



# MARYLAND'S OPEN MEETINGS ACT What You Need To Know

## **MARYLAND PLANNING COMMISSIONERS ASSOCIATION**

October 25, 2013

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# Intent of the Open Meetings Act

- That public business be transacted in view of the public.
- That citizens be allowed to watch the performance and the deliberations of public decision-makers.
- That, with some exceptions, the deliberations and decision-making process occur in public.

The law includes specific examples:

- Public Notice of meetings.
- Public Access to meetings.
- Public Access to meeting minutes.



The law only applies to public bodies involved in a function covered by the Act.

The Three-Part Test:

- Is it a public body?
- Is it a public meeting?
- Is the public body performing a function covered by the Act?



# What is a Public Body?

- Is it created as a public body by law?
- Is it created by a Chief Executive or subordinate?
- Is it created by a state public body or subordinate?
- Is it the “functional equivalent” of a public body?



# Is it created as a public body by law?

- The Maryland Constitution?
- Maryland Law?
- A local charter?
- A local ordinance?
- A rule, regulation or by-law?
- An executive order of the Governor?
- An executive order of the chief executive of a political subdivision?

# Is it created by the Chief Executive of a governmental entity or a subordinate?

- Does it consist of more than one member?
- Does it include at least two citizen members (not employees of the state or local government)?



# Is it created by a State public body or subordinate?

- Is there more than one member?
- Are there at least two citizen members?
- Are other members appointed by a public body in the Executive Branch of state government (whose members are appointed by the governor or another state official)?

Is it a non-profit appointed by and controlled by government officials?

See, for example, the Baltimore Development Corporation.



# What is not a public body?

- The Governor's cabinet.
- The Governor's executive council or a committee of the council.
- A local government counterpart to the Governor's executive council or committee.
- A court (except when engaged in rule-making).

# What is not a public body?

- Juries (both grand juries and petit juries).
- Local government self-insurance fund committees or pools.
- The governing bodies of “some” specified hospitals.
- Some subcommittees of executive-appointed entities.

# How do we know?

- Look at the definition of a public body.
- For example, a subcommittee can be a public body if a quorum of the “parent body” is included on the subcommittee.



# When is a meeting a meeting?

- A quorum is present (generally a simple majority).
- To consider or transact public business.
- A quorum can be created by telephone conference call or Skype.
- The key is “simultaneous interaction.”

# When is a meeting a meeting?

- No “walking quorum” is allowed.
- Deciding whether an item is or is not subject to the Act is itself a policy decision and should be done in public.



# When is a meeting a meeting?

- If a quorum of members goes to a conference, there is no “meeting” unless the quorum considers and/or discusses public business.
- If a quorum of members goes to a social event, there is no “meeting” as long as the quorum does not consider public business.

# Meeting or no meeting?

## Meeting:

- Performing a legislative function (law or policy)
- Performing a quasi-legislative function (rules, regulations, contracts, budgets)



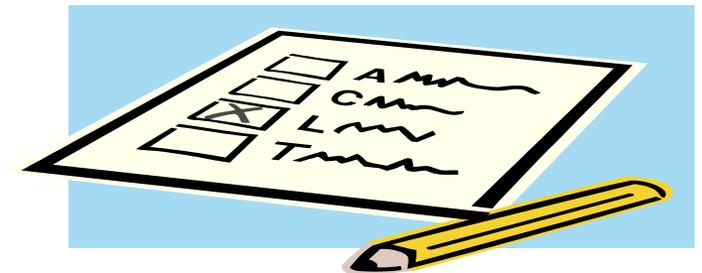
# Meeting or no meeting?

- Performing an advisory function (performing a study, reviewing matters of public concern, addressing matters delegated by a chief executive officer (e.g., the governor or a county executive)).



# When you close ...

- Use a pre-printed form (not required) that is prepared for your public body.
- The form should include spaces for check marks for the topics to be covered, lists of who attended the meeting, and a space for the presiding officer to verify that the statement was given to the public.



# When you close ...

- If a member of the public files a formal objection to the closing, the public body must send a copy of the closing statement to the Open Meetings Law Compliance Board for its review.



# When you close ...

- Minutes of the next public meeting must reflect the actions taken in the previous meeting's closed session.



# Cases on closing a meeting

- Include, for example, 1 OMCB Op. 96-12 (1996) and 7 OMCB Op. 225 (2011).



