



## Attorney General of New Mexico

**HECTOR H. BALDERAS**  
Attorney General

March 10, 2016

Adolfo Lucero  
Commission Chairman  
De Baca County Board of County Commissioners  
P.O. Box 347  
Fort Sumner, NM 88119

**RE: Open Meetings Act Complaint; Kimberly Conner**

Dear Mr. Lucero:

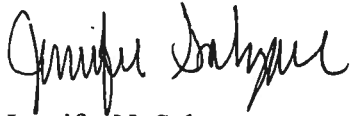
Thank you for responding to our request for information regarding the complaint filed by Kimberly Conner alleging that the De Baca County Board of County Commissioners ("Commission") violated the Open Meetings Act ("OMA"), NMSA 1978, Sections 10-15-1 through -4 (2013), by discussing budget matters during an executive session held on July 24, 2015.

In a letter to the Office of the Attorney General ("OAG") dated November 17, 2015, the Commission denies discussing the County budget during the executive session portion of the meeting held on July 24, 2015. Based upon the information available to us at this time, we must presume that the Commission acted in accordance with the law. *See* NMSA 1978, § 10-15-3(A) (explaining that there is a presumption that a public body acted in accordance with the OMA). The Commission concedes, however, that there were OMA violations that occurred at the July 24, 2015 meeting. Specifically, the Commission admits that it went into a closed executive session to discuss pending litigation even though the particular items discussed were not listed on the agenda. The Commission's letter to the OAG characterizes this action as an "unfortunate oversight." The OMA provides that a public body can legally correct, or cure, prior mistakes and give legal force to its prior invalid actions. *See* § 10-15-3(B). In order to cure its prior OMA violations, at its next properly noticed public meeting, the Commission must state that it went into executive session at the July 24, 2015 meeting, and identify the items discussed during that executive session.

In enforcing the law, the OAG educates public bodies about their obligations under the OMA. We trust that the Commission will take all necessary steps to ensure its future compliance with the law. A copy of the most recent edition of the Attorney General's Open Meetings Act

Compliance Guide can be found online at <http://www.nmag.gov/oma-and-ipra-nm-sunshine-laws.aspx>. In addition, we strongly encourage you to attend an Attorney General Open Meetings Act training; please find a schedule of upcoming trainings enclosed. If you have any questions about the specific matters addressed in this letter, please do not hesitate to contact our office.

Sincerely,



Jennifer N. Salazar  
Assistant Attorney General

Enclosures as stated

cc: Timothy Rose, District Attorney w/o enclosure  
Kimberly Conner w/o enclosure

**OPEN MEETING ACT ("OMA") COMPLAINT FORM**

New Mexico Office of the Attorney General  
Open Government Division

2015 SEP 10 11:00:00

**Your Contact Information:**

First Name: KIMBERLY Last Name: CONNER

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

City: FM State:     Zip Code:    

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

Email: N/A

Name of Public Body that is the Subject of this Complaint (including city/town, district, county or region, if applicable): DE BACA COUNTY BOARD OF COUNTY COMMISSIONERS

Specific date(s) of OMA violation(s): 07-28-15 / 07-24-15

**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.

REFER TO ATTACHMENT A

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

REFER TO ATTACHMENTS B-F

## Attachment "A"

On July 24, 2015, the De Baca County Board of County Commissioners began the posted "Budget Workshop" meeting by going into executive session for "pending litigation". This is in violation of OMA for two reasons. First, the Executive Session was not listed as an agenda item and second, no attorney was present to attach the Attorney/Client privilege. All Department Heads, including the Human Resources Director, were excused under the "Executive Session", however, Financial Specialist, Nicole Moyer, was allowed to attend the session. The Board and the Financial Specialist discussed budget during the session as was evident when Department Heads were allowed back in and very little discussion took place regarding the budget. It was clear by the language and actions of the Board that decisions regarding budget were made during the Executive Session. In my conversations with Village Officials later in the week, I was told that certain budget decisions had been made during that meeting. These decisions were not made during the budget workshop portion of the meeting and are not included in the approved minutes. It is clear that those decisions were made behind closed doors during the illegal executive session. The minutes of the meeting indicate that one Sheriff's Deputy position would be cut.

On July 28, 2015, the Board of County Commissioners met in a regular meeting and passed the final budget. It was during this meeting that it was learned that the Board had cut two Deputy Sheriff positions when passing the final budget. This decision was made without the knowledge or consent of the Sheriff. It is clear that the Board circumvented the spirit of OMA and made decisions regarding the reduction of law enforcement behind closed doors in an attempt to hide their actions from the public. It was only after the Sheriff requested to advertise to fill the final position that it was learned that the Board had cut the position in secret. Nobody that was present in the "Budget Workshop" can recall discussion regarding cutting a 2<sup>nd</sup> Deputy Sheriff position. It was obvious by the words and actions of the Sheriff during the regular meeting that the Sheriff was not aware of the cut. Chairman, Adolpho Lucero, stated in the meeting that the Sheriff had agreed to the additional cut, however, the Sheriff emphatically denied knowing about the cut and complained that the County can not be adequately covered with a 33% reduction in law enforcement personnel. A review of the minutes of the budget workshop clearly indicates that only one Deputy Sheriff position would be cut.

The Board of County Commissioners discussed and took final action on an item reducing Sheriff's Office staff by an additional position. This item was never listed on any agenda and was never discussed in an open meeting.