

APPROVED

January 11, 2016

MEETING OF THE MONTGOMERY COUNTY BOARD OF ELECTIONS  
18753-210 North Frederick Avenue, Gaithersburg, Maryland

In Attendance:

Board Members:

James Shalleck, President  
Nahid Khozeimeh, Vice President  
Mary Ann Keeffe, Secretary  
Alex Vincent  
David Naimon  
Jacqueline Phillips

Staff:

Margaret Jurgensen, Election Director  
Alysoun McLaughlin, Deputy Election Director  
Laletta Dorsey, Acting Voter Registration Manager  
Lisa Merino, Office Services Coordinator  
Janet Ross, Information Technology Manager  
Christine Rzeszut, Operations Manager  
Leslie Woods, Election Judge Coordinator  
Gilberto Zelaya, Outreach Coordinator

Melvita Chisholm, Trainer  
Marcia Dickerson, Trainer  
Kathia Miles, Trainer  
Kevin Lindsay, Trainer  
Robert Eckrich, Trainer

Zeba Khalid, Trainer  
Sarah Kelly, Absentee (Nursing Home)  
Tara Grist, Absentee (Nursing Home)  
Courtney Grundmayer, Voter Registration  
Deniz Odgers, Voter Registration

Guests:

Paul Bessel  
Jennifer Housey  
Dolly Kildee  
John O'Malley  
Lewis Porter  
Barbara Sanders

**Convene the Board Meeting and Declare a Quorum Present**

Mr. Shalleck called the Board meeting to order and declared a quorum present at 2:30 p.m.

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### **Approval of the October 19, 2015, Board Meeting Minutes**

Mrs. Khozeimeh made a motion to accept the minutes as presented. The motion was seconded by Ms. Keeffe. There was a brief discussion on past practices regarding how information is documented in the minutes. The motion passed unanimously.

### **Approval of the November 16, 2015, Board Meeting Minutes**

Mrs. Khozeimeh made a motion to accept the minutes as presented. The motion was seconded by Ms. Keeffe. Ms. Khozeimeh stated that the minutes continue to be too long and still agrees that the minutes should be presented in a summary format. Mr. Vincent asked for clarification on edits suggested by a Board member. Ms. Keeffe stated that she was very pleased with the way the minutes were produced and the ample time given to the Board members to provide edits. Mr. Naimon agreed with Ms. Keeffe's comment and added that the minutes should not be presented in any less detail than presented. The Board meeting minutes were approved as presented unanimously.

### **Additions and Changes to Agenda**

Mr. Shalleck asked that the Open Meeting Compliance item be moved to the next item.

### **Open Meetings Compliance Board**

Mr. Shalleck announced that the Open Meetings Compliance Board had found a violation of the Open Meetings Act and orally summarized its decision from the written ruling. He stated that the majority of the Board accepts the decision, acknowledges the decision, and will comply with the decision.

Mr. Shalleck stated that the Open Meetings Compliance Board did not take a position on the question about whether responses to Open Meetings Act complaints must come from the public body's members, as opposed to counsel. It was noted that all material received by the Board Attorney was sufficient for them to review. (See attachment A)

Mr. Shalleck noted that it is not an admission of a violation to announce the Open Meetings Act Compliance Board's decision and, in response, all six Board members present signed the opinion. The signed Open Meeting Compliance Board decision will be forwarded to counsel for the Open Meetings Compliance Board.

Ms. Keeffe inquired if the Bylaws will need to be revised to comply with the Open Meetings Act. (This item is discussed further under new business.)

Mr. Shalleck asked that the record show that the violation was not done intentionally but was simply a misinterpretation of the Bylaws.

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**Personnel**

Ms. McLaughlin introduced new temporary personnel who will be working as trainers, recruiters, in voter registration, and/or the nursing home program. Ms. Jurgensen stated that five employees have been hired in voter services that are bilingual in Spanish and English.

**Public Comments**

Lewis Porter asked to address the Board members in advance. Mr. Porter provided his condolences for the attacks toward Mr. Shalleck during the Early Voting site selection. Mr. Porter made a public statement that the organizations that made verbal assaults and attacks towards Mr. Shalleck should be reported to the State as racist organizations.

Mr. Porter expressed his concerns with the need for voter rolls to be cleaned; he claimed that deceased voters are still on the voter rolls after 20 years. He asked that Early Voting no longer be used in Maryland, claiming that there is an "overload" that produces voter fraud. Mr. Porter asks that the Board of Elections provide information to assist him in taking on the issues presented.

Paul Bessel asked to address the Board members. Mr. Bessel complimented the Board of Elections' website, noting that he was pleased to see the audio of the Board meetings posted there.

**Election Director Status Report** (Incorporated as Attachment B)

Ms. Jurgensen stated that the Board Meeting Agenda was posted December 24, 2015, and draft Board Meeting minutes were provided to the Board members on December 29, 2015. She added that paperwork for the alternate/emergency sites was sent to the State Board of Elections on January 8, 2016.

**Personnel**

Ms. Jurgensen stated that additional temporary personnel will be hired to work in the Information Technology Section throughout the next few weeks.

**Budget**

Ms. Roher provided a spreadsheet detailing FY16 expenditures through December 31, 2015, in advance. After further review, a discrepancy was noted on line item 61926 (Polling Place Rentals) reflecting a credit. A corrected spreadsheet was provided to the Board members at the meeting. Ms. Roher stated that she will inquire with Finance to resolve the credit issue. Ms. Roher does not believe there is a credit. The actual expenditure was reflected in the revised spreadsheet (see attachment C).

Ms. Khozeimeh inquired why line item 60414 (Building Construction) is reflecting over budget. Ms. Roher stated that there was a slight deficit due to last minute additions that included electrical outlets and installation of a glass window for better visibility of employees by managers. Ms. Keeffe inquired why line item 60304 (Maintenance – Electrical) was budgeted at \$0 and has an expenditure of \$3,005 to date. Ms. Roher stated that the Department of General Services has changed how they bill departments; she added that the FY16 budget was created a year ago and she was not expecting that DGS would be making chargebacks. In the future, funds will be budgeted for line item 60304.

