

12 Official Opinions of the Compliance Board 21 (2018)

- ◆ **2(A) Notice Requirement, Generally. Website Notice, Generally (No Violation)**
- ◆ **2(F)(1) Agenda Requirement, Generally. Public Body May Alter Agenda (No Violation)**
- ◆ **2(F)(3) Agenda Requirement, Contents. Posted Agenda Does Not Include All Known Topics to be Discussed. (Violation)**
- ◆ **Violations: § 3-302.1(a)**

*Topic numbers and headings correspond to those in the Opinions Index posted on the Open Meetings webpage at www.marylandattorneygeneral.gov/Pages/OpenGov/OpenMeetings/index.aspx

April 9, 2018

Re: Mayor and Council of Boonsboro

The complaint alleges that the Mayor and Council of Boonsboro (“Council”) violated the Open Meetings Act on August 7, 2017, by voting on the Town’s budget ordinance without giving notice to the public and without listing the vote on the agenda for the meeting. The complaint additionally alleges that the Council did not approve the minutes of the meeting. The Mayor and the Town Attorney responded on the Council’s behalf.

The submissions and the meeting documents posted on the Town’s website establish that the Council gave proper notice of the meeting, as required by § 3-302¹ and that the Council adopted minutes, as required by § 3-306. The remaining question is whether the Council complied with the agenda requirement set by § 3-302.1.

The pertinent facts are as follows: The Town’s fiscal year begins on July 1 of each year. At its May, 2017 regular meeting, the Council voted to establish a budget task force to consider budgetary matters and stated that it would review applications for membership in July. Meanwhile, the Council proceeded to prepare the Fiscal Year 2018 budget. It held budget workshops and a public hearing on a proposed budget ordinance and put the item on the agenda for its June 19, 2017 workshop/business meeting as an item of “unfinished business.” On June 19, a Council member moved to adopt the ordinance. After discussion, another member moved to instead defer the adoption of a budget for 120 days to enable the upcoming task force to work on it and thus to maintain the Fiscal Year 2017 budget into Fiscal Year 2018. The Town Attorney was not present.

Later, the Mayor asked the Town Attorney for advice regarding the adoption of the Fiscal Year 2018 budget. In a letter dated July 27, 2017, the Town Attorney advised that no law authorized

¹ References are to the General Provisions Article (2014, with 2017 supp.) of the Maryland Annotated Code.

the Council to adopt an interim budget and that the last year's appropriations could not be carried over. The Town Attorney further advised: "I concur in your intent to adopt the FY2018 annual budget at the August meeting, and recommend that you enact the budget for the current fiscal year without further delay." The Council did not discuss the budget ordinance at its July 31 workshop meeting, and the workshop agenda did not include the item in the list titled "Tentative Regular Agenda Items." The agenda for the August 7 regular meeting also did not include the ordinance as an item of business. The response states that the Town Manager knew that the issue would be raised on August 7 but was away on vacation when the agenda was prepared.

The Council's meeting agendas regularly list "Approval of the Agenda" as the first item of business. At the August 7 meeting, the Council discussed whether to add the budget ordinance to the agenda. The minutes reflect that two members stated that they had not been told that the issue would come up. The Mayor read the Town Attorney's letter, and the Council voted to add the item to the agenda, over some members' opposition. The Council then deliberated on, and adopted, the budget ordinance.

Section 3-302.1(a) requires public bodies to "make available," at least 24 hours before each meeting, an agenda that contains "known items of business or topics to be discussed" during the open portion of the meeting. Section 3-302.1(e) provides: "Nothing in this section may be construed to prevent a public body from altering the agenda of a meeting after the agenda has been available to the public."

We find that, apparently through an administrative error, the Council violated § 3-302.1(a) by making available an agenda that omitted an item of business "known" to at least some members of the Council when the agenda was prepared. Such violations can be avoided by establishing a routine by which the presiding officer or other officer reviews agendas before they are posted, as each public body, not its staff, is answerable for compliance with the Act. The Council did not violate the Act by adding the item to the agenda; § 3-302.1(e) expressly permits a public body to alter an agenda that has already been made available to the public.

The Council must announce and acknowledge this opinion in accordance with § 3-211.

Open Meetings Compliance Board

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