

OPEN MEETINGS COMPLIANCE BOARD

Meeting of December 7, 2005

MINUTES

Attendance

The meeting was called to order by Chairman Walter Sondheim at 9:35 a.m. In attendance were Chairman Sondheim, Board members Courtney McKeldin and Tyler Webb, and the Compliance Board's co-counsel, Assistant Attorneys General Jack Schwartz and William Varga.

Members of the public in attendance were: Amanda Conn, with Funk & Bolton, representing Caroline County; Leslie Knapp, with the Maryland Association of Counties; James Peck, with the Maryland Municipal League; and James Keat and Carol Melamed, both representing the Maryland-Delaware-D.C. Press Association.

Study of the Executive Function

Chairman Sondheim welcomed those in attendance and expressed his hope that the most recent draft of the study on the executive function exclusion under the Open Meetings Act fairly reflected the positions of the various stakeholders involved. Mr. Sondheim noted that the Compliance Board and representatives of MACo and MML have not historically found themselves in conflict over the concept of open meetings, and the current situation is the result of differences in perspective on how burdensome the proposed recommendations would actually be. Chairman Sondheim suggested that the principle concern appears to be the effect on the budget process.

Mr. Schwartz noted that the Compliance Board has recently received a letter from the Maryland Association of Boards of Education, whose position, in large part, tracks that of MACo and MML. Mr. Schwartz summarized the three issues that the Compliance Board needed to address before finalizing its report to the Legislature: (1) altering the terminology used to label the function in question – a change that everyone seems to support; (2) applying the Open Meetings Act to the entire budget process, not merely the adoption phase; and (3) requiring some level of disclosure about meetings that involve executive functions, which, under current law, are free from any form of required disclosure.

● *Budgetary Process*

Mr. Schwartz noted that the primary objection to subjecting the preliminary budget process to the Open Meetings Act is the inherent unfairness that would result between local

governments with a single chief executive, under which budget preparation routinely occurs outside public view, and those where a public body exercises both administrative and legislative authority. Under the proposed recommendation, meetings of a public body under the latter structure would be subject to the Act at the earliest stage of the budget preparation process.

The consensus of the Compliance Board was that this difference is inherent in the form of governmental structure under which local citizens elect to operate and extends to issues beyond application of the Open Meetings Act.

● *Disclosure Requirements*

Mr. Schwartz explained the proposed disclosure requirements (notice of regularly scheduled executive function sessions; subsequent disclosure of sessions that had not been previously announced) and the resulting balance staff had hoped to achieve. These changes are opposed by local governments as unduly burdensome. Press representatives, however, feel the proposed disclosure is inadequate.

Jim Peck reviewed the debate on the Open Meetings Act 12 years ago when the Mayor of Burkittsville met with the Compliance Board and reviewed the impact of the Act on a small municipal government that operates with little or no staff. Because members of the governing body are responsible for regular government operations, they may be in frequent contact. Yet, under the current proposal, any unscheduled discussion over administrative concerns would trigger an obligation to document the session in the minutes of the next public meetings. For elected officials in this situation, the recommended requirements are a recipe for failure.

In response to Mr. Peck's position, Chairman Sondheim reflected that people don't want to see their elected officials acting in secret and that the status quo results in a loophole inconsistent with the legislative policy of the Act. Ms. McKeldin added that an individual elected to public office has an obligation to be open and honest in dealing with public business and, in setting policy, we ought to err on the side of open government.

Mr. Peck offered an example of the mundane issues municipal officials might deal. Mr. Webb suggested the example appeared unlikely and acceptance of MML's argument could result in many governmental decisions being handled out of sight of the public. Mr. Sondheim viewed the burden of the proposed record keeping requirements as small.

Mr. Schwartz noted that the only required disclosure under the proposal following an unanticipated meeting was the fact a meeting occurred and the date, time, and place of the

session. The lack of minutes is the part of the proposal that the Press Association has criticized. However, the proposal sought to provide sufficient information so that a member of the public or a reporter could question a member of the public body as to what had occurred.

Mr. Keat provided a practical example of his dealings with a governmental entity and the resulting dilemma when a public body is found to have violated the Act, but no record of what had transpired exists.

Ms. Melamed suggested a compromise, under which minutes of an unscheduled session would not be required, but a public body would be required to disclose the subject matter of an unannounced session in the minutes of the subsequent session. Mr. Peak repeated his concern that expanding required disclosure simply adds opportunities for local officials to inadvertently fail to comply.

Mr. Webb expressed concern that, if not carefully drafted, the addition would require a series of opinions in order to define the level of disclosure satisfying the Act.

The Compliance Board approved the staff proposal as modified, to require disclosure of the subject matter of an unscheduled session in the minutes of the public body's subsequent public meeting.

Closing

Mr. Schwartz indicated that a final draft reflecting the day's discussion would be circulated to members of the Compliance Board for approval before submission to the Legislature. Chairman Sondheim adjourned the meeting at 10:40 a.m.