Open Meetings Act Masterclass

Presented to NMSBA Board Institute
February 23, 2019

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

ORTIZ & ZAMORA
Attorneys at Law, LLC
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
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