

**YOU'VE BEEN ELECTED TO THE SCHOOL BOARD, NOW WHAT?**

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**THE OATH OF OFFICE**

- NMSA 1978, § 22-5-9.1 (1979). Oath of office.  
All elected or appointed members of local school boards shall take the oath of office prescribed by Article 20, Section 1 of the Constitution of New Mexico.
- Article 20, Section 1 of the New Mexico Constitution  
"Every person elected or appointed to any office shall, before entering upon his duties, take and subscribe to an oath or affirmation that he will support the constitution of the United States and the constitution and laws of this state, and that he will faithfully and impartially discharge the duties of his office to the best of his ability."

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**Open Meetings Act (OMA)**

In the News:

- "Without a public vote, Las Cruces announces new city manager," NMPolitics.net (September 19, 2016), <http://nmpolitics.net/index/2016/09/without-a-public-vote-las-cruces-announces-new-city-manager/>.

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## PURPOSE OF THE OMA

- “The ‘Open Meetings Act,’ NMSA 1978, Sections 10-15-1 to 10-15-4, is known as a ‘sunshine law.’ Sunshine laws generally require that public business be conducted in full public view, that the actions of public bodies be taken openly, and that the deliberations of public bodies be open to the public.” OMA Guide, page ii.
- You can learn more about OMA via the *New Mexico Open Meeting Act Compliance Guide* published by the NM Attorney General at: <http://www.nmag.gov/uploads/files/Publications/ComplianceGuide/s/Open%20Meetings%20Act%20Compliance%20Guide%202015.pdf>.

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## APPLICABILITY OF THE OMA

The Open Meetings Act applies to meetings of public bodies:

- at which a quorum of the members of the public body is present in person or by telephone; and
- during which the public body will formulate public policy, discuss public business or take action.

See NMSA 1978, § 10 -15-1 (B) (2013).

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## OFFICIAL ACTS GOVERNED BY THE OMA

- “[O]fficial acts’ for purposes of OMA include informal acts by a public body in the course of official business, such as the acts of deliberation, discussion and deciding occurring prior and leading up to ... affirmative ‘formal action.’”
- “[A]ssuming a narrow definition of the term ‘official acts,’ OMA ensures public access to ‘information regarding’ those acts, which includes discussions among the members during a meeting related to the public body’s decisions, actions and policies.”

Letter to NM Sentencing Commissioner Chair John Bigelow (02/23/10).

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### WHAT DO I NEED TO KNOW?

- Review your district’s annual resolution containing notice procedures including calendar of meetings.
- Know your district’s deadlines, including internal deadlines, and procedures for publishing and posting meeting notices, such as newspaper deadlines.
- Know your district’s internal deadlines and procedures for posting the agenda 72 hours before the meeting, including to the district’s website.
- Know your district’s process for calling a special meeting or an emergency meeting.

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### WHAT DO I NEED TO AVOID?

- Rolling quorum.
  - i.e., when Board Members are not physically present together at the same time and place, but through a series of conversations, discuss public business or take action.
  - For example, if three members of a five member board discuss public business in a series of telephone or email conversations.
- Taking action on items not on the agenda for action including through means such as polling the Board.
  - An agenda that reflected “A Base Rate committee” was determined to lack sufficient specificity for the action taken, which was a base rate increase. OMA Complaint—Lamy Mutual Domestic Water Association (02/24/16).

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### WHAT DO I NEED TO AVOID? (CONTINUED)

- Speaking on behalf of the board (“we”) on items that have not been acted upon through a vote.
- Discussing items in executive session that are not proper for executive session.
- Discussing items in executive session that go beyond what was noticed for executive session.

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### WHAT DO I NEED TO AVOID? (CONTINUED)

- Discussing items in executive session without reasonable notice to the public of what is being discussed.
  - The agenda “included the vague description of ‘personnel matters’ as a basis for closing the public meeting. This description is insufficient because it does not provide the public with adequate notice of what business the Board is discussing.” OMA Complaint—Belen Consolidated Schools (11/20/15).
  - The Attorney General cited a Texas case that held the public is entitled to greater levels of specificity “when the subject is one in which the public can reasonably be expected to have a special interest,” such as the selection of a superintendent. *Cox Enterprises, Inc. v. Board of Trustees of Austin Independent School Dist.*, 706 S.W.2d 956 (Tex. 1986).