### **Voter Registration**

Ms. Jurgensen reported that MDVoters 6.0 has moved from an Oracle platform to a SQL server. Some outstanding issues have been resolved with the transfer; however, some Spirit issues still remain such as freezing screens that slow down the processing, and the inability to create a voter registration database. She added that BOE staff is in the process of testing Spirit issues.

Ms. Jurgensen reported that the GIS interface to change and merge polling places has been completed; voter notifications will be mailed in stages.

Ms. Jurgensen stated that Montgomery County Public Schools requested an extension from the original deadline for the high school voter registration drive of December 23, 2015. The Voter Registration program (BOE) agreed to an extension date of February 1, 2016, as requested by Ms. Rossini (Student Leader Coordinator). Mr. Naimon inquired why the school would select a date that would overlap with exams. Ms. Jurgensen stated that Ms. Rossini requested the date.

### **State Board of Elections**

Ms. Jurgensen reported that ES&S has pledged to provide a video for public use to assist with education and outreach for use in polling places and local board events.

Ms. Jurgensen stated that an ERIC report would be provided in January. She added that it is the goal for the Maryland ERIC report to be incorporated with the NCOA (National Change of Address). Ms. McLaughlin briefly described the ERIC report.

Ms. Keeffe asked Ms. Jurgensen to brief the Board members on a legislative committee hearing in December. Ms. Jurgensen stated that she attended a hearing of the Health and Education Committee of the Maryland Senate on December 17, where she reported on the City of Rockville Election (A copy of her testimony was provided to the Board members via email in advance of the Board meeting.) She added that information technology concerns were expressed with all parts of the new voting system. Questions were asked by Senators but the appropriate Department of Information Technology (DOIT) representatives were not there to respond. The State Board of Elections spoke on election services and the meshing of all the processes.

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SBE stated that while the equipment functions, it acknowledged that there are issues with the same-day voter registration software. Ms. Jurgensen stated that the Board of Elections will be conducting testing of the Electronic Pollbook and the regional site software. The Board members and Ms. Jurgensen briefly discussed the need for additional equipment and additional election judges for the General Election.

### **Legislation**

Ms. McLaughlin reported on local bills that were presented at the delegation hearing on November 30. In addition, she stated that Senate Bill 19, presented by Senator Reilly, may potentially affect the length of time written minutes or tapes of public meetings are held if passed. Ms. Roher stated that tape recordings were held for a year before the BOE went to digital recordings and written minutes are never discarded.

Ms. McLaughlin stated that she and Mr. Zelaya will further review a proposed Senate Bill presented by Senator Kagan regarding Language Access to State Government Websites, requiring agencies to take reasonable steps to provide equal access to public services for individuals with limited English Proficiency since Montgomery County Board of Elections already abides by Section 203 of the Federal Voting Rights Act. Mr. Naimon asked that Ms. McLaughlin determine if the Bill will apply to the Board of Elections, since Mr. Karpinski has said that the Board is a State agency for most purposes.

Ms. McLaughlin stated that Senate Bill 11, Universal Voter Registration Act, and Senate Bill 19, Automatic Voter Registration, are somewhat identical except SB 11 repeals requirements that Motor Vehicle Associations and Social Services Agencies (broadly) provide voter registration services at the point of service and replaces it with procedures for data sharing from the agencies to the State Board of Elections and then to local boards (that would require mailing). Senate Bill 19 would extend the same applications to higher education. The Board members briefly discussed the Bills.

Mr. Shalleck stated that he asked Ms. Jurgensen about the status of the tenth Early Voting site and she has stated that County lobbyists are working to ensure that it is timely enacted.

### **Attorney Report**

Mr. Karpinski was not able to attend the Board meeting.

### **Old Business**

#### **Other Old Business**

No items were discussed.

## **2016 Election Preparation**

### **New Voting System Update**

Ms. Jurgensen reported on the amount of voting equipment received to date as well as pending equipment to be received.

### **Election Judge Manual**

Ms. Jurgensen stated that local boards have been permitted to include relevant data - that includes names of county, phones numbers, address, and graphics - into the Election Judge training manual. She added that the Early Voting Manual has not been finished due to the incompleteness of the same day voter registration instructional materials. Mr. Naimon inquired if the manual instructs election judges on procedures to post results by party at 10:00 a.m. and 3:00 p.m.; Ms. Jurgensen and Ms. McLaughlin said it did. Ms. Keeffe stated that, in the past, complaints have been received regarding insufficient information in the training manual and she inquired if it would be beneficial for Board members to have a hands-on review of the manual. Ms. Jurgensen stated that the Board members are encouraged to attend Chief Judge training and noted that the manual is prepared by the State Board of Elections and any recommendations must be submitted to the State. Ms. Jurgensen agreed to provide dates that Board members may attend Chief Judge training.

Ms. Khozeimeh acknowledged a letter from the State Board of Elections to Mr. Shalleck with costs of additional equipment that could be leased. Ms. Jurgensen stated that the request for additional equipment for Montgomery County should be covered by the State legal process in which the State covers 50% of the cost and Montgomery County the other 50%. Mrs. Khozeimeh and Ms. Phillips noted that the County Executive has acknowledged that it is a legislative priority. Ms. Jurgensen stated that County lobbyists are advocating for a 50/50 split of the cost. She added that the request for equipment would be for the 2016 General Election only.

### **Transportation**

Ms. Jurgensen reported that staff met with the Department of General Services (DGS) to obtain their services to pick up ballot bins from polling places for the Primary Election. Board of Elections' staff provided route lists of polling places to DGS. Future meetings are planned to keep DGS updated.

### **Regional Upload Sites**

Ms. McLaughlin reported that the regional sites for election night have been identified based on secure County network access and location. The following sites were selected: White Oak Community Recreation Center, Marilyn J. Praisner Community Recreation Center, Potomac Community Recreation Center, Mid-County Community Center, Bethesda Library, Silver Spring Library, Olney Library, and the Board of Elections. Ms. McLaughlin briefed the Board members on the process of receiving results on election night.

## **Public Test for Voting System**

The Board members agreed to hold Public Testing on April 8, 2016, at 10:00 a.m.

