings Act matters and, specifically, the Open Meetings Compliance Board were distributed for the Compliance Board's review.

2004 Legislation

The Compliance Board reviewed the Governor's veto of Senate Bill 87 and House Bill 73 (2004), legislation that would have eliminated the standing requirement for filing a judicial action under the Open Meetings Act. Messrs. Keat and Marquardt discussed the importance of litigation as an option under the Act. Also discussed were the practical effects of the circuit court's ruling, which led to the filing of the 2004 legislation, and the status of the appeal before the Court of Special Appeals.

A decision was reached by consensus that staff prepare a letter to the presiding officers of General Assembly, re-emphasizing the Compliance Board's original support for the legislation and addressing the objections raised in the Governor's veto message. However, the letter should stop short of specifically advocating for an over-ride of the Governor's veto. The possibility of a special session this year will affect when the letter might be sent. The Compliance Board asked that a letter be ready in case a special session is convened. Otherwise, the letter will be sent shortly in advance of the 2005 session.

PenMar Decision

There was extensive discussion of the Compliance Board's recent discussion concerning the PenMar Development Corporation, 4 *Official Opinions of the Maryland Open Meetings Compliance Board* 88 (2004), and the effect of PenMar's partial exemption from provisions of the Open Meetings Act. Staff briefed the Compliance Board on identical exemptions that appear in the legislation establishing the Maryland Economic Development Corporation, the Bainbridge Development Corporation, and the Maryland Technology Development Corporation. Discussion centered on the risk of opening the door to similar exemptions and whether the policy justifications for closed meetings by such entities could not be accommodated under the existing provisions of the Open Meetings Act.

A decision was reached by consensus that staff prepare a draft letter to the chairmen of the appropriate legislative committees addressing the Compliance Board's concerns and recommending that these exemptions be repealed. The draft letter is to be distributed to the members of the Compliance Board for their review.

Executive Function

Staff reviewed the ongoing concern about the executive function exclusion under the Open Meetings Act. Draft legislation was distributed for the Compliance Board's review that would require public bodies to document an executive session that was not open to the public. Specifically, the proposed draft would require a public body to include in the minutes of its next open meeting a statement reflecting the time, place, and purpose of a closed executive session as well as a listing of topics discussed, persons present, and any action taken during the course of the session. The documentation would allow for the evaluation of the executive function exclusion by public bodies. Currently, no record permitting any meaningful evaluation exists.

A decision was reached by consensus that staff send a copy of the draft legislation to the Maryland Association of Counties and the Maryland Association of Boards of Education. (A representative of the Maryland Municipal League was present and agreed to forward any comments.)

Adjournment

The meeting was adjourned at 12:10 p.m.