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### NOT A ROLLING QUORUM

- “On May 11, 2015, four separate thirty-minute meetings involving six City Councilors were held between 3:00 p.m. and 4:30 p.m. Mr. Ginger [the court-appointed APD monitor] met with one City Councilor at a time, at 3:00 p.m. and 3:30 p.m., then a pair of City Councilors during the last two meetings. At no time during those meetings with Mr. Ginger was a quorum of City Councilors present. Therefore, the separate meetings between Mr. Ginger and the City Councilors were not subject to the OMA.”
  - There was no evidence “that the six City Councilors who met with Mr. Ginger discussed what happened in their separate meetings amongst themselves – in a series of conversations or otherwise – outside of a publicly noticed meeting.”
- OMA Complaint—Albuquerque City Council (09/11/15).

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### WHAT ABOUT SOCIAL SITUATIONS?

- Example:

“Mr. Jones and Mr. Smith both serve on a board of county commissioners and constitute a quorum of that board. Jones and Smith are also in the same business and frequently run into each other in the course of a business day. Moreover, they are friends and see each other at various social functions. The Act is not intended to alter the business or social relationships of these men so long as they are not meeting in their capacity as county commissioners for the purpose of conducting public business. Should public business arise in such business or social settings, the two men should avoid discussing the matter between themselves. Rather, the matter should be raised, discussed and decided in an open meeting of the board.” OMA Guide, page 8.

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**NMSA 1978, § 22-5-6(A) (2009). NEPOTISM PROHIBITED.**

- "A local superintendent shall not initially employ or approve the initial employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of a member of the local school board or the local superintendent."
- "The local school board may waive the nepotism rule for family members of a local superintendent."

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**WHAT ABOUT THE CONTRACT RENEWAL OF FAMILY MEMBERS?**

- The nepotism statute does not apply to the automatic contract renewal of family members who are already employed when a relative becomes a school board member. *See New Mexico State Bd. of Ed. v. Board of Ed. of Alamogordo Public School Dist.*, 1981-NMSC-031, 95 N.M. 588.

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**Governmental Conduct Act (GCA)**

In the News:

- "Strange Bedfellows: How four Capitol couples negotiate love, lobbying and legislating," Santa Fe Reporter (February 8, 2017), <http://www.sfreporter.com/santafe/article-13027-strange-bedfellows.html>.
- "All in the Family: State Rep directs capital outlay to big brother's big building project, and no one noticed," ProgressNowNM (August 1, 2016), <http://progressnownm.org/2016/08/01/all-in-the-family-state-rep-directs-capital-outlay-to-big-brothers-big-building-project-and-no-one-noticed/>.

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### OFFICIAL ACTS PROHIBITED

- Under the GCA, "it is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position." NMSA 1978, § 10-16-4(A) (2011).
- Financial interest is "an interest held by an individual or individual's family that is: (1) an ownership interest in business or property; or (2) any employment or prospective employment for which negotiations have already begun." NMSA 1978, § 10-16-2(F) (2011).
- "Family" means "an individual's spouse, parents, children or siblings, by consanguinity [blood relationship] or affinity [through marriage]." NMSA 1978, § 10-16-2(E) (2011).

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### RECUSE FROM VOTING

- Under the GCA, "[a] public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public." NMSA 1978, § 10-16-4(B) (2011).
- Abstain vs recuse.

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### DISCLOSURE OF REAL OR POTENTIAL CONFLICTS

- Under the GCA, "[f]ull disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service." NMSA 1978, § 10-16-3(C) (2011).
- "Unless a public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process, a local government agency shall not enter into a contract with a public officer or employee of that local government agency, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest." NMSA 1978, § 10-16-2(B) (2011).

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### KEY DEFINITION

- “‘Contract’ means an agreement or transaction having a value of more than one thousand dollars (\$1,000) with a state or local government agency...” NMSA 1978, § 10-16-2(C) (2011).

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### PRACTICAL EFFECT

- An employee or Board Member (including a family member) who has a financial interest in a contract should abstain from voting on or otherwise approving the contract, or sitting on the committee to evaluate bids, or being involved in drafting contract terms on behalf of the District.
- The District must undergo a potentially more rigorous (competitive) process than required under the Procurement Code before awarding a contract if an employee or Board Member (including a family member) has a financial interest in the contract.

