

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

September 3, 2021

VIA ELECTRONIC MAIL ONLY

Noreen Gonzalez
91 San Juan Dr.
Timberon, NM 88350
Email: 1john215@hush.com

Re: Open Meetings Act Complaints – Timberon Water and Sanitation District Board of Directors

Dear Ms. Gonzalez:

The Office of the Attorney General, Open Government Division (hereinafter “OGD”) has received your two most recent complaints alleging violations of the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (2013) by the Timberon Water and Sanitation District Board of Directors (the “Board”). The OGD is charged with enforcement of OMA and in that capacity has reviewed the facts and allegations in your complaint. *See* NMSA 1978, § 10-15-3(B) (authorizing the Office of the Attorney General to enforce all provisions of the Open Meetings Act).

In New Mexico, “any board, commission, administrative adjudicatory body or other policymaking body of any state agency or any agency or authority of any county, municipality, district or political subdivision” is subject to the provisions of the Open Meetings Act. Section 10-15-1(B). The OMA governs all meetings consisting of at least a quorum of such entities and is intended to provide the public with access to “the *greatest possible information* regarding the affairs of government.” Section 10-15-1(A) (emphasis added). In accordance with the public policy behind the statute, OMA is broadly construed in favor of transparency. *See* Attorney General’s Open Meetings Act Compliance Guide, p. 7 (8th ed. 2015) (“OMA Guide”) (noting that “doubt as to the proper course of action should be resolved in favor of openness whenever possible”).

In your most recent OMA complaints to our Office, you argue that the Board violated OMA both by failing to post its meeting minutes online and by failing to comply with certain guidelines recommended by our Office for virtual meetings. Regarding your first point, OMA simply does not require a public body to post its meeting minutes online. While the statute requires public bodies to post meeting agendas online,

see Section 10-15-1(F), it does not contain a similar requirement for meeting minutes.¹ *See* § 10-15-1(G). Therefore, the Board clearly has not violated OMA by failing to post its meeting minutes online.

As to your contention that the Board failed to comply with certain guidelines recommended by our Office for virtual meetings,² we again do not find that this represented a violation of OMA. Most importantly, we would clarify that, while some of our guidelines represented clear legal requirements for virtual meetings (affording the public the right to attend and listen remotely, for example, or providing necessary connectivity information to the public prior to the meeting), most of our guidelines represented best practices and not strict legal requirements. Thus, while you argue that the Board failed at unspecified meetings³ to conduct all votes by roll call and that individual members did not always identify themselves before speaking, these guidelines were only best practices. Similarly, while the Board might not have complied with our recommendation to record its meetings and post its recording online, this again does not necessarily constitute a violation of OMA.

More importantly, the facts presented by your complaint indicate that you and other members of the public were able to “attend and listen” to the Board’s meetings. Section 10-15-1(A). Your complaint states that you were able to attend the meetings telephonically, the minutes of these meetings reflected how each member voted, and the Board members were audible during the meetings. Given these facts, your complaint then appears to indicate that the Board substantially complied with OMA, not that it violated the statute. *See Parkview Cmty. Ditch Ass’n v. Peper*, 2014-NMCA-049, ¶ 14 (holding that OMA “requires substantial, not strict, compliance”). As a result, no further review is necessary, and we consider this matter closed.

The Office of the Attorney General appreciates you bringing possible violations to this office and will welcome any further complaints you may submit. If you have any concerns in the future, please do not hesitate to contact us. Additionally, the OMA Guide is available on the website of the Office of the Attorney General at www.nmag.gov.

Sincerely,



John Kreienkamp
Assistant Attorney General

Enclosure

cc: Steven E. Jones, Esq. sjones@carrillolaw.org

¹ Section 10-15-1(G) requires that meeting minutes must be available for public inspection upon request. Your complaints do not allege that you submitted a written request to the Board to inspect or copy meeting minutes.

² *See* N.M. Att’y Gen. Advisory, Mar. 17, 2020, available at https://www.nmag.gov/uploads/PressRelease/48737699ae174b30ac51a7eb286e661f/AG_Balderas_Guidance_to_Public_Entities_Regarding_OMA_and_IPRA_Compliance_During_COVID_19_State_of_Emergency.pdf.

³ When we contacted you to request specific meeting dates, you stated only that “I was referring to the meetings that were conducted during the Covid-19 restrictions by your office.”