

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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October 6, 2016

William Hocker
Cebolleta Land Grant
HC 77 Box #6
Seboyeta, NM 87104

Re: Open Meetings Act Complaint – Kilino Marquez

Dear Mr. Hocker:

We have reviewed the complaint filed by Kilino Marquez alleging that the Cebolleta Land Grant Board of Trustees (“Board”) violated the Open Meetings Act, NMSA 1978, §§ 10-15-1 to -4 (2013) (“OMA”), and your response to our inquiry regarding the complaint (“Response”) and the supplemental documents. The complaint alleges that the Board’s meeting on April 13, 2015 violated OMA’s requirements for proper notice, adequate agenda specificity, and adequate meeting minutes. Based on our review of the complaint, the Response and applicable law, the Board has failed to comply with Section 10-15-1(D) (failure to adopt an annual open meetings resolution), Section 10-15-1(F) (failure to have adequate notice and agendas) and Section 10-15-1(G) (failure to keep adequate meeting minutes), making its actions taken at the April 13, 2015, invalid under Section 10-15-3(A). These failures would also jeopardize subsequent actions made by the Board in similar improper meetings. I caution the Board to comply with all of the requirements of the OMA, including listing on its meeting agendas each “specific item of business to be discussed or transacted” at the meeting, taking action or voting only on such items specifically and clearly stated on the agendas, and then stating all such action or votes in the minutes, and preparing minutes that include all of the information required by the OMA. *See* §§ 10-15-1(F) (agenda) and 10-15-1(G) (minutes).

The Open Meetings Act Resolution

Section 10-15-1(B) states: “All meetings ... any board, commission...of any state agency, any agency or authority of any county...or any political subdivision...are declared to be public

meetings....” The OMA confirms as its purpose that members of the public “are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.” NMSA 1978, § 10-15-1(A). The Board must always comply with these statutory mandates and with the specific procedures set forth in the OMA itself.

Upon request for supporting documentation, the Board did not provide an Open Meetings Act Resolution. Section 10-15-1(D) of the OMA requires public bodies to annually determine, in a public meeting, “what notice for a public meeting is reasonable” for the body and specify how that notice will be provided to the public. This determination is typically done by the public body’s adoption of a resolution or formal statement as to what notice of its meetings the Board determines to be reasonable for the upcoming year. At the next schedule meeting, please adopt an Open Meetings Resolution. A sample Resolution is found starting on page 13 of the Attorney General’s Open Meetings Act Compliance Guide. (See attached). Once adopted the Board will be mindful of their obligations for posting notice and making agendas available for all its public meetings.

Meeting Notice And Agenda Requirements

The complaint alleges that the Board took action not specified on the agenda and that the agenda was not posted before 72 hours before meetings. Public bodies must include an agenda in their meeting notices or information on where a copy of the agenda may be obtained. Section 10-15-1(F) of the OMA requires that meeting notices must include *either* an agenda listing the “specific items of business to be discussed or transacted” at that particular meeting *or* “information on how the public may obtain a copy of such an agenda.” (emphasis added) The sample meeting notice included with the complaint provided no agenda for the Board’s meeting, and did not state how members of the public could obtain a copy of the agenda for the meeting. The Board’s failure to provide an agenda with the meeting notice or to state how the public could obtain the agenda violates Section 10-15-1(F).

Further, the agenda provided for the April 13, 2015 meeting is simply too vague of a listing of agenda items and fails to provide the specificity required by the OMA. The agenda fails to provide the public “the greatest possible information” about the Board’s business and the actions it intends to take at these meetings, as required by the OMA Section 10-15-1(A) and (F). It is further alleged that the Board took action on items not listed on the agenda. Specifically, that the Board took votes to reorganize members of the Board. Unless a matter is specifically listed on the meeting agenda as required by the OMA Section 10-15-1(F), the Board cannot legally take action or vote on that matter. If this is the case, and the Board voted to reorganize the Board during this April 13, 2015 meeting then that vote is in violation of this provision.

The consequence of the Board voting or acting on agenda items that are not sufficiently clear or descriptive is that the Board’s votes or other actions on those items are invalid. *See* § 10-15-1(F) (meeting agenda must list the “specific items of business to be discussed or transacted”), § 10-15-3(A) (no action by the board “shall be valid unless taken or made at a meeting held in accordance with the requirements of [the OMA] Section 10-15-1”). *See* Attorney General’s Open Meetings Act Compliance Guide, p. 17, Example 26. In order to adequately inform the public,

each meeting agenda should reflect exactly what the Board intends to discuss or transact at that particular meeting, and each agenda item must be specifically listed so that the public knows what the Board intends to do at that meeting.

The complaint further alleges that that agenda for the April 13, 2015 meeting was not posted before the meetings. The OMA states when an agenda must be made available to the public. Section 10-15-1(F) of the OMA requires each meeting agenda be available to the public at least seventy-two hours prior to the meeting. As noted above, the agenda was not provided in the notice and no further information was provided by the Board on complying with the 72-hour notice requirement. Therefore, the Board has failed to comply with OMA regarding agenda requirements.