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### PENALTIES

- Criminal penalties: “Unless specified otherwise in the Governmental Conduct Act, any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$ 1,000) or by imprisonment for not more than one year or both. Nothing in the Governmental Conduct Act shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.” NMSA 1978, § 10-16-18(B) (1995).
- Civil penalties “may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred and fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).” *Id.*

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### HOW DO I LEARN MORE ABOUT IT?

- The Governmental Conduct Act is located at NMSA 1978, § 10-16-1 to 18 (1967, as amended through 2011).
- The NM Attorney General's *Governmental Conduct Act Compliance Guide* is available on-line: <http://www.nmag.gov/publications.aspx>.

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### POWERS AND DUTIES

- Board develops educational policies for the school district.
- Board reviews district policies on an annual basis and revises as needed.
  - Superintendent administers (carries out) local board's policies, state and federal requirements and applicable laws, including the Public School statutes and rules promulgated by the PED.

See NMSA 1978, § 22-5-4(A) (2005); NMSA 1978, § 22-5-14(B)(1) (2003); see also 6.29.1.9(A)(6), (B)(1) NMAC.

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### POWERS AND DUTIES

- Board employs the superintendent, fixes the superintendent's salary, and evaluates the superintendent.
  - Superintendent administers and supervises the school district.
  - Superintendent employs, fixes the salaries of, assigns, terminates or discharges all employees of the school district.
- Board conducts termination and discharge hearings.

See NMSA 1978, § 22-5-4(B) (2005); NMSA 1978, § 22-5-14(B)(2)-(3) (2003); NMSA 1978, § 22-10A-24 (2003), NMSA 1978, § 22-10A-27 (2003); See also 6.29.1.9(A)(2), (A)(12) NMAC

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**POWERS AND DUTIES**

- Board has the capacity to sue and be sued.

*See NMSA 1978, §22-5-4(E) (2005).*

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**POWERS AND DUTIES**

- Board acquires, leases and disposes of property.
  - Superintendent ensures that school patrons and the public are informed and involved in the acquisition, planning and development of school facilities.
- Board provides for the repair of and maintains all property belonging to the school district.
  - Superintendent ensures that students are provided with adequate facilities which conform to state and federal mandates.
  - Superintendent is accountable for student safety.

*See NMSA 1978, § 22-5-14 (D) (2003); NMSA 1978, § 22-5-14 (H); See also 6.29.1.9 (B)(5)-(6) NMAC.*

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**ISSUES FOR CONSIDERATION**

- What does it mean that the Board supervises the Superintendent and the Superintendent supervises the District and its employees?
- How does the Board gain insight into the Superintendent's performance, particularly in the area of personnel management, in order to evaluate him or her, without overstepping its boundaries?
  - Board Members set boundaries that respect the chain of command.
  - Superintendent communicates with the Board regarding handling of all matters including personnel.
  - Board seeks 360-degree feedback as part of its evaluation process.
  - Superintendent is held accountable for outcomes.

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**DELEGATION**

- Board delegates administrative and supervisory functions to the local superintendent.
- Board refrains from involvement in delegated administrative functions.
  - Superintendent performs other duties as required by law, the PED or the local school board.

See NMSA 1978, § 22-5-14(B)(5) (2005); See also 6.29.1.9(A)(4)-(5) NMAC.

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**POWERS AND DUTIES**

- Superintendent prepares the school district budget for review and approval by the local school board and the department.
- Finance subcommittee makes recommendations to the board regarding annual budget preparation and oversight.
- Board reviews and approves the annual school district budget.

See NMSA 1978, § 22-5-4(C) (2005); NMSA 1978, § 22-5-14(B)(4) (2003); NMSA 1978, § 22-8-12.3(C)(1)(c) (2010); See also 6.29.1.9(A)(10) NMAC.

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**POWERS AND DUTIES**

- Except for expenditures for salaries, Board contracts for the expenditure of money according to the provisions of the Procurement Code.
- Board ensures that district funds are appropriately managed and disbursed in accordance with laws, regulations, and terms of grants.
- Board is responsible for oversight of revenue and expenditures within the district.
  - Superintendent is accountable for budget management and expenditure of funds.