## **Sample Ballot**

Mr. Shalleck stated that several candidates have expressed concern with their names not appearing on the first page of the ballot in the Primary Election, and he shares their concerns. He inquired if the font size can be made smaller so as to fit all candidates on one page. Ms. McLaughlin stated there was much conversation when the software was created, and it was determined that large font, more white space, and no lettering on the right side was preferred by advocates before the U.S. Election Assistance Commission. She added that since then, local boards have inquired about the possibility of customizing the software. However, at this time, no changes may be made to the ballot screen because of Federal certification required by law for the voting system.

Ms. McLaughlin stated that a draft sample ballot was sent to the Board members in advance requesting that suggested edits be provided at the January 11 Board meeting. The Board members briefly discussed the layout and suggested edits for the sample ballot. Ms. McLaughlin noted that the candidate filing deadline is February 3 and the sample ballot will need to be completed immediately thereafter. Mr. Naimon provided his comments and suggested edits to Ms. McLaughlin who then provided a February 3 deadline to submit any further comments.

## **Outreach Report**

Mr. Shalleck stated that he attended two outreach events recently that Ms. Jurgensen and Mr. Zelaya attended, and acknowledged a job well done on the outreach events thus far.

Mr. Zelaya provided a list of outreach events to date (additional dates are to be added). He stated that the list presented may indicate one location holding several activities to serve various groups.

Ms. Keeffe inquired why the list presented has a pending status for the high school outreach events. Mr. Zelaya responded that the calendar of events has been updated since the list was sent to the Board members. He added that the Board of Elections will be visiting schools during their lunch hour as requested by Montgomery County Public Schools in coordination with the Future Vote Program.

The Board members thanked Mr. Zelaya for his efforts.

## **Election Judge Update**

Ms. Woods reported that election judge recruitment launched in December. She stated that 9,103 individuals have been contacted, 1,580 have signed up, 999 have taken and passed the initial quiz, and 645 have scheduled training.

The overall need for election judges for the Primary Election is 2,800 to 3,100 and the Board of Elections will need to train 4,000 to get what's needed for the Primary Election. Ms. Woods reported that training classes are scheduled to begin January 18 and all classes for the first week are full. Ms. Phillips asked that training information be provided to her and Ms. Woods agreed to provide the desired information after the Board meeting.

## **New Business**

### **Allocation of Equipment**

Mr. Naimon stated that at the October Board meeting he had requested that allocation of equipment be discussed and he hopes to discuss the item in the February Board meeting. He prepared a chart of equipment allocation he created (distributed to Board members) (see Attachment D) from information provided from various documents of the Board of Elections. He would like to get a better understanding of how the allocation process is done for Early Voting and Election Day. Ms. Jurgensen stated that the allocation process for Election Day has already been decided; one scanner per polling place unless there are 4,000 or more voters, one express vote per polling place, and the State Board of Elections determines how many ballots are issued to each polling place. As for Primary Early Voting, eight express votes and two scanners at each early voting center are to be allocated according to the State Board of Elections. Ms. Jurgensen stated that she and Ms. McLaughlin used a Massachusetts Institute of Technology (MIT) formula for equipment allocation to keep wait times at less than 30 minutes. The Board members asked to see the schematics for each early voting site and agreed to discuss the allocation further in the February Board meeting.

### **Bylaws**

Ms. Keeffe proposed that the Board Attorney draft language to amend the Montgomery County Board of Elections' Bylaws to comply with the Open Meetings Compliance Board's recent decision.

### **Future Meetings**

Mr. Shalleck asked that staff prepare a description of Board members needs and responsibilities for future meetings.

Mr. Naimon suggested that the Board hold a Board meeting during the evening hours, at a location that would be convenient to public transportation, and that it potentially be the March meeting. Ms. Phillips expressed her concern with staff's overtime and requirements to move the meeting to another location. The Board members agreed to discuss this further at the February Board meeting.

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*All meetings begin at 2:30 p.m. unless otherwise indicated*

- A. February 22, 2016 - Board Meeting
- B. March 21, 2016 - Board Meeting and Swear-In as Board of Canvassers 2:00 p.m.  
Board Meeting 2:30 p.m.
- C. March 30, 2016 - Early Voting and Supply Bag Verification 5:30 p.m.
- D. April 8, 2016 - Public Test 10:00 a.m.
- E. April 14, 2016 - Early Voting Begins 9:00 a.m. - 11:00 a.m.
- F. April 15, 2016 - Election Day Equipment Verification 4:30 p.m.
- G. April 18, 2016 - Board Meeting
- H. April 21, 2016 - Close of Early Voting 7:00 p.m.
- I. April 25, 2016 - Monday Night Visit 6:00 p.m.
- J. April 26, 2016 - Presidential Primary Election 6:00 a.m. - 8:00 p.m. and  
Board Meeting 11:00 a.m.
- K. April 28, 2016 - Absentee Ballot Canvass I 10:00 a.m. - 8:00 p.m.
- L. April 29, 2016 - Absentee Ballot Canvass I cont. 9:00 a.m. - 7:00 p.m.
- M. April 30, 2016 - Absentee Ballot Canvass I cont. 9:00 a.m. - 7:00 p.m. (Tentative)
- N. May 4, 2016 - Provisional Canvass 10:00 a.m. - 8:00 p.m.
- O. May 5, 2016 - Provisional Canvass cont. 9:00 a.m. - 7:00 p.m.
- P. May 6, 2016 - Absentee Ballot Canvass II and Provisional 10:00 a.m. - 8:00 p.m.
- Q. May 7, 2016 - Absentee Ballot Canvass II cont. 9:00 a.m. - 7:00 p.m. (Tentative)
- R. May 16, 2016 - Board Meeting
- S. June 20, 2016 - Board Meeting
- T. July 18, 2016 - Board Meeting
- U. August 15, 2016 - Board Meeting (Tentative)
- V. September 19, 2016 - Board Meeting
- W. October 14, 2016 - Public Testing
- X. October 17, 2016 - Board Meeting and Swear In
- Y. October 27, 2016 - Early Voting Begins 9:00 a.m. - 11:00 a.m.
- Z. October 28, 2016 - Election Day Equipment Verification
- AA. November 3, 2016 - Close of Early Voting 8:00 p.m.
- BB. November 7, 2016 - Monday Night Visit 6:00 p.m.
- CC. November 8, 2016 - Presidential General Election 6:00 a.m. - 8:00 p.m. and  
Board Meeting 11:00 a.m.
- DD. November 10, 2016 - Absentee Ballot Canvass I 10:00 a.m. - 8:00 p.m.
- EE. November 11, 2016 - Absentee Ballot Canvass I cont. 9:00 a.m. - 7:00 p.m.
- FF. November 12, 2016 - Absentee Canvass I cont. 10:00 a.m. - 8:00 p.m.
- GG. November 13, 2016 - Absentee Canvass I cont. 10:00 a.m. - 7:00 p.m. (Tentative)
- HH. November 16, 2016 - Provisional Ballot Canvass 10:00 a.m. - 8:00 p.m.
- II. November 17, 2016 - Provisional Ballot Canvass cont. 9:00 a.m. - 7:00 p.m. (Tentative)
- JJ. November 18, 2016 - Provisional and Absentee Ballot Canvass II 10:00 a.m. - 8:00 p.m.
- KK. November 19, 2016 - Absentee Ballot Canvass II cont. 9:00 a.m. - 8:00 p.m. (Tentative)
- LL. November 22, 2016 - Certification of Election
- MM. November 21, 2016 - Board Meeting
- NN. December 19, 2016 - Board Meeting (Tentative)