Meeting Minutes Requirements

The complaint alleges that the meeting minutes of this meeting were not available for inspection and that the board did not vote on the approval of meeting minutes at its subsequent meeting. Generally under OMA, a public body's meeting minutes must include, at a minimum, the date, time and location of the meeting; the names of the members present and those absent; the substance of the matters considered and discussed; and "a record of any decisions and votes taken that show how each member voted." *See* § 10-15-1(G). Meeting minutes must also be made available to the public for their inspection and copying. *Id.* Because no minutes were provided from the April 13, 2015 meeting as requested, we must assume they do not exist. Therefore, the Board has failed to comply with the minutes provisions of OMA. However, some minutes from prior and subsequent meetings were submitted. The Board should ensure that all future meeting minutes are made available for inspection in draft form 10 working days after a meeting and must be approved, amended or disapproved at the next meeting where a quorum is present. *See* Section 10-15-1(G).

Conclusion

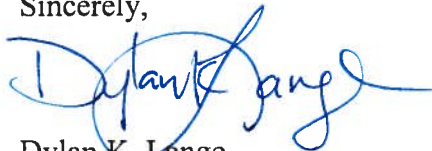
The OMA provides that no action taken by the Board "shall be valid unless taken or made at a meeting held in accordance with the requirements of ... Section 10-15-1." *See* § 10-15-3(A). The Board violated numerous sections of the OMA. However, a public body can legally correct prior mistakes and effectively give legal force to its prior invalid actions. *See* § 10-15-3(B); Open Meetings Act Compliance Guide, pp. 38-42. To cure the OMA violations discussed above, the Board should convene and hold another meeting in accordance with Section 10-15-1, discuss the specific matters and summarize the comments made at these meetings at which the OMA was violated, and retake any actions or vote again on the matters described above upon which the Board acted or voted in violation of the OMA. *See* § 10-15-3(B). The Board also should give proper notice of such a meeting and timely provide an agenda pursuant to Section 10-15-1(D) and (F). After the conclusion of your next scheduled meeting, please provide me with a copy of the notice, agenda and meeting minutes of the meeting where the Board takes the corrective action described here.

In enforcing the law, our Office educates public bodies about their obligations under, and how they can comply with, the OMA. We trust that the Board will take all steps necessary to ensure

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its future compliance with the OMA, and to better inform the public as to what the Board is doing, and we advise the Board to be more diligent in following the specific mandates of Section 10-15-1(D) (meeting notice and open meetings resolution), 10-15-1(F) (agenda) and 10-15-1(G) (minutes) for all of its meetings. If you have questions about the specific matters addressed in this letter, please let me know.

Sincerely,



Dylan K. Lange
Assistant Attorney General

Encl.

cc: Kilino Marquez

RECEIVED FEB 09 2016
BM

OPEN MEETING ACT ("OMA") COMPLAINT FORM

New Mexico Office of the Attorney General
Open Government Division

2016 FEB -9 Ail 7: 41

Your Contact Information:

First Name: Kilino Last Name: MARQUEZ

Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Phone Number: [REDACTED]

Email: [REDACTED]

Name of Public Body that is the Subject of this Complaint (including city/town, district, county or region, if applicable): CEBOLLETA LAND GRANT / BILL HOCKER
HC 77 Box #6 SEBOYETA, NEW MEXICO 87014

Specific date(s) of OMA violation(s): MONDAY, April 13, 2015

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.

THE OMA WAS VIOLATED ON MONDAY, APRIL 13, 2015.

AGENDA:

- * THE AGENDA WAS NOT AVAILABLE AS POSTED CANVASSING AND ELECTION RESULTS WAS THE ONLY ITEM.
- * AGENDA DID NOT INCLUDE A LIST OF SPECIFIC ITEMS THE PUBLIC BODY INTENDED TO DISCUSS OR ITEMS ACTED UPON.
- * PUBLIC BODY TOOK ACTION ON ITEMS THAT WERE NOT POSTED ON MEETING NOTICE/AGENDA.

MINUTES:

- * DRAFT COPY OF MINUTES HAVE NEVER BEEN PROVIDED
- * MINUTES HAVE NEVER BEEN AVAILABLE OR PROVIDED FOR BOARD TO APPROVE, AMEND, OR DISAPPROVE WHERE A QUORUM OF THE PUBLIC BODY WAS PRESENT.

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

NOTE:

- * MEETING NOTICE — CANVASSING AND VERIFYING 2015 ELECTION RESULTS
- * AGENDA — MADE AVAILABLE ON APRIL 13, 2015 AT 6:00 PM —
 - SEVERAL ITEMS ACTED ON WITHOUT NOTICE / BOARD APPROVAL OF AGENDA.