

The Capital

Opinion

Guest column: Open meetings law: How you can learn

By J. JOSEPH CURRAN JR.

The Maryland Open Meetings Act begins with an ode to transparency in government. It declares Maryland's recognition that openness is essential to public confidence and public officials' accountability to the citizens. Yet, for all of its power and simplicity, this public policy declaration at the beginning of the Open Meetings Act gives way to a series of detailed provisions that are complex and far from self-explanatory.

After nearly 30 years under the act, and more than 10 years after its last major revision, question after question recurs: To which entities does the act apply? Which meetings are covered, and which are not? What kind of notice is good enough? How does a public body close a meeting? What has to be covered in the minutes?

The devil really is in the details, because the law reflects a sometimes labored compromise between the public's right to know and the confidentiality that at times is needed for efficient government. How can citizens, journalists and public officials understand the Open Meetings Act and its application to particular situations?

The most authoritative interpretation comes in court decisions. Given the costs of litigation, however, this is not a practical alternative in most situations. In the nearly three decades since the act was enacted, there have been fewer than a dozen appellate court decisions interpreting it.

Apart from the courts, two other publicly available sources of guidance are the Attorney General's Office and the Open Meetings Compliance Board.

Since the act passed in 1976, this office has occasionally been asked to interpret and apply it in opinions of the attorney general. These have addressed issues ranging from the authority of the courts to void an agency's actions to the status of e-mail messages among members of a public body.

My office also has provided a key educational tool, the "Open Meetings Act Manual." Now in its fifth edition, the manual is meant to help members of public bodies, their lawyers and members of the press and public understand the act and especially its practical application. The manual reviews the act comprehensively and gives users checklists and other tools.

The manual is available for downloading from our Web site, www.oag.state.md.us. From the menu on the left side of the screen, click on "Open Government," then on "About the Maryland Open Meetings Act."

The Open Meetings Compliance Board is an innovative alternative to litigation when a member of the public believes that a public body might have violated the law. For the cost of a postage stamp, a person can lodge a complaint. After obtaining a response from the public body, the compliance board issues an opinion on whether the act was violated. The entire process usually takes only about two months.

While inexpensive and efficient, the compliance board process does not yield what some people want: a binding corrective order when a violation is found. The board has no power to do so; its opinions are advisory only. The board's chairman -- the legendary civic leader Walter Sondheim Jr. -- has called the board "toothless."

Still, sometimes mere advice has power. Since the compliance board began its work in 1993, it has issued scores of opinions, which collectively form a body of clear, reliable guidance. (The compliance board's opinions are all available from the attorney general's Web site.)

In addition, the compliance board, acting through the lawyers from my office who advise it, has formed a partnership with local government organizations and the press association to hold workshops throughout the state on Open Meetings Act compliance. Most observers, be they open government advocates or public officials, consider the compliance board experiment a marked success.

Ninety years ago, Williams Jennings Bryan, sometimes a prophet despite his predilection for lost causes, remarked in a speech in Baltimore that "The government being the people's business, it necessarily follows that its operations should be at all times open to the public view. Publicity is therefore as essential to honest administration as freedom of speech is to representative government."

What he meant by "publicity" is not the after-the-fact cosmetics of spin doctors but the unadorned state of being public - of doing the public's business where it can be seen. Doubtless "at all times" goes too far, but Bryan's core principle was right then, and is right today. In Maryland, this principle is enshrined in policy. Our task, then, is to work together to make it an everyday reality.

The writer is attorney general of Maryland.

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