

**From:** Kuc, Gary  
**Sent:** Wednesday, September 14, 2016 10:26 AM  
**To:** Schoolbudgetreview  
**Subject:** Reply to First Meeting Questions

Members of the School System Budget Review Committee –

I am following up on two legal questions asked at your last meeting, one regarding whether members may work in subcommittees and the other regarding whether members may designate a substitute to act in his or her place on the Committee. Ms. DeLacy also had a question after the meeting about electronic communications and the Open Meetings Act, and I want you to have the information she received. Finally, I want to provide you with a summary of the State and County laws related to the process for the School System's Budget and the County's Budget.

1. The Committee May Not Use Subcommittees

The County Council established the Committee under Section 902 of the Howard County Charter related to temporary citizen advisory boards. In pertinent part, that section authorizes the Council to appoint "boards" of citizens and prescribes certain functions for "each such advisory board." The language of Section 902 directs the "board" to perform the functions assigned to it, not a subset of the board. Further, no other provision in the County Charter or in the County Code authorizes a temporary citizen advisory board to create subcommittees to perform the work that is assigned to the board itself.

Council Resolution No. 88-2016 created the Committee. That legislation directs the "Committee" to perform certain functions, prescribes the membership of the Committee, and specifies three matters of procedure for the Committee (e.g., select officers, hold meetings, and accept public testimony). Thus, the language of the legislation directs the "Committee" to perform the functions assigned to it, not a subset of the Committee.

The legislation also does not authorize the Committee to use subcommittees. This omission strongly indicates the Council did not intend the Committee to use subcommittees, because prior authorizations for other temporary citizen advisory boards have, on occasion, permitted the use of subcommittees. If the Council had intended the Committee to use subcommittees, the Council would have included such authority in the legislation. They did not do so here.

Finally, the conclusion that the Committee may not use subcommittees is confirmed by Robert's Rules of Order used by the County Council. "Committees of organized societies operate under any applicable rules stated in the bylaws, the special rules of order, the parliamentary authority, and standing rules adopted by the society. Committees may not adopt their own rules except as authorized in the bylaws or in instructions given to the committee by the society." See *Robert's Rules of Order* § 50, at 500-01 (11<sup>th</sup> ed. 2011). The County Council

did not authorize the Committee to use subcommittees or to adopt its own rules providing for the use of subcommittees.

## 2. A Substitute May Be Designated By The Committee Member's Appointing Authority

Council Resolution No. 88-2016 grants the authority to appoint a member to the Committee to certain public officials, organizations, associations, unions, and committees. This authority is not granted to individuals who are appointed to serve as members of the Committee. If a Committee member wants to have a back-up in the event of an inability to attend a Committee meeting, the member should ask the member's appointing authority to designate a back-up and to provide the back-up's name to County Council Staff Member Jeff Meyers for administrative purposes.

## 3. The Open Meeting Act And Electronic Communications

During my general overview about the Open Meetings Act and electronic communications among Committee members, my recommendation that members try to avoid discussing the work of the Committee electronically amongst themselves was based on the reality that, depending on the facts, members of public bodies can unwittingly "meet" via electronic communications. After the meeting Ms. DeLacy asked for clarification. She was provided with the following link to the Maryland Attorney General's *Open Meetings Act Manual* and directed to pages 9-11 (PDF pages 14-16):

[https://www.oag.state.md.us/Opengov/Openmeetings/OMA\\_manual\\_2015.pdf](https://www.oag.state.md.us/Opengov/Openmeetings/OMA_manual_2015.pdf). These pages discuss the ways members of a public body may, through the use of electronic communications, "meet" for purposes of the Open Meetings Act, which would require advance notice of, and the opportunity of the public to attend, such an "electronically" conducted meeting for it to be lawful.

## 4. State and County Budget Laws

The following is not intended to be a comprehensive discussion of all the rules and regulations related to the School System budget. Section 5-101 of the Maryland Education Article requires the local Board of Education to prepare an annual budget, subject to the rules of the State Board of Education and with the advice of the County Superintendent. That budget must contain specified major budget categories and other information. Section 5-102 of the Maryland Education Article requires the local Board to timely submit its budget to the County Executive. The local Board's budget submission is then considered during the County's annual budget process under Article VI of the County Charter and Subtitle 4 of Title 22 of the Howard County Code. In preparing the County's annual proposed budget, the County Executive may, pursuant to State law, deny in whole or reduce in part any major budget category in the budget submitted by the local Board. When considering the County's proposed budget, the County Council may, pursuant to State law, restore any denial or reduction made by the Executive in the budget submitted by the local Board. After the County Council adopts the County's annual budget, all revenues received by the local Board pursuant to that budget must be spent by the

Board in accordance with the Board's major budget categories, pursuant to Section 5-105 of the Maryland Education Article. The County Council must receive timely notice of any transfer made by the School System within a major budget category, and a transfer between major budget categories may only be made with the approval of the County Council. Attached to this email are Maryland Education Articles Sections 5-101, 5-102, and 5-105.

Thank you,

Gary

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