

M E M O R A N D U M

July 22, 1992

TO: Maggie Roffee, Disability Resources Division
Department of Family Resources

FROM: Steven M. Gilbert *SMG*
Assistant County Attorney

RE: Open Meetings Act: Application to
Commission on People with Disabilities

Thank you for your memorandum of July 17, 1992, following our earlier telephone conversation on the referenced subject.

Because of the importance of the subject, I have attempted here to give a full discussion of the Open Meetings Act, most recently amended by the General Assembly last year. The passage of Chapter 655 of the Laws of Maryland of 1991, codified as Subtitle 5 of Title 10 of the State Government Code, and effective July 1, 1992, reaffirms open meeting policy in Maryland and clarifies and expands many of the law's requirements.

Your questions concern the applicability of the Open Meetings Act to the Commission on People with Disabilities. The Commission is an advisory body which meets regularly to discuss and make recommendations on Montgomery County's policies toward the disabled. As you explained, the Commission is a body including a number of citizens and officials, established by County legislation, and appointed by the County Executive, with confirmation by the County Council. The Commission meets once a month from September through May, holding open meetings in the auditorium of the Executive Office Building. Notice of each meeting, including time, date, place, and agenda, is sent to all Commission members and to all members of the public requesting written notice. Notice is also given in the County Council's published weekly agenda. Notice is not posted, as far as I know, nor are copies of meeting notices sent to the news media.

In the last meeting in each fiscal year, in June, the Commission members hold a six-hour planning session. This meeting, a form of "retreat," is held in a different location each year, and a light meal is served. At the planning meeting,

covered, except in the unusual case where a quorum does not appear and business cannot be transacted.

Finally, the Act applies only to certain kinds of public business. There are a number of exceptions, certain kinds of business not covered by the Act, but none of the exceptions would apply to the Commission. For our purposes, all of the Commission's advisory functions qualify as public business requiring compliance with the Act.

Since the Act will apply to all of the Commission's usual proceedings, including the June meeting, you should be advised of the Act's notice, minute-taking, and other requirements, including the provisions for closing the meetings.

Notice Requirements

Every meeting of a public body which is subject to the Act must be preceded by "reasonable advance notice." §10-506(a). Notice of the meeting is required even if the Act permits its closing, for one of the Act's enumerated reasons.

Unless impractical, the public body should give written notice which includes the time, date, and place of each meeting. If part or all of the meeting is to be closed, the notice should say that. §10-506(b).

The Act permits notice by a number of methods. A public body may give notice "by delivery to representatives of the news media who regularly report on sessions of the public body or the activities of the government of which the public body is a part." §10-506(c)(2). A body may also give notice "by posting or depositing the notice at a convenient public location at or near the place of the session," if it "previously has given public notice that this method will be used." §10-506(c)(3). That might include, for example, posting notice on a bulletin board near the auditorium. Finally, a public body may give notice of a meeting "by any other reasonable method." §10-506(c)(4).

The methods of notice of meetings given by the Commission appear generally to comply with the Act. At present, all persons with an interest in the subject of disabilities policy are on a mailing list and receive written notice of

practicable. §10-509(b). Minutes of each meeting must be made available for inspection by the public. §10-509(d).

The Act requires that the following information be given in the minutes, whether the meeting is open or closed: each "item" considered, the action taken on each item, and each recorded vote. §10-509(c)(1). Each item in the minutes should be described sufficiently to permit a member of the public to understand what was discussed and decided.

If a public body meets in closed session, it must keep written minutes, although they generally would not be open to public inspection. §10-509(c)(3).

After a closed meeting is held, the minutes of the next open meeting must include "a statement of the time, place, and purpose of the closed session," a record of how each member voted on the motion to close the session, a citation of the provision of the Act allowing the closing, and "a listing of the topics of discussion, persons present, and each action taken during the session." §10-509(c)(2).

I understand that it is unlikely that the Commission on People with Disabilities would hold closed sessions. I think you should be advised of these provisions, however, since they make it clear how important the minute-taking and notice requirements are, in the scheme of the Act, and since it may be necessary to close a meeting at some future time. Meetings are permitted to be closed, under §10-508 of the Act, for 14 enumerated reasons, including the "appointment" or "employment" of an advisor or consultant, "any other personnel matter," or to "protect the privacy or reputation of individuals with respect to a matter that is not related to public business." §10-508(a)(1),(2). If a meeting is closed for a purpose listed in §10-508, the closed discussion should be limited to that topic. If and when an occasion arises for closing a meeting, it is advisable for Disability Resources staff to discuss the matter with this Office.

I hope the above discussion clarifies Open Meetings Act requirements. The main recommendation here is that the June meeting be treated the same as the others, for purposes of notice, minute-taking, and holding open sessions.

COMPLIANCE CHECKLIST

A. Is your meeting covered by the Open Meeting Act?

- 1. Is your group a "public body"? (See pages 3-6 of the manual.)
- 2. Are you holding a "meeting"? (Pages 6-9.)
- 3. Are you meeting on a matter that is an "advisory function," a "legislative function," or a "quasi legislative function," or that concerns the "granting of a license or permit" or any zoning matter? (Pages 9-12.)

If the answers to all of these questions are "yes," the Open Meetings Act applies and you must comply with its requirements.

B. Have you given proper notice of your meeting? (Pages 14-15.)

- 1. Did you give notice even if the meeting is to be closed?
- 2. Did you give notice reasonably far in advance of the meeting?
- 3. Did you use one or more of the methods of notice set out in the Act?
 - Publication in the Maryland Register;
 - Delivery to the news media;
 - Public posting;
 - Another method.

C. Are you keeping proper minutes? (Pages 18-19.)

- 1. Did you take minutes even if the meeting is closed?
- 2. Do your minutes reflect each item considered, the action taken on each, and each recorded vote?

3. Do the minutes of your open meeting contain the following about the preceding closed meeting: a statement of the time, place, and purpose of the closed meeting; a record of the vote to close the meeting and the authority to do so; and a listing of the topics discussed, the persons present, and the actions taken?

D. May you close a meeting? (Pages 20-24.)

1. Did you record a majority vote in favor of closing the meeting?
2. Can you identify one or more of the following grounds for closing the meeting?
- a specific personnel matter;
 - protection of personal privacy on a matter unrelated to public business;
 - acquisition of real property;
 - a proposed business relocation or expansion;
 - the investment of public funds;
 - the marketing of public securities;
 - obtaining legal advice;
 - consulting about litigation;
 - collective bargaining;
 - public security;
 - scholastic, licensing, or qualifying examinations;

* These items are merely synopses of the exceptions. The actual text of an exception should be considered carefully before a meeting is closed on that basis.

- criminal investigations;
- other legal requirement; or
- preliminary discussion of procurement issues.

3. Did you include in the record a written statement of the reasons and legal basis for closing the meeting and the topics to be discussed?