## Executive Session Minutes

The Board members received the November 16, Executive Session minutes and the December 16, Executive Session Conference Call minutes in advance. Mrs. Khozeimeh made a motion to accept the Executive Session minutes as presented. The motion was seconded by Ms. Keeffe and passed unanimously.

## Adjournment

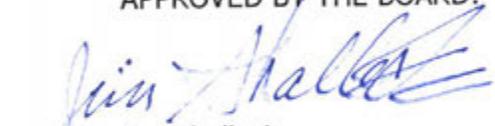
With no further business to discuss, Mrs. Khozeimeh moved to adjourn the Board meeting. The motion was seconded by Mr. Vincent and passed unanimously. The meeting adjourned at 5:25 p.m.

Respectfully Submitted,



Lisa Merino  
Office Services Coordinator

APPROVED BY THE BOARD:



Jim Shalleck  
President

**Lawrence J. Hogan, Jr.**

*Governor*

**Boyd K. Rutherford**

*Lt. Governor*



**Jonathan A. Hodgson, Esq.**

*Chair*

**April C. Ishak, Esq.**

**Rachel A. Shapiro Grasmick, Esq.**

**STATE OF MARYLAND  
OPEN MEETINGS COMPLIANCE BOARD**

December 3, 2015

James Shalleck, President  
Montgomery County Board of Elections  
18753 North Frederick Avenue, Suite 210  
Gaithersburg, Maryland 20879

Re: Board of Elections, Montgomery County - Open Meetings Act Complaint  
Paul M. Bessel, *Complainant*

Dear Mr. Shalleck:

Enclosed please find the Compliance Board's opinion in this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ann MacNeille".

Ann MacNeille

Assistant Attorney General

Counsel, Open Meetings Compliance Board

cc: Paul M. Bessel  
Kevin Bock Karpinski, Esq.  
Open Meetings Compliance Board

LAWRENCE J. HOGAN, SR.  
*Governor*

BOYD K. RUTHERFORD  
*Lt. Governor*



JONATHAN A. HODGSON, ESQ.  
*Chair*

APRIL C. ISHAK, ESQ.  
RACHEL A. SHAPIRO GRASMICK, ESQ.

STATE OF MARYLAND  
OPEN MEETINGS COMPLIANCE BOARD

*9 Official Opinions of the Compliance Board 307 (2015)*

Montgomery County Board of Elections  
*Paul M. Bessel, Complainant*

December 3, 2015

Paul M. Bessel, Complainant, alleges that the Montgomery County Board of Elections (“elections board”) violated the Open Meetings Act when three of its voting members held a private conference call with the chairman of their party’s county central committee to discuss possible early voting sites. Complainant alleges that those three members constitute a majority of the five voting members of this local elections board, that their votes in a subsequent open session determined the elections board’s action on the subject, and that the public was deprived of the opportunity to observe their deliberations during the conference call. We have also received letters from individual members of the elections board.

The elections board, through its counsel, responds that the conference call was not subject to the Act. Explaining that the Act only applies when a quorum of the public body’s members meets to conduct public business, the response states that the presence of three members did not create a quorum as defined in the elections board’s bylaws. Those bylaws, as approved by the State Board of Elections, provide that a quorum is four members, at least one of whom must be a member of the “principal minority party.”<sup>1</sup> The bylaws implement § 2-201 of the Elections Article of the Maryland Code (“EL”), under which the local elections boards must include members of both the majority party and the principal minority party. Even without the bylaw, the response states, a quorum would be four, as the majority of this seven-member board, which comprises five voting and two substitute members. Complainant replies that the bylaws do not have the effect of law and that a quorum of this board is a simple majority of the voting members.

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<sup>1</sup> The Elections Article, at § 1-101(dd) and (jj), defines the terms “majority party” as the party of the most-recently elected Governor and the “principal minority party” as the party whose candidate received the second-highest number of votes in that election.

The resolution of this complaint has required a more detailed legal analysis of the Act than we expect the members and staff of public bodies to undertake, especially when, as here, a public body is operating under a clearly-phrased definition in a set of bylaws approved by the agency that directs its work. As explained below, the Act defines the term “quorum” in a way that leads us to conclude that, for purposes of the Act, a quorum of this public body is a majority of its voting members and therefore three. The Act’s definition thus differs from the more specialized definition that the elections board, under the State Board’s direction, has adopted for purposes of conducting the elections board’s business consistently with the policies set forth in the elections laws.

