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## **OPEN MEETINGS COMPLIANCE BOARD**

**Meeting of September 29, 2005**

### **MINUTES**

#### ***Attendance / Opening Remarks***

The meeting was called to order by Chairman Walter Sondheim at 10:00 a.m. In attendance were: Chairman Sondheim, and Board members Courtney McKeldin and Tyler Webb. Also in attendance were Compliance Board staff, Assistant Attorneys General Jack Schwartz and William Varga and Kathleen Izdebski.

Members of the public in attendance were: David Bliden and Leslie Knapp, with the Maryland Association of Counties; Candace Donoho, with the Maryland Municipal League; John Mathias, Frederick County Attorney; Amanda Conn, with Funk & Bolton, representing Caroline County; Michael Field, with the Baltimore County Office of Law; Tom Marquardt, with *The Capital*, and James Keat, both representing the Maryland-Delaware-D.C. Press Association; and Eric Brousades and Eric Gunderson, attorneys who represent local boards of education.

Chairman Sondheim welcomed those in attendance and invited their participation in discussions. Other members of the Compliance Board shared opening comments and recognized the work of the staff in the process.

#### ***Executive Function Study***

The primary focus of the meeting was discussion of a draft report prepared by staff in response to Chapter 533, Laws of Maryland 2005. The statute requires the Compliance Board to undertake a study of the executive function exclusion under the Open Meetings Act and report to the Senate Education, Health, and Environmental Affairs Committee and House Health and Government Operations Committee by December 1, 2005. A copy of the staff's draft report was distributed to various stakeholders in advance of the meeting.

##### ***1. Staff Discussion Draft***

Mr. Schwartz outlined efforts undertaken as part of the study and reviewed options available to the Compliance Board in making recommendations to the Legislature, namely, maintaining the status quo, repealing the executive function exclusion, or substituting an alternative that might be viewed as "Open Meetings Act Lite." After explaining his view that

the first two options were unsatisfactory, he summarized the elements of draft legislative proposal. First, the term “executive function” should be replaced by an alternative term, “administrative function,” encompassing day-to-day operational matters by public bodies. It would not extend to policy, contractual, or budgetary matters or other functions that are excluded under the Act’s current definition of “executive function.” Under the proposal, public bodies would be required to make public a schedule of planned administrative sessions, but minutes would not be required and changes in scheduled administrative sessions would not require additional notice except to those who specifically inquired. An administrative session could be closed by a simple consensus of those members of the public body present. If an administrative session was conducted that had not been included in the public schedule, it would be announced in the minutes of the next public meeting, so the public could be aware that the session in fact occurred.

## **2. *Public Comment***

On behalf of the Maryland Association of Counties, David Bliden explored, among other matters, the history of the current provisions of the Open Meetings Act and argued that compelling circumstances that might justify revisiting the balance reached in the 1991 amendments to the Act simply do not exist today. Mr. Bliden also addressed concerns over issues that would arise due to ambiguity in the language proposed by staff and noted that a significant body of case law, Attorney General opinions, and Compliance Board opinions providing guidance under the current Act would be lost. A written statement was also submitted on behalf of the Maryland Association of Counties.

Tom Marquardt disagreed that the problems leading to the 1991 amendments were any less compelling than the status quo today. Jim Keat argued that simply getting rid of the term “executive function” was a step forward. Mr. Keat also suggested changes in the proposed notice language to make clear that any “person,” including the media, could ask for notice of changes in the schedule of administrative sessions. Both Mr. Marquardt and Mr. Keat discussed the problem of the lack of minutes for any meeting of a public body.

John Mathias presented several “real life” examples justifying retention of the status quo and discussed concerns he saw in the proposed language.

In light of the limited time period between circulation of the draft and the date of the meeting, representatives of the Press Association indicated that they would submit written comments for the Compliance Board’s consideration.

## **3. *Future Action***

The Compliance Board will take under advisement the comments of participants and any timely written submissions. If the Compliance Board meets again on this matter, either in person or by conference call, it will notify the participants at this meeting and the public of the arrangements.

### ***Other Matters***

Two additional matters were brought up for the Compliance Board's consideration in connection with its Fiscal Year 2005 report to the Legislature: (1) complaints against defunct public bodies; and (2) the Act's notice requirements.

#### ***1. Defunct Bodies***

During December 2004, the Compliance Board was required to address a complaint against a public body that no longer existed – the Advisory Committee on the Management and Protection of the State's Water Resources. 4 *Official Opinions of the Maryland Open Meetings Compliance Board* 111 (2004). Recognizing that the Act's complaint process envisions both a complaint and response, the Compliance Board declined to address the merits of the complaint since the public body was no longer in existence and thus unable to respond. Unsatisfied with the response, the complainant asked that the Compliance Board recommend a legislative change to prevent a recurrence of this situation. While sympathetic to the complainant's concern, the Compliance Board identified no feasible and appropriate legislative remedy.

#### ***2. Notice Requirements***

The final topic of discussion concerned the Act's notice requirements, including the location of posted notice, notice *via* public bodies' web sites, and the adequacy of notice to representatives of the news media, which may or may not regularly publish notice of public meetings. No decision was reached on this matter. Participants were asked to review the Act's notice requirements and submit any recommendations for the Compliance Board's consideration.

### ***Adjournment***

The meeting adjourned at 11:40 a.m.