

OPEN MEETINGS COMPLIANCE BOARD
Minutes of Annual Meeting
August 20, 2014
Office of the Attorney General
200 St. Paul Street, Baltimore, Maryland

In attendance:

Board and Board staff:

Monica J. Johnson, Esq., Board Chair
Wanda Martinez, Esq. Board Member
Mamata Poch, Esq., Board Member
Ann MacNeille, Board Counsel
Deborah P. Spence, Board Administrator

Others:

John M. Gwynn, Associate County Attorney, Prince George's County Office of Law
Leslie Knapp Jr., Legal and Policy Counsel, Maryland Association of Counties ("MACo")
Thomas C. Reynolds, Director, Maryland Municipal League ("MML")
Janis Sartucci, Parents' Coalition of Montgomery County Maryland

Call to order and welcoming remarks

Ms. Johnson called the meeting to order at 10:03. She welcomed those in attendance and invited the Board members and those present to introduce themselves and offer comments during the meeting. She also introduced the Board's staff. She explained that this was the first time that this entirely new Board had held an annual meeting and proposed that the members briefly describe their backgrounds. Ms. Johnson teaches Business Ethics at the University of Maryland University College. A former Assistant Secretary of the Department of Natural Resources, she has served as legislative liaison to the Montgomery County Delegation to the General Assembly and worked for Prince George's County and the Washington Suburban Sanitary Commission. Ms. Martinez practices law, particularly in the family law and criminal law areas, in a private firm in Montgomery County; she formerly served as counsel to the Montgomery County Office of Child Support Enforcement. She is President-Elect of the Maryland Hispanic Bar Association. Ms. Poch serves as Offset and Industrial Trade Manager for Northrop Grumman.

During the introductions of the members of the public, counsel explained that, under the Open Meetings Act, the Board has both an advisory role, which it fulfills by addressing complaints, and an educational role, which is to provide education on the Act to public bodies, in conjunction with MACo, MML, and the Attorney General's Office. Mr. Reynolds described the certificate program offered through the Academy for Excellence in Local Governance and explained that the Academy's course on the Maryland Open Meetings Act is a core requirement of that program. He and Mr. Knapp explained that the Academy courses are offered at various times during the year at the MACo, MML, and Local Government Insurance Trust conferences. Mr. Knapp explained that MACo has an orientation session for newly elected county officials

every four years, soon after they have been elected, and that the session includes open meetings and ethics presentations. Mr. Reynolds explained that a single orientation session would not work well for the municipalities' elected officials because elections occur on a much more frequent basis and at varying times.

Activities of the Board

The current Board members were not appointed until the end of the 2014 Fiscal year, so counsel reviewed the Board's activities during that period, as set forth in the draft annual report. The Institute for Governmental Service and Research at the University of Maryland, the group that created the online course, continues to update the course, and its expertise has been indispensable. The 2013 legislation that requires public bodies to designate an officer, member, or employee to receive training on the Act took effect on October 1, 2013, and the designations received by the Board's Administrator fill two binders. Proof that the designee actually received the training should be maintained by the public body, and the open meetings webpage on the Attorney General's website gives instruction on that. A question arose as to how often the training must be taken, as the membership of public bodies, particularly for elective bodies, changes constantly. Counsel remarked that the intent of the requirement might be best met by ensuring that, at any given time, at least one employee, member, or officer have taken the training. The Chair remarked on the importance of staff being trained and having a consciousness of the Open Meetings Act as part of the public body's culture, not just as another law for the attorney to address. Noting that most people want to comply with the law, she stated that the members of public bodies need support particularly for the times when their attorney is not present. Ms. Martinez concurred and noted that public bodies need to be pro-active in open meetings matters.

Referring to the complaint statistics in the draft report, counsel noted that the pace of complaints had picked up considerably in the last several months, with 10 or 12 complaints since July 1, just after the new Board members were appointed, but that it now appeared to be abating somewhat. She noted that the statistics are not a good way of assessing trends in the number of violations during a given year, because some complaints allege dozens of violations over periods of years, while others allege a single recent violation. Mr. Reynolds asked whether any particular type of violation seemed to have occurred frequently during the year. Counsel noted that there had been a few complaints about an assortment of basic violations, such as events that were not publicized as events of a public body but were attended by a quorum of the public body's members, who then discussed public business. She remarked that these violations occurred away from the public bodies' usual meeting place and at times when counsel was not there and that the training requirement might reduce those violations in the future. Otherwise, the number of complaints often spikes when a public body is addressing a particularly controversial issue. Messrs. Knapp and Reynolds stated that short alerts that might help local governments comply with the Act could be included in their associations' newsletters.

As described in the draft Annual Report, open meetings training occurred at conferences and meetings during the year. The Chair attended the training at the annual meeting of the Soil Conservation District Supervisors Association.

Discussion of Suggested Legislation and Comments from the Public

The members discussed various suggestions from the public on how the Act might be improved. The Chair noted generally that it might be too early for this Board to assess the need for changes to the Act.

First, the group addressed the increasing use of e-mail, texting, and the circulation of documents as alternatives to deliberation in a public meeting. Comments were made on public officials' receipt of text messages during a meeting, the appearance given to the public by that practice, and public officials' use of their personal devices and computer, for public business, in the belief that e-mail stored on that equipment is not subject to the Public Information Act. Ms. Poch remarked on the difficulty of regulating social media such as Facebook. Ms. Sartucci noted that the use of social media can sometimes increase the amount of information the public receives, as when an official uses Twitter during a meeting to report on the events of the meeting. She drew the members' attention to legislation in Fairfax County, Virginia. Ms. Martinez noted that the Board would have to hear specific proposals. The Board decided not to recommend legislative action on the issue this year.

Second, the group addressed a suggestion that the mandatory training provision be amended to require presiding officers to take the training. The Board discussed the current provision and heard comments, including a comment that it can be difficult for staff to tell the members of a public body that a discussion must be public and various comments on the number and variety of public bodies subject to the Act. The Board decided that it was too early to evaluate the need for an amendment.

Third, the Board addressed two proposals that the Act be amended to require the automatic unsealing of closed-session minutes and to require public bodies to give notice of the fact that sealed minutes have been unsealed and are available for inspection. As to the automatic unsealing, the Board noted that some sealed minutes might contain information that it would not be appropriate to disclose publicly and that it was difficult to address the issue as a general matter. As for the notice to the public that minutes have been unsealed, Ms. Poch noted that a statement in the minutes of an open meeting might suffice for that. The Board agreed that it wanted information from public bodies on how such a provision might work in practice. The Chair asked Messrs. Knapp and Reynolds if they might ask their associations' members for that information.

Fourth, the Board addressed a request that the Board take a position on legislation that failed in 2014, and that the requester expected to be re-introduced in 2015, to require public bodies to make the agendas of their meetings available in advance. After a

discussion of the history of the original 2014 legislation, on which the former Chair had commented, and the amendments to that bill, the Board decided that it will address the issue when a bill has been drafted. Counsel was asked to track open meetings legislation.

Review of organizational meeting

The Chair summarized the events of the organizational meeting that the Board had held at 9:15 that morning and that was adjourned shortly before the annual meeting. She explained that the Board met for the first time and discussed matters such as the logistics of deliberating on opinions. Minutes will be prepared.

Closing remarks and adjournment

The Chair thanked the group for the discussion and adjourned the meeting at 11:42 a.m.