



Attorney General Of New Mexico

HECTOR H. BALDERAS
Attorney General

ELIZABETH A. GLENN
Chief Deputy Attorney General

February 5, 2016

John F. Kennedy
Cuddy & McCarthy
1701 Old Pecos Trail
Post Office Box 4160
Santa Fe, NM 87502

Re: Determination of Open Meetings Act Complaint

Dear Mr. Kennedy:

Thank you for your responses and for the documentation provided regarding the complaints received from Mr. Adam Begay, Mr. Charlie Jones and Dr. George Schumpelt. The complaints allege that the Central Consolidated School District Board ("Board") violated the Open Meetings Act ("OMA") NMSA 1978, § 10-15-1 through 10-15-4, during one or more meetings in 2015.

More specifically, Mr. Begay and Mr. Jones' initial complaint focused on personnel action taken at the August 18, 2015, meeting. Dr. Schumpelt expands his complaints to include additional meetings held on September 10, and September 15, 2015. He further raises allegations related to conducting business by rolling quorum and he provides a complaint received by his office from Deputy Superintendent Mike Pandora. We have reviewed the complaints, the Board responses, the documentation provided, and the OMA. This determination addresses only the issues related to the OMA. As fully set forth below, the Board violated the OMA when it took action on an issue not noticed with reasonable specificity at its August 18, 2015, meeting. Under the OMA, an improper meeting can be cured. From the evidence submitted, the meeting of August 24, 2015, effectively cured the deficiency. No other OMA violations were found.

Collectively, the complaints are directed toward the personnel action taken at the August 18, 2015, meeting. The agenda for the executive session discussion lists "Superintendent Evaluation". The minutes however reflect that action was taken to discharge the superintendent, and to appoint an interim superintendent. We refer you to § 10-15-1 (F) of the OMA, which

John F. Kennedy
Feb 5, 2016
Page 2

guides our discussion and which requires each meeting agenda to list the specific items of business to be discussed or transacted at that particular meeting. This provision ensures that interested members of the public are given reasonable notice about the topics a public body plans to address at its meeting. See *Open Meetings Compliance Guide*, p.17 (8th ed. 2015). A public body should describe agenda items in such a way that a reasonable person is able to discern what the body intends to take action on. Compliance with this provision is particularly important when a public body intends to act on an agenda item. *Id.*

In reviewing the agenda, a member of the public could reasonably conclude that the only action to be taken was the superintendent's evaluation. The public would not anticipate that the superintendent would be discharged and replaced. The action taken exceeds the notice provided. This conflicts with the OMA notice requirements.

The OMA provides that "No ... action of any ... policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of NMSA 1978, § 10-15-1." It appears that the Board itself recognized that it may have violated the OMA and followed the procedures set forth in § 10-15-3(B) by holding a subsequent meeting on August 24, 2015, to address both the superintendent's discharge and appointment of an interim superintendent. The agenda for August 24, 2015, lists both issues with specificity. The minutes reflect that a vote was taken on the listed items. It thus appears that the Board cured the deficiency by convening and holding a later meeting, re- discussing the matters considered at its prior meeting and voting again on these matters. It appears that these remedial steps have brought the Board into compliance with the OMA. We conclude that the actions taken at the August 24, 2015, meeting constitute corrective action satisfying the OMA requirements.

From the enforcement perspective, the issues related to the September 10, 2015, and September 15, 2015, meetings are less clear. It does not appear that these meetings are subject to separate distinct complaints, although documentation related to them was provided. Dr. Schumpelt provided a transcript from the September 15, 2015, meeting. The transcript reveals a discussion presumably by a Board member related to the August 18, 2015, and August 24, 2015, meetings. As discussed above, we have concluded that the violations from the August 15, 2015, meeting were cured. The discussions after the fact, do not constitute a violation.

Lastly, Dr. Schumpelt alleges that the Board engaged in a rolling quorum by conducting/ discussing business outside of an open meeting. In support of this assertion, he provides telephone and text message logs. The logs record a listing of communications between individual members of the Board and between board members and various individuals. The use of a rolling quorum to discuss public business or take action violates the OMA because it constitutes a meeting of a quorum of the public body's members outside of a properly notices, public meeting. See *Open Meeting Compliance Guide* p7. (8th ed. 2015) There is no evidence related to the substance of the communications or supporting the conclusion that telephone conversations between individual Board members or with particular employees and others involved the formation of public policy. There is insufficient evidence to determine an OMA violation.

John F. Kennedy

Feb 5, 2016

Page 3

We are encouraged by the Board's action in recognizing and taking immediate action to cure the deficiency related to the August 18, 2015, meeting. We trust that the actions taken to cure the prior deficiency reflect a good faith effort on the part of the Board to continue in full compliance with the OMA. If this office can be of any further assistance, please do not hesitate to contact us.

Very truly yours,



Susan Sullivan

Assistant Attorney General

cc: Adam Begaye

Charlie Jones

Dr. George Schumpelt

OPEN MEETING ACT ("OMA") COMPLAINT FORM

New Mexico Office of the Attorney General
Open Government Division

Your Contact Information:

First Name: Charlie Last Name: Jones

Address: _____

City: _____ State: _____ 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): Central Consolidated School District (Shiprock, NM)
Randy Manning, Christina Aspaas, Ruthda Thomas

Specific date(s) of OMA violation(s): August 18, 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.

Please Refer to the Attached complaint letter.

In addition to the check list provided above, the illegal actions taken the other CCSD Board members to discharge Superintendent Don Levinski and appointment of Colleen Bowman as acting superintendent did not meet the "emergency" definition or "emergency" requirements of the Open Meetings Act.

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

A copy of the meeting notice/agenda and current Open Meetings Act resolution are attached to the complaint letter

OPEN MEETING ACT ("OMA") COMPLAINT FORM

New Mexico Office of the Attorney General

Open Government Division

Your Contact Information:

First Name: Adam Last Name: Begaye

Address: _____

City: _____ State: _____ 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): Central Consolidated School District (Shiprock, NM)
Randy Manning, Christina Aspaas, Ruthda Thomas

Specific date(s) of OMA violation(s): August 18, 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.

Please Refer to the Attached complaint letter.

In addition to the check list provided above, the illegal actions taken the other CCSD Board members to discharge Superintendent Don Levinski and appointment of Colleen Bowman as acting superintendent did not meet the "emergency" definition or "emergency" requirements of the Open Meetings Act.

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

A copy of the meeting notice/agenda and current Open Meetings Act resolution are attached to the complaint letter

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

Contact Information:

Dr. George Schumpelt
Director of Legal Services and School Board Policy
Central Consolidated School District

As Director of Legal Services for Central Consolidated School District, it is my responsibility to report the following violation of New Mexico School law: NMSA1978, Sections 10-15-1 to 10-15-4.

Name of Public Body that is the Subject of this Complaint Central Consolidated School District, Shiprock, New Mexico 87420

Specific date(s) of OMA violation(s): August 18, 2015 (Minutes Attached), August 24, 2015 (Minutes Attached), September 15, 2015 (Minutes Attached).

ALLEGED VIOLATIONS OF THE OMA BY THE PUBLIC BODY 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.
- 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

CLOSED MEETINGS

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).

DETAILED EXPLANATION OF ALLEGED OMA VIOLATIONS