See NMSA 1978, § 22-5-4 (I) (2005); See also 6.29.1.9(A)(9), (A)(11), (B)(2) NMAC.

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## FINANCE SUBCOMMITTEE

- ❑ Section 22-8-12.3(B) and (C):
  - B. "Each local school board shall appoint at least two members of the board as a finance subcommittee to assist the board in carrying out its budget and finance duties."
  - C. "The finance subcommittee shall:
    - (1) make recommendations to the local school board in the following areas:
      - (a) financial planning, including reviews of the school district's revenue and expenditure projections;
      - (b) review of financial statements and periodic monitoring of revenues and expenses;
      - (c) annual budget preparation and oversight; and
      - (d) procurement; and
    - (2) serve as an external monitoring committee on budget and other financial matters."

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## AUDIT COMMITTEE

- ❑ Section 22-8-12.3(D):

"Except as otherwise provided in this section, each local school board shall appoint an audit committee that consists of two board members, one volunteer member who is a parent of a student attending that school district and one volunteer member who has experience in accounting or financial matters. The superintendent and the school district business manager shall serve as ex-officio members of the committee. A local school board with more than five members may appoint more than two board members to its audit committee."

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## ROLE OF THE AUDIT COMMITTEE

- ❑ Section 22-8-12.3(D):

"The audit committee shall:

  - (1) evaluate the request for proposal for annual financial audit services;
  - (2) recommend the selection of the financial auditor;
  - (3) attend the entrance and exit conferences for annual and special audits;
  - (4) meet with external financial auditors at least monthly after audit field work begins until the conclusion of the audit..."

(continued on next slide)

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## ROLE OF THE AUDIT COMMITTEE (CONTINUED)

- Section 22-8-12.3(D)  
"The audit committee shall:  
...
  - (5) be accessible to the external financial auditors as requested to facilitate communication with the board and the superintendent;
  - (6) track and report progress on the status of the most recent audit findings and advise the local school board on policy changes needed to address audit findings;
  - (7) provide other advice and assistance as requested by the local school board; and
  - (8) be subject to the same requirements regarding the confidentiality of audit information as those imposed upon the local school board by the Audit Act and rules of the state auditor."

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## BOARD GOVERNANCE

- Board adopts rules pertaining to the administration of all powers or duties of the local school board. NMSA 1978, § 22-5-4 (K) (2005).
- Work with your Superintendent to develop a master calendar for:
  - Orientation and Training;
  - Goal Setting;
  - Policy Review;
  - Budget Cycle;
  - Superintendent Contract and Evaluation Cycle; and
  - Self-Evaluation.

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## BUDGET CYCLE – SEE NM MANUAL OF PROCEDURES FOR PUBLIC SCHOOL ACCOUNTING AND BUDGETING, PAGE 9




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### WHAT HAPPENS IF THE BOARD FAILS TO SUBMIT A BUDGET?

- "If a local school board fails to submit a budget pursuant to this section, the department shall prepare the operating budget for the school district for the ensuing fiscal year. A local school board shall be considered as failing to submit a budget pursuant to this section if the budget submitted exceeds the total projected resources of the school district or if the budget submitted does not comply with the law or with rules and procedures of the department." NMSA 1978, § 22-8-6 (D) (1999).

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### SUPERINTENDENT CONTRACT AND EVALUATION CYCLE

- Agree on Annual Goals for the Superintendent
- Determine the Timing and Frequency of Evaluation
- Develop or Revise the Evaluation Instrument
  - Usually in collaboration with the Superintendent
  - Sometimes based on the recommendations of a Committee
- Engage in Periodic Evaluation
  - Input is sought from each board member
  - Board members in executive session prepare one final composite evaluation
  - Board members discuss evaluation with Superintendent
  - Board members take action on any Formal Written Feedback
- Consider Extending the Superintendent's Contract

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### WAYS TO PREVENT AND ADDRESS THE "WHO'S ON FIRST" ERRORS

See [Abbott & Costello Who's on First](#)

- Board Policy
- Administrative Regulations
- Board Operating Guidelines
- Superintendent Feedback through the Evaluation Process

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*The information in this presentation was prepared by Walsh Gallegos Treviño Russo & Kyle P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.*



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