We do not suggest that the elections board’s bylaw provision is invalid. To the contrary, we simply advise that although a public body may adopt additional meetings rules to implement its particular controlling statutes, those rules may not diminish the public’s opportunity to observe the conduct of public business. In this case, it happens that the quorum bylaw that sets the conditions under which the elections board may take actions does not assure that the public may observe the earlier group consideration of those actions by those who hold the majority vote—and the Open Meetings Act applies to the consideration as well as the transaction of public business. *See, e.g., City of New Carrollton v. Rogers*, 287 Md. 56, 72 (1980) (“It is . . . the deliberative and decision-making process in its entirety which must be conducted in meetings open to the public since every step of the process, including the final decision itself, constitutes the consideration or transaction of public business.”).

After addressing the substantive allegations, we will address the procedural assertion in one of the submissions that responses to Open Meetings Act complaints should be submitted by the public body’s members, not its counsel.

### Facts

The elections board comprises five regular members and two substitute members. Three regular members and one substitute member are of the “majority party,” namely the party of the Governor, and two members and the other substitute member are of the “principal minority party.” Md. Code Ann., Elec. Law (“EL”) § 2-201(k). A substitute member may only vote when a regular member of the substitute’s party is absent. EL § 2-201(b)(3). The Elections Article does not contain a definition of “quorum” for the local boards.

The elections board, like the elections boards for the other counties and Baltimore City (“local boards”), is “subject to the direction and authority of the State Board [of

Elections].” § 2-201(a)(2). Subject to the State Board’s approval, each local board may “adopt any regulation it considers necessary to perform its duties under [the Election Article].” EL § 2-202(b)(4). In 2007, the State Board directed the local boards that they should adopt bylaws, and it provided a model set of bylaws, with instructions as to which provisions the local boards variously could, or could not, modify. Among the clauses *not* to be modified was § 3.2 (A), labeled “Quorum.” Section 3.2(A) then provided that a quorum “shall consist of a majority of the membership (including substitute members) of the board.” Under that definition, a quorum arguably could have been formed by three members of the majority party and the substitute member of that party, such that those four members could have held a meeting in the absence of any member of the minority party, and, arguably, the three voting members could have taken an action at that meeting as a majority of the members present.

As explained by the response, the elections board modified the model definition before adopting its bylaws, and the State Board approved the modification. Under the current definition, a quorum still consists of a majority of the members, including substitute members, but it now must also include “at least one member of each political party represented on the board.” The bylaw amendment presumably effects the statutory requirement that elections boards include members of both parties; the elections board cannot take an action unless at least one member of the minority party is present. Nonetheless, the votes of the members of a majority of the members, and thus potentially of the majority party members alone, are still sufficient to adopt a motion.

### Discussion

An important purpose of the Act, as explained by the Court of Appeals, is to “prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance.” *J.P. Delphey Limited P’shp v. Mayor and City of Frederick*, 396 Md. 180, 201 (2006) (internal quotation marks and citations omitted). The Act carries out that purpose by requiring public bodies to “meet” in open session, after having given reasonable advance notice to the public. §§ 3-301, 3-302.<sup>2</sup> The Act defines the verb to “meet” as “to convene a quorum of a public body to consider or transact public business.” § 3-101(g); *see also New Carrollton v. Rogers*, 287 Md. at 73 (“The Act . . . covers all meetings at which a quorum of the constituent membership of the public body is convened ‘for the purpose of considering or transacting public business.’”). We must interpret the provisions of the Act in such a way as to both effectuate the legislative policy behind the

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<sup>2</sup> Except as noted, statutory citations are to the General Provisions Article of the Maryland Annotated Code (2014).

**9 Official Opinions of the Compliance Board 307 (2015)**

December 3, 2015

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Act and harmonize it with other enactments of the General Assembly. *See Bank of America v. Stine*, 379 Md. 76, 85-86 (2003) (reciting rules of statutory interpretation). When the Act conflicts with another statute, we must apply whichever law is the most stringent. § 3-105.

The issue before us is whether a “quorum” met when three voting members of the elections board gathered by conference call and considered public business. If their presence created a quorum, the Act was violated because the call was not open to the public; if there was not a quorum, the Act did not apply and was not violated. The provision that we must interpret and apply is thus the Act’s definition of “quorum.”

Under the Act, a “quorum” is “a majority of the members of a public body” or else “the number of members that the law requires.” § 3-101(k). That definition tracks the common-law principle that a quorum of a membership entity is a simple majority of its members unless the statute that created the entity provides otherwise. *See Heiskell v. City Council of Baltimore*, 65 Md. 125 (1886) (“[I]n the absence of a statute fixing a quorum, . . . a majority of any body consisting of a definite number is necessary to constitute a quorum.”); *see also* 73 Op. Att’y Gen. 6, 9-10 (1988) (explaining the common law). Neither the provisions of the Elections Article nor any other provision of the Maryland Code “requires” a number for the local elections boards’ quorums. Further, although the Elections Article generally authorizes the elections board to adopt “regulations,” we do not consider the bylaws to have the status of “law” as that term is used in the Act, much less than a law that would operate to override the Act’s policy that the public be afforded the opportunity to observe all phases of a public body’s consideration of a matter.<sup>3</sup> We will therefore apply the simple-majority prong of § 3-101(k). To do that, we need to know

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<sup>3</sup> The elections board’s quorum bylaw is unusual in that its composition of a quorum is different than the number of votes needed to take an action. As explained in *Floyd v. Mayor & City Council of Baltimore*, 407 Md. 461 (2009), quorum provisions in an entity’s bylaws generally define the number of members needed to take actions:

A quorum is defined as “that number of the body which, when assembled in their proper place, will enable them to transact their proper business; or, in other words, that number that makes the lawful body, and gives them the power to pass a law or ordinance.” *Heiskell v. City Council of Baltimore*, 65 Md. 125, 149, 4 A. 116, 119 (1886). *See also* Black’s Law Dictionary 1284 (8th ed.2004) (defining “quorum” as “[t]he minimum number of members (usually a majority of all the members) who must be present for a deliberative assembly to legally transact business”).

*Id.* at 465. As explained above, however, the Act applies more broadly to provide to the public the opportunity to observe all phases of the public body’s consideration of its business. So, as is the result here, the Act may require that the public be allowed to observe a gathering at which the members would not be able to take an action.

whether to count the substitute members, who may not vote unless a voting member of their party is absent.

