



Open Meetings Act Masterclass

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Geno Zamora, Esq.
Nicholas A. Govea, Esq.

Overview

- Public policy for open meetings
- When does OMA apply/not apply?
- Meeting notices and agendas
- Meeting minutes
- Other meeting considerations
- Violation consequences/penalties
- Further questions/discussion

Public Policy for OMA

- New Mexico Open Meetings Act, NMSA 1978, Sections 10-15-1 through 10-15-4
- Section 10-15-1(A)
 - Government is dependent on an informed electorate
 - All persons are entitled to the greatest possible information regarding the affairs of government and official acts of those officers and employees who represent them

Public Policy for OMA

- The formulation of public policy or the conduct of business by vote shall not be conducted in closed meetings
- All persons desiring shall be permitted to attend and listen to the deliberations and proceedings

Public Policy Considerations

- Issues to consider:
 - How to ensure access by the public:
 - Meeting room size?
 - Language translator/devices for hearing impaired?
 - Live streaming on internet/YouTube?
 - Appropriate use of 2 member subcommittees
 - Superintendent searches?
 - Superintendent evaluations?
 - Other?
 - Rolling quorum problems

When Does OMA apply?

- Section 10-15-1(B)
 - All meetings of a quorum of members ... held for the purpose of formulating public policy
 - Development of policies
 - Discussing public business
 - Taking action within the Board's authority
 - Certain exceptions
 - The Board cannot be divided up for the purpose of keeping actions secret

When does OMA not apply?

- Section 10-15-1(H) closed meetings (executive sessions) are permitted for:
 - (2) **Limited personnel matters:** discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or investigation or consideration of complaints or charges against **any individual public employee**
 - (4) Discussion of personally identifiable **student information**

When does OMA not apply?

- (5) The discussions relating to **collective bargaining** strategy and negotiations
- (6) Reviewing the contents of **competitive sealed proposals and negotiations** under the Procurement Code, for proposals over \$2,500
- (7) **Attorney-client privileged** discussions
- (8) Discussions of the acquisition or disposal of **real property or water rights**

When does OMA not apply?

- Additional requirements for executive sessions:
 - Public notice required, stating specific provision of law and reasonable specificity of the subject to be discussed
 - Generally, no action can be taken in executive session
 - Roll call vote to go into executive session
 - Motion to return to open session requires a statement that only those topics listed were discussed in executive session, voice vote ok

Meeting Notices and Agendas

- Section 10-15-1(D) – Any meetings ... and any closed meetings, .. shall be held only after reasonable notice to the public.
 - Board’s annual OMA resolution sets parameters (recitation of the law)
 - Notice shall include broadcast stations and newspapers of general circulation that have requested notice

Meeting Notices and Agendas

- Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted
- Agenda must be posted at least 72 hours before meeting
 - Must be available to the public (posted in public places)
 - Must be posted on the website

Emergency Meetings

- Bottom Line: Highly unlikely and very difficult to prove
- Section 10-15-1(C)
 - “Emergency” is for unforeseen matters that, if not addressed immediately ... will likely result in injury or damage to persons or property or substantial financial loss to the district
 - Within 10 days, the meeting must be reported to the Attorney General explaining the need
 - Attorney General may rule meeting invalid

Meeting and Agenda Considerations

- How distribute to local media?
- How specifically are the items described?
- What if something needs to be added or removed within 72 hour window?
- What if agenda is not posted on website, or is late?
- Is our emergency an actual emergency under OMA?

Meeting Minutes

- Section 10-15-1(G) the Board shall keep written minutes of all its meetings with:
 - Date, time, and place of meeting
 - Members in attendance and absent
 - Substance of the proposals considered
 - A record of any decisions made and votes taken to show how each member voted
- Draft minutes shall be prepared within 10 working days of meeting
- Minutes shall be approved at the next meeting where a quorum is present

Other Meeting Considerations

- Board member telephonic/remote attendance
 - When difficult or impossible for the member to attend in person
 - Remote member must be able to be identified and heard by the other members and public
- Public Comment Period
 - OMA does not require, but Board policy might
 - Can set basic rules: 2 to 3 minutes, no sharing of time, no student information, etc.

Penalties/Consequences

- Sections 10-15-3 and 10-15-4
 - No Board action is valid unless taken at a valid meeting
 - If OMA was violated, the action is invalid
 - OMA is enforced by the Attorney General, District Attorney, or private individual
 - Successful Plaintiff may receive costs and reasonable attorneys' fees
 - Frivolous claimants may have to pay reasonable attorneys' fees
 - Possible criminal misdemeanor penalties/fines

Recent Issues

- Vague agenda items
- Executive session placeholders
- Discussions during a meeting recess
- Compliance with minutes requirements
- Enforcement of public comment rules
- Properly posted meeting notices

ATTORNEY GENERAL INQUIRIES

- Costly – monetarily and public opinion

Resources

- New Mexico Statutes Annotated, Sections 10-15-1 through 10-15-4
- New Mexico Open Meetings Act Compliance Guide, Issued by the NM Attorney General's Office
 - <https://www.nmag.gov/oma-and-ipra-nm-sunshine-laws.aspx>

Questions/Discussion

- Public Policy
- When OMA does/doesn't apply
- Proper notices and agendas
- Minutes and other considerations
- Penalties

Geno Zamora, Esq.

geno@ortiz-zamora.com

Nick Govea, Esq.

nicholas@ortiz-zamora.com

(505)986-2900