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**STATE OF MARYLAND**  
**OPEN MEETINGS COMPLIANCE**  
**BOARD**

**19 Official Opinions of the Compliance Board 370 (2025)**

**December 23, 2025**

**Charles County Board of Education**

The Complainants allege that the Charles County Board of Education (the “Board of Education” or “Board”) violated the Open Meetings Act (the “Act”) by meeting in private without following the Act’s procedure for convening in closed session and by failing to make certain post-meeting disclosures. The Board of Education responds that the meeting involved the performance of an administrative function and, thus, was not subject to the Act. For the reasons below, we agree with the Board of Education and find no violation of the Act.

**Background**

Effective August 1, 2025, a member of the Board of Education resigned, creating a vacant seat on the body. State education law requires that, “within 90 days after a vacancy occurs on the [Board of Education], the elected members of the [Board of Education] shall select a qualified individual to fill the vacancy . . . for the remainder of that term and until a successor is elected and qualifies.” Md. Code Ann., Educ. § 3-501(f)(1)(i).<sup>1</sup> This law further imposes certain openness requirements for the selection process. “An interview of an applicant . . . shall be conducted by the board at a meeting open to the public,” Md. Code Ann., Educ. § 3-501(3)(i), and the Board “shall make publicly available through its website . . . [l]ive video streaming of each public meeting” and “[a] complete video recording of each public meeting,” *id.*(3)(ii). The Board also “shall publish a list of the names of the applicants . . . at least 2 weeks before the interview of the first applicant is scheduled to occur,” *id.*(4)(i), and provide public notice of each applicant’s interview “[a]t least 2 weeks before the interview is scheduled to occur” and “[i]n the same manner as a public notice of a regular meeting of the board is published,” *id.*(4)(ii). The Board is not, however, “required to conduct discussions of the applicants or make the final selection of the member to fill a vacancy of the elected member at a meeting open to the public.” *Id.*(5).

<sup>1</sup> An exception is if the vacancy “occurs in an election year for the seat that is vacant,” in which case the Board of Education “may choose not to fill a vacancy.” Md. Code Ann., Educ. § 3-501(f)(1)(ii).

At an August 12, 2025, open meeting, the Board of Education discussed the process it would use to fill the vacancy. The Board advertised the vacancy and received two applications. The Board posted their names and scheduled interview times.

On September 17, 2025, the Board of Education interviewed the candidates in an open meeting, which was livestreamed.

On September 23, 2025, the Board convened to select a candidate to fill the vacancy. The meeting was neither advertised nor open to the public.

On October 27, 2025, during an open session of the Board of Education, the selected candidate was sworn in as a member of the Board.

### **Discussion**

The Complainants allege that the Board of Education violated the Act by meeting in private on September 23 to select a candidate without first notifying the public, making an agenda available, and meeting at least briefly in open session before closing the meeting to the public. The Complainants also assert that the Board should have made certain disclosures to the public after the September 23 meeting.

The Board of Education responds that the Act did not apply, because the Board was performing an administrative function. We agree.

The dispute here involves the distinction between an *exclusion* and an *exception* under the Act. “A public body must meet in open session unless the Act expressly provides otherwise.” 11 *OMCB Opinions* 12, 14 (2017) (citing § 3-301.2<sup>2</sup>). “The Act expressly permits public bodies to hold a closed session when the discussion falls either within a function that is explicitly excluded from the Act<sup>[3]</sup>—an ‘*exclusion*’—or within one of the [fifteen] topics that are explicitly excepted from the Act—an ‘*exception*.’” *Id.* (emphasis added). The exceptions are listed in § 3-305(b). “If the public body’s discussion falls within one of these exceptions, the body may exclude the public from its meeting,” but only after providing notice to the public and convening in an open session, 18 *OMCB Opinions* 129, 130 (2024), during which the presiding officer must “conduct a recorded vote on the closing of the session” and “make a written statement of the reason for closing the meeting, including a citation of the authority . . . , and a listing of the topics to be discussed,” § 3-305(d)(2). Following the closed session, the body must make certain public disclosures in the minutes of its next open session. *See* § 3-306(c)(2).

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<sup>2</sup> Unless otherwise noted, statutory references are to the General Provisions Article of the Maryland Annotated Code.

<sup>3</sup> When we issued our 2017 opinion, the Act recognized only fourteen exceptions; the fifteenth exception, allowing certain discussions about cybersecurity to take place in closed session, was added to the Act in 2018. *See* 2018 Md. Laws, ch. 304.

“If, by contrast, the public body’s meeting falls within an exclusion—because the body is performing an administrative, judicial, or quasi-judicial function—the Act generally does not apply.” 19 *OMCB Opinions* 56, 59 (2025) (quoting 18 *OMCB Opinions* at 130 (citing § 3-103(a)); *see also* § 3-101(b) (defining “administrative function”); § 3-101(e) (defining “judicial function”); § 3-101(i) (defining “quasi-judicial function”); *but see* § 3-104 (requiring a public body to make certain public disclosures after recessing an open session to meet in closed session to perform an administrative function)).

