

"Federation Corner" column
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Open government and the Maryland Open Meetings Act

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We like to think that our government is there for us, particularly our county government which has the greatest impact on our daily lives. It is supposed to be government of the people, by the people and for the people. But sometimes our relationship to government evolves into a murky, painful and frustrating one.

Sometimes the government behaves in a secretive and sneaky manner, working out deals behind closed doors that benefit one party over and above the public interest. To restrict this kind of chicanery, the State legislature passed the Open Meetings Act (OMA). Most of us know nothing about this law, but we should be informed because it's an important guarantor of openness and transparency.

To learn about this law, I went to the website of the Office of the Attorney General:
www.oag.state.md.us/Opengov/Openmeetings/Overview.pdf . I quote from the preface because it is written in clear English and easy to understand.

“When the bill that later evolved into Maryland’s 1977 'Sunshine Law' was endorsed by the House and Senate committees, they wrote of the need to find the 'proper balance between ... two imperatives': 'securing the public’s right to know public business,' and yet preserving the 'confidentiality [that] is indispensable to the efficient, effective and fair conduct of government.' The 1977 Open Meetings Act tried to find that necessary balance. It represented a major advance over prior law, which essentially left the matter up to the agencies and therefore encouraged closed-door government. Then, in 1991, the Legislature returned to the issue and shifted the balance more clearly in favor of the public’s right to know, including an advisory process, through the Open Meetings Compliance Board, as an alternative to litigation. Since that time, the Legislature has periodically amended the Act largely in the interest of increased government transparency. “

Citizens may take what they perceive to be violations of the OMA to the State Open Meetings Compliance Board. This Board recently found that the Montgomery County Board of Education had repeatedly violated the OMA when meeting in closed sessions to discuss the lease of the Brickyard Road school site in Potomac. That finding weighed heavily in the Circuit Court deliberation of the Brickyard Road site case on February 8 of this year, when Judge Greenberg stressed that government, to be trusted by the governed, must be open and transparent. The case he was hearing was ultimately dismissed when the County Executive turned the lease back over to the Board of Education and the case became moot.

What is not moot is the fact that under the existing law public entities may violate the OMA with impunity. There is no penalty or consequence for violating the law, the very law which is supposed to insure that we can trust the government.

A bill pending in Annapolis, HB 331 “Open Meetings Act - Violations and Penalties” authored by Delegate Dan Morheim of Baltimore County would change this. The fiscal note attached to the bill provides the following summary.

“This bill specifies that if the State Open Meetings Compliance Board determines that a violation of the Maryland Open Meetings Act has occurred, (1) a member of the public body must, at the public body’s next open meeting after the board has issued its opinion, announce the violation and orally summarize the opinion and (2) a majority of the public body’s members must sign (and return to the board) a copy of the opinion. The public body may not designate its counsel or another representative to provide the announcement and summary. Compliance with these provisions does not constitute an admission to a violation of the Act and may not be used as evidence in a specified proceeding. The bill also repeals a prohibition on the introduction of a written opinion of the board as evidence in a proceeding conducted before a circuit court under the Act. In addition, the bill increases the civil penalty for meeting in violation of the Act from up to \$100 to (1) up to \$250 for the first violation and (2) up to \$1,000 for each subsequent violation occurring within three years after the first violation. When determining the amount of a fine, the court must consider the financial resources of the public body.”

The delegates to the Montgomery County Civic Federation have voted to support HB 331. The bill is co-sponsored by Montgomery County Delegates Kumar Barve, Heather Mizeur, Bonnie Cullison, Ariana Kelly and Kirill Reznik. We thank them for their support. As of March 19 the bill has passed in the House of Delegates and will now be taken up in the Senate, although there is no date yet set for its Senate hearing.

We should be contacting our state senators and urging them to support this bill. It is a step in the right direction. But it is only the next step; not the last. One problem will still remain. If the “public body” which violated the OMA must pay a fine, then we, the taxpayers, are paying the fine. The individuals who make up the public body will still be unaccountable for the violation that they caused.

Until the individuals serving on the board or department are individually accountable and penalized for transgressions of the law, there may be little incentive for the “public bodies” to discipline themselves and insure that the public bodies they constitute remain as open and transparent as a democracy demands.

The views expressed in this column do not necessarily reflect formal positions adopted by the Federation. To submit an 800-1000 word column for consideration, send as an email attachment to montgomerycivic@yahoo.com