

Academy for Excellence in Local Governance

Sunshine & Shadows Complying with Maryland's Open Meetings Act

**William R. Varga
Assistant Attorney General**



**MML Conference
June 29, 2010**

Objectives

- When does the Act apply?
- What are the ground rules for an open meeting that is subject to the Act?
- When and how may a meeting be closed?
- How is the Act enforced?

OPEN MEETINGS ACT

State Government Article

Title 10, Subtitle 5

Annotated Code of Maryland

It is essential to the maintenance of a democratic society that, except in special and appropriate circumstances:

(1) public business be performed in an open and public manner; and

(2) citizens be allowed to observe:

(i) the performance of public officials;

and

(ii) the deliberations and decisions that the making of public policy involves.

§10-501(a)

Scope of the Act: “Public Body”

- Multi-member
- Formal creation (usually)
 - Committees and subcommittees
- Informally created public bodies
- Nominally private corporations

Scope of the Act: “Meeting”

- Quorum convened
 - Conference calls, e-mail
- Public business
 - Social gatherings, retreats

Scope of the Act: Topic of Discussion

- Covered: Advisory, legislative, quasi-legislative functions
- Excluded: administrative (formerly executive), judicial, quasi-judicial functions
- Exceptions:
 - » Granting license or permit
 - » Zoning matters

The *Mysterious* Administrative (formerly Executive) Function Exclusion

- Not within other defined functions
- Not creation of new law or policy
- Administering existing law or policy

Special Case for Budget Preparation

- Administrative function during preparation phase
- Quasi-legislative function during formal approval process

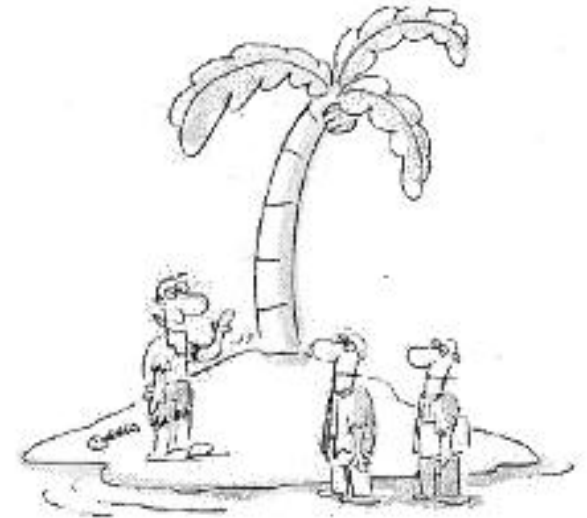
Notice of Meetings

- Timing
 - Reasonably in advance
 - Last-minute meetings
- Content
 - Time, place, open/closed status
 - Agenda?
- Method



Open Meetings

- Location
- Public participation
- Cameras/tape recorders
- Access to documents referred to during meeting



"...I declare this meeting open!"

Closing a Meeting



-
- Identifying a specific exception
 - Procedural requirements
 - Public vote, written statement
 - Exceptions to be construed narrowly
 - Staying within an exception

§10-508(a) Exceptions

- Specific personnel matters
- Legal advice
- Litigation
- Real property acquisition
- Collective bargaining
- Business development
- Certain public security matters
- Competitive procurements
- Other law requiring confidentiality
- Etc.

Minutes

- Duty of timely preparation
- Open meetings
 - Available on request
 - Tape recording \neq minutes
- Closed meetings
 - Sealed
 - Publicly available summary (requirement extends to certain closed administrative function sessions)



Record Retention

- Notice
- Documentation closing meeting
- Minutes

Enforcement

- Open Meetings Compliance Board
 - Advisory opinions
- Circuit court
 - May overturn public body's action
 - May award attorney's fees to winning party

More Information

- Open Meetings Act Manual (6th ed. 2006)
- Compliance Board Opinions
- www.oag.state.md.us
 - Click on “Open Government”