“We have long concluded that a public body is fulfilling an administrative function when it convenes to fulfill its own statutory duty to make an appointment.” 8 *OMCB Opinions* 84, 85 (2012) (citing 1 *OMCB Opinions* 252 (1997) and 6 *OMCB Opinions* 53 (2008)). The Act defines “administrative function” “by what it is—the ‘administration’ of laws, rules, regulations, or bylaws—and by what it is not—the other functions defined by the Act.” 10 *OMCB Opinions* 12, 15 (2016) (quoting § 3-101(b)). “Thus, to determine whether a particular topic of discussion falls within a public body’s administrative function, we apply a two-step inquiry.” 17 *OMCB Opinions* 83, 87 (2023) (citing 16 *OMCB Opinions* 140, 155 (2022)). “First, the discussion cannot fall within one of the other functions defined by the Act—i.e., it cannot be advisory, judicial, legislative, quasi-judicial, or quasi-legislative in nature.” 18 *OMCB Opinions* 62, 63 (2024); *see also* § 3-101(b)(2) (providing that “administrative function” does not include these other functions); *id.*(c) (defining “administrative function”); *id.*(e) (defining “judicial function”); *id.*(f) (defining “legislative function”); *id.*(i) (defining “quasi-judicial function”); *id.*(j) (defining “quasi-legislative function”). “If the discussion does fall within one of these functions, the inquiry ends because the discussion necessarily cannot be administrative in nature.” 18 *OMCB Opinions* at 63. “If the first part of the inquiry is satisfied, then the second step requires that the discussion involve the administration of an existing law (or laws) that the public body is legally responsible for administering.” 15 *OMCB Opinions* 11, 15 (2021).

Applying the first step of the analysis to the facts before us, we conclude that the Board of Education was not performing any non-administrative function defined by the Act when it met on September 23 to discuss who to appoint to fill the vacancy. In so doing, the Board was not “study[ing] . . . a matter of public concern” or “making . . . recommendations” on such a matter, which are advisory functions under § 3-101(c) and are usually performed by task forces and commissions appointed to study a particular issue and report back. *See* Office of the Attorney General, *Open Meetings Act Manual* 1- 21 (12th ed. Oct. 2023). Nor was the Board of Education exercising “power of the Judicial Branch of the State government” (defined as a judicial function under § 3-101(e)), deciding a contested case under the Administrative Procedure Act or a matter before an administrative agency (quasi-judicial functions under § 3-101(i)); or approving, disapproving, or amending a rule, regulation, bylaw, budget, or contract (defined as quasi-legislative functions under § 3-101(j)).

Finally, the Board of Education was not performing a legislative function, which is defined as: approving or disapproving an appointment; proposing or ratifying a constitutional or charter provision; or approving, disapproving, enacting, amending or repealing a law or any “other measure to set public policy.” § 3-101(f). Although *approving* or *disapproving* an appointment is a legislative function, 18 *OMCB Opinions* at 64, we have said that “the terms approving or disapproving denote a response to someone else’s proposal of an appointment,” 18 *OMCB Opinions* 1, 2 (2024) (quoting 1 *OMCB Opinions* 123, 125 (1995) (some internal quotation marks omitted)). “When a public body itself makes an appointment, however, it is ‘not approving one.’” 1 *OMCB Opinions* at 125 (some internal quotation marks omitted). “Moreover, if the body is making the appointment pursuant to a legal obligation, the body is ‘administering a law and so engaged in an [administrative] function.’” 18 *OMCB Opinions* at 64 (quoting 1 *OMCB Opinions* at 125<sup>4</sup>); *see also* 2 *OMCB Opinions* 45, 47 (1999) (recognizing that “the process by which a public body itself makes an appointment (as distinct from the process of considering the confirmation of an appointment made by someone else) is an [administrative] function not covered by the Act”).

Moving to the second step of the analysis, we conclude that, when the Board of Education met on September 23 to select a candidate to fill the vacant seat, it was administering an existing law that the Board of Education is legally responsible for administering. 8 *OMCB Opinions* at 85. As already noted, § 3-501 of the Education Article requires the Board to fill a vacancy, and we have previously recognized that in so doing, the Board administers that law and, thus, performs an administrative function. *See* 4 *OMCB Opinions* 182, 183-85 (2005). As such, we conclude that the September 23 meeting involved the performance of an administrative function, and the Act did not apply.

### **Conclusion**

We find no violation of the Act.

**Open Meetings Compliance Board**

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<sup>4</sup> This quotation used the term “executive function,” but that term has since been replaced, without substantive change, by “administrative function.” *See* 2006 Md. Laws, ch. 584.