# COMMON ERRORS IN CLOSED SESSIONS

1. The “personnel” exception. Instead of discussing one or more specific and identifiable employees, the public body discusses a class of employees, personnel policies, or department reorganizations. See 1 OMCB Op. 94-5 (1994), 6 OMCB Op. 104 (2009), or 6 OMCB Op. 180 (2009)



# COMMON ERRORS IN CLOSED SESSIONS

## 2. The legal exception.

The law allows a public body to close a meeting "... to consult with counsel to obtain legal advice." Sec. 10-508(a)(7).

- This does not mean that the public body may have a general discussion with staff about a legal issue, even if the attorney is present.

- This can be covered when closing to discuss pending or potential litigation, where discussions with staff, consultants and others may occur. 1 OMCB Op. 97-9 (1997).
- So-called “legal advice” from a non-lawyer is strictly prohibited. 1 OMCB Op. 92-1 (1992).
- Avoid the “lawyer as potted plant.”



# Closed session minutes must be prepared and maintained.

- List each item considered.
- List the action taken on each item.
- List each recorded vote.
- You don't need to write about the discussion.



- Draft minutes become final when approved by the public body, which should occur “as soon as practicable after the meeting.”
- Normally, this is the next meeting of the public body.



# Public review of minutes.

- Open session minutes must be available to the public during regular business hours.
- Minutes may be posted on the Website, but that cannot be the only way the public can access the minutes.
- The public body is not required to answer questions about the minutes, to search for documents for members of the public, or to provide copies of documents.

# Public review of minutes.

- Closed session minutes are not available to the public, but the next open session minutes must contain a summary of the closed session.
- The closed session summary must include the time, date and purpose of the closed meeting, a record of the vote to close, the statute under which the meeting was closed, and the topics discussed during the closed session along with the persons present and the actions taken.

# Public review of minutes.

- Administrative function sessions must also lead to written minutes, including the time, date, and persons present, and at least a phrase or sentence identifying the subject discussed.



# Retention of the minutes

For at least one year, the public body must keep:

- A hard copy of the meeting notice.
- A copy of the written statement/form used to close the meeting.
- A copy of both open and closed meeting minutes.
- Any copy or recording of the votes, including Internet posting of the vote.

Finally, a public body must keep all records that relate to a complaint filed with the Open Meetings Law Compliance Board.



# ENFORCEMENT OF THE ACT

## The Open Meetings Law Compliance Board

- Three members
- Appointed by the Governor
- Issues advisory opinions
- Receives legal support from the Office of the Attorney General



# Enforcement of the Act

- Citizens can submit written complaints.
- The Compliance Board may require the public body to disclose minutes, meeting notices and closing statements.
- Sealed minutes are confidential.



In reaching a decision on a violation of the Open Meetings Act, the Board uses information in the complaint, the reply from the public body, and “other information that comes to its attention.”

- The Compliance Board may schedule an informal conference, but it has no authority to compel testimony.



- If the OMCB finds a violation, it issues an Opinion, which a member of the violating public body must announce and summarize at its next public meeting.
- A majority of the members of the public body must sign a copy of the Opinion and return it to the Open Meetings Law Compliance Board.



# Legal Action

- There is a presumption that the public body acted legally and complied with the Open Meetings Act.
- A person alleging a violation of the Act may sue the public body in the Circuit Court and ask the court to:
  - § Determine the applicability of the law
  - § Require the public body to comply with the law, or
  - § Void the action of the public body.



The law presumes that the public body did not violate any provision of the Open Meetings Act.

- If a Circuit Court finds that a public body willfully failed to comply with the legal provisions regarding open and closed sessions, meeting notices, public attendance and content of meeting minutes, the Circuit Court may declare the actions of the public body to be void.



The Court may also issue an injunction against the public body and grant fees and costs to the prevailing party in the litigation.

- If the Circuit Court finds that a public body willfully met with knowledge that the meeting violated the Open Meetings Act, the Circuit Court may fine the public body up to \$250 for a first violation and up to \$1,000 for any violation within the next three years.



As of October 1, 2013, each public body in Maryland must designate at least one member, officer or employee to receive training on the Open Meetings Act and to notify the Open Meetings Law Compliance Board of the designation of the member, officer or employee.



- The training must take place within 90 days after the individual is designated to receive the training.
- Within 90 days after the designation, the individual must complete either an on-line course offered by the Office of the Attorney General and the University of Maryland Institute for Governmental Service and Research, or a class offered by the Maryland Association of Counties or the Maryland Municipal League, through the Academy for Excellence in Local Governance.

# Any Questions?