The Act does not specify whether non-voting members of a public body may be counted for purposes of a quorum. A common law principle fills that gap; only voting members count towards a quorum. *Bd. of Cty. Comm'rs of St. Mary's Cty. v. Guyther*, 40 Md. App. 244, 246 (1978) (“a person present but incompetent to act because of disqualification cannot serve as a constituent part of a quorum”); *Hagerstown Furniture Co. of Washington Cty. v. Baker*, 158 Md. 574, (1930) (holding that a director who is disqualified from voting at a board meeting could not be counted towards a quorum).<sup>4</sup>

The elections board has five voting members, so a simple majority is three voting members.<sup>5</sup> Accordingly, for purposes of the Act, we find that a quorum was created when three voting members gathered by conference call, that the occasion became a “meeting” subject to the Act when they discussed public business, and that the meeting was not held in accordance with the Act. We do not suggest either that the Act’s definition of a quorum affects the bylaws provision or that the Act precludes the elections board and the State Board from implementing the election law provisions on bipartisan boards. Likewise, we have not commented on the application of the elections laws and regulations to a gathering of three voting members. We have simply applied the Act’s definition of a quorum and concluded that, whatever status that the elections laws might accord to a gathering of a majority of the voting members to discuss public business, such a gathering is subject to the Act.

We turn to the assertion in one of the submissions that responses to Open Meetings Act complaints should be submitted by the public body’s members, not its counsel. When an open meetings complaint is submitted to us, our staff routinely transmits it to the public body’s chair. Usually, the public body’s counsel responds on its behalf, though sometimes the public body’s staff responds and, rarely, the chair responds. How that decision is made

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<sup>4</sup> See, also, e.g., *Garner v. Mountainside Bd. of Adjustment*, 212 N.J. Super. 417, 425 (Ch. Div. 1986) (“[I]f a member of the board of adjustment is ineligible to vote under the appropriate statute, then his mere presence at voting time should not be counted for either quorum purposes or as part of the required votes necessary to form a majority.”); *Coles v. Trustees of Vill. of Williamsburgh*, 1833 WL 3183 (N.Y. Sup. Ct. 1833) (excluding from the quorum count the members who “were incompetent to vote by the act”); XXV Kan. Op. Atty. Gen. 28 (Kan. A.G. 1991) (noting the common law that “[m]embers disqualified from voting may not be counted when determining whether a quorum is present”).

<sup>5</sup> Under the Act’s definition of a quorum, a substitute member would only count toward a quorum when the member is standing in for a regular voting member of the same party.

is not a question for us. What *is* important to us is that we receive a response that provides us with the necessary documents, briefly explains any pertinent circumstances, identifies the provisions of Act deemed controlling, and omits unnecessary rhetoric. The papers that the elections board's counsel submitted on its behalf did all of those things. If a public body's member, on reading a response, sees that counsel has gotten a relevant fact wrong, someone should submit a correction. We do not understand that to be the case here.

### Conclusion

We have concluded that three voting members, a majority of the voting members of the elections board, constitute a "quorum" for purposes of the Act such that a conference call among three voting members constituted a meeting subject to the Act. We have recognized that applying the Act's quorum definition to the elections board is complicated, and this matter posed the unusual circumstance in which the public body's own definition, when applied, did not secure the public's right to observe every stage of the public body's consideration of public business. Although we can see that the board members might reasonably have relied on the bylaws provision when they conducted the board's business among themselves, we nonetheless find that the conference call violated the Act. We therefore direct the elections board to the acknowledgment requirement in § 3-211. We have not commented on how the elections board must transact business under the elections laws.

We have also addressed a question about whether responses to Open Meetings Act complaints must come from the public body's members, as opposed to its counsel.

Open Meetings Compliance Board

*Jonathan A. Hodgson, Esq.*

*April C. Ishak, Esq.*

**Election Director Report  
January 2016**

**Change the agenda, Open Meeting Compliance Statement  
Open Meeting Compliance Report – Jim Shalleck**

Notification of Board meeting posted December 24, 2015.  
Draft Minutes provided to Board members on December 29 2015.

Alternate/Emergency Early Voting Centers  
Paperwork sent to State Board of Elections

**Personnel**

Introductions by Alysoun McLaughlin

**Budget** – Margie Roher (in advance packet)

**Voter Registration**

MDVOTERS 6.0 has moved from Oracle platform to SQL server on December 31 2015. The outstanding problems reported that current SPIRIT issues will remain current issues, however some will be resolved because of the transfer to SQL server. As with any significant change with a data base, some issues have been discovered overall a smooth transition.

GIS interface to move the voters from one polling place to another and precinct merges has been completed and notifications are in the mail to voters and will be mailed in stages.

High School Registration – requested an extension to February 1, 2016.

**State Board of Elections**

**New ES&S Personnel on site in the State of Maryland**

ES&S pledged to provide video for voter perspective for public use to assist with education and outreach. Video produced and under review by State Board staff for use in polling places and local board events.

## **Voter Registration**

Mary Wagner reported that there will be no ERIC reports for December, but there will be reports in early January. Stacey will be sure to let LBEs know when the reports will be available. Ms. Wagner also reported that NCOA reports will hopefully be introduced in January as well.

MDVOTERS UAT 6.0 has moved from Oracle platform to SQL server on December 31 2015... Stacey reported that current SPIRIT issues will remain current issues, however some will be resolved because of the transfer to SQL server. The new platform operational issues are program freezes and inability to create CD of the voter registration data base from MDVoters. State Board is working to fix these problem.

**Legislation** – Alysoun McLaughlin report.

**Board Attorney Report** – Kevin Karpinski – not attending/conflict  
**Old Business**

**Open Meeting Compliance Report** – Jim Shalleck

**New Voting System**

**Overall:**

- 1. Voting Equipment is on site**
- 2. Poll book software is in testing phase**
- 3. MDVoters was upgraded and candidates will receive the December 2015 with the old precincts configuration or wait until the SBE fixes the MDVoter ability to extract data for voter registration information.**
- 4. Testing of the Regional uploads will occur over the next several weeks into February.**
- 5. Candidate filings are taking place.**

**Same Day Registration Status (SDVR)** - Nikki reported that the proposed regulations will be presented for final adoption at the January 21<sup>st</sup> State Board meeting.

