



Office of New Mexico
Attorney General
HECTOR BALDERAS



June 22, 2021

New Mexico Commission for the Blind State Rehabilitation Council

Open Meetings Act

NMSA 1978, Sections 10-15-1 to -4

Assistant Attorney General

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Open Government Division

New Mexico Office of the Attorney General



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About the Open Government Division

- Office of the Attorney General Structure: Civil Affairs & Criminal Affairs
 - OGD is within Civil Affairs
- Represent approximately 80 state boards and commissions
- Have a variety of functions:
 - Client representation
 - Contract review
 - Draft Official Attorney General Opinions
 - Bill analysis
 - Other duties as assigned
 - Enforce Open Meetings Act (OMA) and Inspection of Public Records Act (IPRA)



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This Presentation

- 30 minute overview of OMA
 - Who and what is subject to OMA?
 - Notices
 - Agendas
 - Minutes
- Not a full training, leaving out:
 - Procedures for closed session
 - Exceptions to go into closed session
- Focus on what members need to know



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OMA as Public Policy

- Public is entitled to greatest possible information about government affairs
- Representative government depends on informed electorate
- All meetings of a public body are public meetings
 - Anyone can “attend and listen”
 - No closed meetings for formation of public policy or conduct of business by vote

Section 10-15-1(A)



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Who and what is subject to OMA?

- “Public body”= very broad definition
 - Must be multi-member, policymaking
 - Not purely advisory bodies, unless created by statute
- OMA applies to all meetings of a quorum held to:
 - Formulate public policy
 - Discuss public business
 - Take any action
- OMA does not apply when public body is not discussing public business
- Keep in mind:
 - Committees are subject to OMA when they wield policymaking authority
 - Avoid rolling quorums
 - Meetings of quorum can go by many names (work session, retreat, etc.)

Section 10-15-1(B)



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Examples

The Public Regulation Commission is a full-time salaried commission regularly engaged in the conduct of public business, i.e., utility rate regulation. The PRC holds a special meeting for the purposes of discussing public business, but takes no action at the meeting. **Is the meeting subject to OMA, requiring notice, agenda, minutes, etc.?**

Two members of a three-member school board attend the retirement party of the District's longtime superintendent. While at the party, the Board members discuss the basketball playoffs. After the meeting, one of these Board members sends a text message to the other urging him to vote in favor of the proposed budget at the next meeting. The other Board member texts back that he will vote in favor of the budget. **Was this a violation of OMA?**



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Meeting Notices - Generally

- Reasonable advance notice of all meetings
 - Applies to both open and closed meetings
 - No secret meetings
- All public bodies must determine reasonable notice once per year
 - Custom is to adopt annual OMA resolution
- Must include:
 - Date, time, and location
 - Agenda (or how to get a copy)
- Provided to, at minimum:
 - Published or posted in place and manner accessible to the public
 - Broadcast stations and newspapers of general circulation that make a written request for notice
 - Other requirements found by the public body to be reasonable

Section 10-15-1(D)



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Meeting Notices: General Deadlines

- Regular meetings
 - Notice: at least 10 days
 - Agenda: at least 72 hours
- Special meetings
 - Notice: at least 3 days
 - Agenda: at least 72 hours
- Emergency meetings
 - Only allowed if significant threat to public health, safety, or imminent and irreparable financial harm to public body
 - Notice and agenda = 24 hours or less depending on emergency

Section 10-15-1(D)



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Agendas

- Meeting notice must include agenda (or information on how to get a copy)
- Must contain a list of specific items of business
 - Must be reasonably specific
- No action may be taken at a meeting unless the item appears on final agenda
 - Posted 72 hours in advance
 - Exception for emergency meetings

Section 10-15-1(F)



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Agendas: Timing

- Must be posted at least 72 hours before a meeting
- Must be on website
 - If public body has one
 - Again, 72 hours in advance
- Exception: public bodies that meet more than once a week
 - Draft agenda: 72 hours before a meeting
 - Final agenda: 36 hours before a meeting

Section 10-15-1(B)



Example

School Board Agenda

123 Fictitious Ave.,
Santa Fe, NM
May 23, 2021
5:00 PM

- I. Call to order
- II. Approval of Meeting Agenda
- III. Approval of Minutes from March 4, 2021 Meeting
- IV. Old Business
- V. New Business
 - a) Vending machines in the cafeteria
 - b) Limited personnel matters
- VI. Adjourn

The Board discusses and acts on three contracts. Was this agenda item reasonably specific?

The Board discusses and votes to allow vending machines in the school cafeteria. Was this agenda item reasonably specific?

The board dismisses the director of the district's administrative office and reorganizes the remaining staff positions. Was this agenda item reasonably specific?



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Minutes

- Must keep minutes of all meetings
- At minimum, must include:
 - Date, time, and place
 - Names of members present and absent
 - Substance of proposals considered
 - Record of decisions made and any votes
- Voting: how each member voted
 - No secret ballots

Section 10-15-1(G)



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Minutes: Timing

- Minutes are available for inspection
 - Includes draft minutes
 - Even if not yet approved by public body
- Draft minutes must be prepared in 10 working days
- Must be considered at next meeting
 - Including special meetings, work sessions, retreats, etc.
- Subject to IPRA

Section 10-15-1(G)



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Open Meetings and COVID-19

- Generally, public bodies must meet in person
 - COVID-19 pandemic is an exception to the rule
- Can meet virtually or telephonically during the state of emergency
- Attorney General's Guidelines:
 - Provide alternative means of attendance to public (virtual or telephonic)
 - Announce members of public body participating remotely
 - All members must be audible when speaking
 - Suspend discussion when audio/video interrupted
 - All votes by roll call vote
 - Produce and maintain a recording of the meeting

Section 10-15-1(C)



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Enforcement: Civil and Criminal

- Attorney General and District Attorneys
- Private individuals
 - Written notice to public body required; public body has 15 days to act on alleged violation
 - Individual can recover reasonable costs & attorneys' fees
- Actions taken in violation of Act may be deemed invalid
 - Presumption: public body complied with OMA
- Criminal sanction: violation of OMA is full misdemeanor
 - Punishable by up to \$500 per violation





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In Review

- Any meeting of quorum where public business is discussed is a meeting subject to OMA
 - Even if you call it a retreat or work session
- Avoid “rolling quorums”
- Agendas must be reasonably specific



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Questions?

- Consult your attorney
- Attorney General Open Meetings Act and Inspection of Public Records Act Compliance Guides, www.nmag.gov
- NM Attorney General's Office
 - Open Government Division, (505) 490-4060
- NM Foundation for Open Government
 - www.nmfog.org



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