



## Attorney General of New Mexico

**HECTOR H. BALDERAS**  
Attorney General

March 3, 2016

Philip Chavez  
HC 77 Box 1  
Seboyeta, NM 87014

Kilino Marquez  
P.O. Box 1465  
Paguete, New Mexico 87014

Re: Open Meetings Act Complaint

Dear Mr. Chavez and Mr. Marquez:

Thank you for providing your December 13, 2015, response regarding the complaint submitted by Richard Jaramillo and William Hocker on October 13, 2015 ("Complaint"). This Complaint alleged violations of the New Mexico Open Meetings Act ("Act"), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013).

The Complaint alleges that the Cebolleta Land Grant Board of Trustees Vice President Onesimo Armijo, Member Phillip Chavez, and Member Kilino Marquez ("Board Members") violated the Act by taking an official board action outside of a public meeting. Attached to the Complaint is a letter dated September 21, 2015, signed by the Board Members, stating that they had to take "immediate action" to mitigate "very serious health safety issues concerning the domestic water within the three communities of the Cebolleta Land Grant." This letter indicates that the Board Members authorized Robert Armijo to conduct work and "purchase materials to keep the water system in compliance." The Office of the Attorney General requested a description of the "very serious health safety issues" cited in the letter, as well as any documentation to support the Board Members' actions. The findings made by the Office of the Attorney General are based upon review of the contents of the Complaint, as well as your response provided on December 13, 2015.

The Act ordinarily requires that formal actions within the delegated authority of a public body be taken in public meetings with an agenda made publicly available at least 72 hours prior. *See* § 10-15-1(A), (B), (D), (F). Section 10-15-1(F) provides for an emergency exception to the foregoing requirements, defining "emergency" as "unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or

property or substantial financial loss to the public body.” Even in the case of an emergency meeting, the public body should provide as much advance notice to the public as reasonably possible. *See* N.M. Att’y Gen. Open Meetings Act Compliance Guide at 39-40 (8th ed. 2015) (available on our website, [www.nmag.gov](http://www.nmag.gov)). Importantly, an emergency meeting called with little or no notice must involve circumstances that could not have been anticipated. When an emergency action is taken, the public body must report the action taken and circumstances justifying the action to the Office of the Attorney General within 10 days.

It is uncontested that the Board Members took an official action outside of a public meeting. The actions at issue do not appear to fall under the emergency exception of the Act. We acknowledge that the integrity of public water systems is of paramount importance. However, a document enclosed in your December 13, 2015, response, entitled “Listing of Concerns that warranted support for an emergency decision for CLG Board Members,” repeatedly references the fact that maintenance of the water system had not been conducted for “at least 3 months” and that numerous attempts to contact the Board’s president regarding these issues had been made. This information demonstrates that the Board Members were aware of potential problems with the water system for some time. Therefore, the circumstances surrounding the Board Members’ actions were not unforeseen, as required by the Act’s emergency exception, and holding a public meeting with some advance notice was likely possible. Even had these circumstances constituted an unforeseen emergency, the Board Members still did not notify the Office of the Attorney General within 10 days of its actions. The actions taken by the Board Members were not in compliance with the Act and may therefore be deemed invalid. *See* § 10-15-3.

The Board has the opportunity to come into compliance with the Act and cure its invalid actions, provided that the Board takes the following steps:

- 1) Schedule a public meeting within 15 days of receipt of this letter.
- 2) Provide notice to the public, making the agenda public at least 72 hours before the meeting.
- 3) At this public meeting, address the actions taken in violation of the Act, re-discuss issues previously addressed in contemplation of the Board Members’ invalid action, and vote again on actions previously taken in violation of the Act.
- 4) Notify the Office of the Attorney General within 10 days of all actions taken during this meeting. Please also send a copy of the agenda and minutes for this meeting.

We strongly encourage the Board to take such remedial action. Failure to comply could result in an enforcement action by either an individual or the Office of the Attorney General. Thank you for your prompt attention to this matter.

Regards,

  
James Torres  
Assistant Attorney General

cc: Richard Jaramillo  
William Hocker

**OPEN MEETING ACT ("OMA") COMPLAINT FORM**  
New Mexico Office of the Attorney General  
Open Government Division

**Your Contact Information:**

First Name: Richard / William Last Name: Jaramillo / Hocter

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: 1 Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

Name of Public Body that is the Subject of this Complaint (including city/town, district, county or region, if applicable): Cebolleta Land Grant

Specific date(s) of OMA violation(s): Date of letter received from 3 board members (Kilino Marquez / Philip Chavez / Onisemo Armijo)

**ALLEGED VIOLATIONS OF THE OMA BY THE PUBLIC BODY:** Please select from the following list the violations you allege the public body committed. Check all that apply.

**DEFICIENCIES IN NOTICE OF THE MEETING**

- Notice did not comply with the deadlines or procedures for meeting notices adopted by the public body, or with the reasonable notice requirement in the OMA
- Notice did not include date, time, and/or location of the meeting
- Notice was not published or posted in a place and manner accessible to the public
- Notice did not include an agenda or information on how the public may obtain a copy of the agenda
- A meeting was reconvened by the public body, but notice of the date, time, and place of the reconvened meeting was not placed on or near the door of the place where the original meeting was held or in at least one other location appropriate to provide public notice

**AGENDA**

- Agenda was not available seventy-two (72) hours prior to the meeting

- Agenda did not include a list of specific items the public body intended to discuss or transact at the meeting or the items listed and acted upon were not listed with reasonable specificity
- Public body took action on items that were not listed on the agenda
- In a reconvened meeting, the public body discussed or took action on items not appearing on the agenda of the original meeting

#### MINUTES

- The minutes did not contain the date, time, and/or place of meeting, the name of all members of the public body attending the meeting and those absent
- The minutes did not contain a description of the substance of all proposals considered during the meeting or a record of any decisions made and votes taken
- A draft copy of the minutes was not available within ten (10) working days of the meeting
- The minutes were not approved, amended, or disapproved at the next meeting where a quorum of the public body was present

#### CLOSED MEETINGS

- The public body did not follow the required closing procedures to close a meeting (e.g., did not list the items they were going to discuss in the motion to close, or the motion to close did not contain the provision of law permitting the closing of the meeting)
- The public body closed the meeting to discuss an issue not covered by one of OMA's exceptions
- Matters not stated in the motion to close were discussed in the closed session.
- Final action was taken by the public body in the closed meeting

#### CONDUCTING/DISCUSSING BUSINESS OUTSIDE OF AN OPEN MEETING

- A quorum of the public body formulated policy, discussed public business, or took action outside of an open meeting
- A "rolling quorum" was used to discuss public business (i.e., a quorum may exist even when the members are not physically present at the same place, such as discussing public business in a series of telephone or email conversations)

\_\_\_ A committee was created by the public body that constitutes a policymaking body that formulated recommendations that were binding on the public body or otherwise established policy for the public body, outside of an open meeting

**DETAILED EXPLANATION OF ALLEGED OMA VIOLATIONS:** Please provide a description of the actions taken by the public body that violated the OMA, including specific dates and times, and why you believe the OMA has been violated.

Three Board members got together w/o an official meeting and make a decision and wrote attached letter and signed it.

**ADDITIONAL INFORMATION:** Please attach any documentation or evidence you have regarding the alleged OMA violation.