Testing of the Electronic Poll book software to facilitate SDVR will take place over the next weeks. Testing will occur at three stages starting January 12 2016.

### **Election Judge Manual**

Local Boards of Elections are permitted to include relevant data for each locality. If you make changes to sections not highlighted in yellow, these changes are not permitted to change because of regulation and the Attorney General required sign-off. The Early Voting Manual has lagged behind because of the same day voter registration issues in the works as part of the instructional material in the Election Judges' Manual. The Step-by-Step Guides have been revised and ready. The checklists and integrity reports are complete. The ballot accounting forms are finished.

The LBEs should begin their modifications to the first four chapters and submit them to SBE for sign off.

Chapters not completed are Poll Book, the technical guide for roamers and the procedures in the SDVR/Address Change manual are not approved until testing is complete.

### **Voting equipment**

The following equipment that has been delivered to Montgomery County:

Digital Scanner	370
Black Ballot Box	370
Express Vote	534
Carts	337
Express Printers	145
High Speed scanner	001
Printer/scanner	001
Workstations with printer	005
Servers	002

## Voting related equipment Not delivered

Blue ballot bins                    1111  
Voting booths                        3683  
ADA tables for the polling places  
Hard Case and Stands for the Express Vote or ballot marking device

The balance of the equipment is in route (via ocean freight) with expected delivery in January 2016 or prior to next Board meeting. (note the following exception)

- **Two containers of 2400 voting booths arrived today**

## **Transportation**

Meeting with County General Services occurred in November and December related to Ballot bin pick-up from the polling places in the Primary Election.

Board of Elections staff provided route lists for county staff to review and listing of all polling places and equipment description of election related materials.

Staff from both agencies are scheduled to meet for planning.

## **Regional Upload sites**

Testing of the seven locations started and will continue through January 2016 and early part of February.

Olney Library

Praisner Comm. Rec. Ctr

Midcounty Comm. Rec. Ctr

Bethesda Library

Silver Spring Library

Potomac Comm. Rec. Ctr.

White Oak Comm. Ctr

Board of Elections office is Primary Site

Testing of latest version of poll book software will take place this week and Montgomery County will participate in the initial software review and testing.

## **Establish Public Testing Date for Board**

April 1 or April 8 at 10:00am; need Board members (3), April 8 is preferred by staff.

**Sample Ballot draft** – Alysoun McLaughlin (in advanced packet)

**Outreach Report** – Gilberto Zelaya (in advanced packet)

**Election Judge Report** – Leslie Woods

**FY16 OPERATING BUDGET SPREADSHEET**  
**Through December 31, 2015 (As of January 10, 2016)**

LINE ITEM	FY16 APPROVED	FY16 YEAR TO DATE*
<b>PERSONNEL COSTS</b>	<b>3,931,901</b>	<b>1,408,675</b>
<b>5A001 - Salaries &amp; Wages</b>	<b>3,233,166</b>	<b>1,118,748</b>
50010 - Full Time Salaries	2,126,098	875,252
50012/50020 - Part Time Salaries/Seasonal Temps	656,424	209,631
60168 - Temporary Office Clerical (moved from OP for clarity)	201,329	1,403
<b>SUBTOTAL FOR TEMPORARY PERSONNEL</b>	<b>857,753</b>	<b>211,034</b>
50324 - Overtime (includes emergency, multi-lingual & holiday)	249,315	32,462
<b>5A002 - FICA</b>	<b>218,646</b>	<b>80,844</b>
<b>5A003 - Group Insurance</b>	<b>305,315</b>	<b>129,725</b>
<b>5A004 - Group Retirement</b>	<b>174,774</b>	<b>79,358</b>
<b>OPERATING EXPENSES</b>	<b>3,609,635</b>	<b>1,295,151</b>
<b>6A001 - Services and Contracts</b>	<b>1,688,863</b>	<b>630,463</b>
60060 - Legal/Attorney Services	75,000	38,387
60066 - SBE Program Management	613,682	300,223
60304 - Maintenance - Electrical	0	3,005
60314 - Maint - Computer Systems	25,000	80
60326 - Repair/Maint Agmts - Office Equip	11,000	3,427
60412 - Moving Services	27,857	3,937
60414 - Building Construction	277,060	281,242
60530 - Other Professional Services - EJ Stipend	624,764	0
60532 - Other Non-Professional Services (includes EJ mod.)	34,500	162
<b>6A002 - Maintenance</b>	<b>188,765</b>	<b>38,765</b>
61010 - Computer Equip Repairs/Maint (EPB)	188,765	38,765
<b>6A003 - Rentals/Leases</b>	<b>842,337</b>	<b>446,716</b>
61902 - Furniture Rentals (Polling Place)	7,000	320
61924 - Other Equipment Rentals (MDVoters)	717,448	217,448
61926 - Bldg or Space Rental/Leases (Pol. Place)	24,500	500
61932 - Other Rentals/Leases (Voting System)	93,389	228,447
<b>6A004 - Office Supplies &amp; Equipment (&lt;\$5,000)</b>	<b>125,004</b>	<b>25,128</b>
62010 - General Office Supplies+	70,000	14,118
62016 - Computer Supplies	5,000	0
62018 - Computer Equip (<\$5,000)	28,000	681
62022 - Paper and Supplies for Copiers	0	751
62028 - Other Supplies & Equipment	22,004	9,579
<b>6A011 - Books, Videos, and Subscriptions</b>	<b>3,500</b>	<b>3,505</b>
62700 - Books/Reference Materials	2,500	1,808
62712 - Other Books, Videos, and Subscriptions	1,000	1,697
<b>6A012 - Other Supplies/Materials/Equipment</b>	<b>107,726</b>	<b>30,058</b>
62826 - Keys and Locks	0	0
62946 - Charges from SBE	107,726	30,058
<b>6A013 - Printing/Central Duplicating Services</b>	<b>169,336</b>	<b>40,170</b>
63016 - Imaging	35,380	4,045
63018 - Document Shredding	0	101
63020 - Office Mach. Cop. Leasing	11,760	8,726
63022 - Other Central Dup Svc - Printing (all printing costs)	122,196	27,298
Mandated Legal Requirements		
Charges from SBE		
Election Specific Costs		
Personnel Charges		
Temporary Personnel Charges		
Overtime Costs		
Benefits		

