

Geno Zamora, Esq. Meagan R. Muñoz, Esq.



### Overview

- OMA Refresher
  - Public policy for open meetings
  - When does OMA apply/not apply?
  - Executive sessions
  - Meeting notices and agendas
  - Emergency meetings, meeting minutes, and public comments
- Issue Spotting
- Questions/Comments



### 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

### OMA Applies to:

- Section 10-15-1(B)
  - All meetings of a quorum of members ... held for the purpose of formulating public policy
- What about the following?
  - Video conferences/meetings?
  - Email/text communications?
  - Breakfast meetings?
  - Social gatherings?
  - Phone calls between 2 members?
  - Rolling quorums?



### **Executive Sessions**

- Section 10-15-1(H), permitted for:
  - (2)Limited personnel matters of any individual public employee
  - (4) Identifiable student information
  - (5) Collective bargaining strategy and negotiations
  - (6) Reviewing competitive sealed proposals and negotiations under the Procurement Code, for proposals over \$2,500
  - (7) Attorney-client privileged discussions of pending or threatened litigation
  - (8) Discussions of the acquisition or disposal of real property or water rights



### **Executive Session Requirements**

- 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

- Any meetings ... and any closed meetings, ..
   shall be held only after reasonable notice to the
   public.
- NOTICE AND AGENDA MUST BE POSTED AT LEAST 72 HOURS BEFORE MEETING
  - Must be posted on the website
  - NMSBA Policy Service: <u>At central office AND all school sites</u>
    - Must be available to the public (posted in publicly viewable places)
  - Includes sending to 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 <u>specific</u> items of business to be discussed or transacted



# Who creates the Agenda?

- Typically determined by Board Policy
- Superintendent and Board President lead the process
- Board member addition of items varies
  - One Board member?
  - Two Board members?
  - Consensus from a previous meeting?

# **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 or actions invalid

## 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

### Public Comment Considerations

- Typically governed by Board Policy
- Rules of thumb:
  - Put a time limit that applies to all speakers
    - No sharing of time
  - Topics should relate to school district business
  - Should not discuss individual employees or students
  - Use a "ground rules" script and a timer

# Virtual Meetings

- NMAG Advisory <u>during COVID Emergency</u>
  - Allows virtual meetings
  - At start, announce names of remote members
    - Members must identify selves when speaking or voting
  - Public should have access via live stream, other technology, or call-in number to listen
  - Pause meeting if audio/video problems
  - All votes <u>must</u> be by roll call
  - A recording of the meeting should be kept
  - Virtual meetings recommended during health emergencies
- Be careful with chat functions!

### Other Meeting Considerations

#### Post COVID -

- Board member telephonic/remote attendance
  - When difficult or impossible for the member to attend in person (unusual, not regular)
  - Remote member must be able to be identified and heard by the other members and public
- Public attendance/participation live stream or virtual access may be good to continue

# Issue Spotting

- Agenda items: Contracts?
- Agenda posting:
  - Location: Central Office?
  - Timing: 6 pm Friday posting for 5 pm Monday meeting?
- Quorums:
  - Graduation? Coffee shop? Email?
  - Communications from Superintendent? Constituents?
- Executive Session: Discuss the budget? Union negotiations?
- Emergency meetings: Forgotten contract? Safety risk?



### Covered Issues

- Vague agenda items
- Executive session placeholders
- Compliance with minutes requirements
- Properly posted meeting notices
- Rolling quorums

#### ATTORNEY GENERAL INQUIRIES

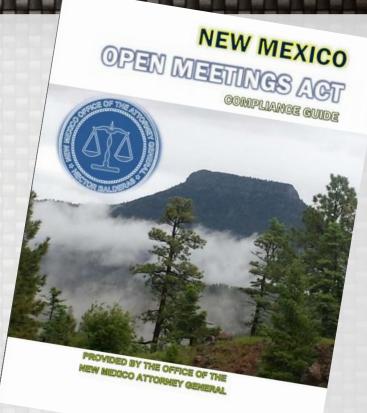
Costly – monetarily and public opinion

## 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

### 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/publications.aspx

### Questions/Discussion

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- Executive sessions
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- Emergency meetings, meeting minutes, and public comments
- Penalties

Geno Zamora, Esq.

Meagan R. Muñoz

geno@ortiz-zamora.com

meagan@ortiz-zamora.com

(505)986-2900