**FY16 OPERATING BUDGET SPREADSHEET**  
**Through December 31, 2015 (As of January 10, 2016)**

LINE ITEM	FY16 APPROVED	FY16 YEAR TO DATE*
<b>6A014 - Outside Printing</b>	<b>100,550</b>	<b>0</b>
63100 - Outside Printing/Copying	550	0
63104 - Sample Ballot Printing	100,000	0
<b>6A015 - Mail</b>	<b>138,361</b>	<b>10,685</b>
63200 - Central Dup - Postage - Bulk (services, NO postage)	36,530	6,301
63202 - Central Dup - Postage - Individual (PO Box rental)	21,081	1,658
63206 - Inter-Office Mail/Pony Charge	750	2,501
63208 - Other - Mail (Sample Ballot Postage)	80,000	225
<b>6A016 - Outside Postage and Mail</b>	<b>38,000</b>	<b>20,141</b>
63300 - Outside Mail Services (VNCs and all other postage)	37,500	20,061
63304 - Other Outside Mail Services	500	79
<b>6A017 - Motor Pool</b>	<b>10,832</b>	<b>2,354</b>
63500 - Assigned Motor Pool Vehicles	8,832	2,061
63504 - Daily Rental Motor Pool	2,000	152
63508 - MP EZPASS Charges		141
<b>6A018 - Communications Services</b>	<b>123,549</b>	<b>36,630</b>
63600 - Local Telephone Service Charges	50,000	0
63604 - Cellular Phone Line Charges	2,800	0
63618 - Blackberry Charges (smart phones)	9,000	3,688
63624 - Communication Circuits	36,279	22,967
63626 - Communication Modems (SBE)	4,870	349
63634 - Other Communication Services (PP Phone Lines)	20,600	9,626
<b>6A020 - Charges from Others</b>	<b>11,148</b>	<b>101</b>
63810 - Charges for Facility Maintenance	11,148	101
<b>6A021 - Travel</b>	<b>23,996</b>	<b>9,674</b>
64010 - Metropolitan Area Travel	17,996	7,505
64012 - Non-Metropolitan Area Travel	6,000	2,169
<b>6A022 - Education, Tuition, and Training</b>	<b>10,125</b>	<b>19</b>
64100 - Local Conference Related	2,000	0
64120 - Other Education, Tuition, & Training	8,125	19
<b>6A023 - Dues/Memberships</b>	<b>2,000</b>	<b>195</b>
64200 - Professional Memberships (Individual)	2,000	195
<b>6A024 - Advertising</b>	<b>20,036</b>	<b>0</b>
64300 - Advertising - Jobs	0	0
64304 - Advertising - Marketing/Sales	20,036	0
<b>6A099 - Miscellaneous Operating Expenses</b>	<b>5,507</b>	<b>547</b>
69999 - Other Misc Operating Expenses	5,507	547
<b>DEPARTMENTAL TOTAL</b>	<b>7,541,537</b>	<b>2,703,826</b>
* Included prior year encumbrances		
+ Includes office supplies, polling place supplies, and office furniture		
Mandated Legal Requirements		
Charges from SBE		
Election Specific Costs		
Personnel Charges		
Temporary Personnel Charges		
Overtime Costs		
Benefits		

**EQUIPMENT AT EARLY VOTING CENTERS IN SUBMISSIONS TO STATE BOARD  
COMPARED WITH VOTERS WITHIN 5 MILES**

<b>Center</b>	<b>Voters &lt; 5 Miles*</b>	<b>Express Vote Units#</b>	<b>Poll Books</b>	<b>Scanners</b>
Aspen Hill	174,576	26	10	2
Rockville	180,445	24	6	2
Germantown	94,616	39	14	2
Burtonsville	56,345	39	14	2
Silver Spring	173,852	42	16	2
Gaithersburg	156,082	39	12	2
Damascus	26,128	36	9	2
Bethesda/Chevy Cha	181,166	30	12	2
Wheaton	242,101	26	10	2
Potomac	128,617	24	9	2

\*From county map distributed to BOE 9/25/15

#From room maps submitted to State Board Sept.-Oct. 2015

### Early Voting Turnout in Montgomery County by Location, 2010-2014

EV#	Location	2010 Primary	2010 General	2012 Primary	2012 General	2014 Primary	% of EV turnout	2014 General	% of EV turnout
EV1	Aspen Hill (Bauer/Mid-County*)	2,004*	6,601*	2,722*	15,622*	1,220	6.5%	2,485	7.0%
EV2	Rockville (Executive Office Building)	1,389	4,656	1,649	13,452	2,506	13.3%	4,406	12.4%
EV3	Germantown	1,287	5,309	2,193	18,261	1,901	10.1%	4,549	12.8%
EV4	Burtonsville (Praisner)	1,083	3,951	1,446	13,384	2,324	12.3%	4,988	14.1%
EV5	Silver Spring	1,822	6,190	2,027	17,220	3,961	21.0%	5,740	16.2%
EV6	Gaithersburg (Bohrer Park)	--	--	--	--	2,032	10.8%	4,456	12.6%
EV7	Damascus	--	--	--	--	518	2.7%	1,468	4.1%
EV8	Bethesda/Chevy Chase (Lawton)	--	--	--	--	2,187	11.6%	3,355	9.5%
EV9	Wheaton	--	--	--	--	2,222	11.8%	3,997	11.3%
	<b>Total</b>	<b>7,585</b>	<b>26,707</b>	<b>10,037</b>	<b>77,939</b>	<b>18,871</b>		<b>35,444</b>	

\* indicates elections when the Bauer Drive Community Recreation Center was used -- EV1 was relocated to the Mid-County Recreation Center in 2014.