



Russell, Richard <rrussell@nmag.gov>

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## FW: Open Meetings Act violations of the Health Sciences Academy

1 message

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Laverne Roller <lroller@nmag.gov>  
To: Richard Russell <rrussell@nmag.gov>

Tue, May 26, 2015 at 8:44 AM

**From:** HSA  
**Sent:** Thursday, May 14, 2015 10:17 AM  
**To:** lroller@nmag.gov  
**Subject:** Open Meetings Act violations of the Health Sciences Academy

The purpose of this email is explain:

### 1. Specific dates of potential Health Sciences Academy violation

- On April 23, 2014 the Health Sciences Academy held a special meeting of the charter school governing board.
- After the roll call vote a motion was made to modify the agenda. The motion passed, however action items not on the special meeting agenda were addressed, and voted upon. Several board members were removed involuntarily, and new members were appointed to the board, in violation of the Health Sciences Academy By Laws and the Open Meetings Act.
  
- Description of other circumstances surrounding the action of the Health Sciences Academy:
  - 2. At the same meeting, Ms. Abby Lewis, former Assistant Attorney General assigned to the NM Public Education Commission, appeared on behalf of the school administrator and took charge of the meeting.
  - Ms. Lewis and her firm, Inaccord.pro - see the Health Sciences Academy web site ( see [www.hsanm.org](http://www.hsanm.org)) - was subsequently awarded a contract for \$50,000.
  - This contract violates the prohibition that state employees refrain from contracting with an entity for a period of one year after the retire or leave public service. See 10.16.8 A and B.
  - The Health Sciences Academy and Ms. Lewis are precluded from entering into a contract, at this time, especially since Ms. Lewis intends to represent Health Sciences Academy before the NM Public Education Department.

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**RAPHAEL NEVINS**



## Attorney General Of New Mexico

**HECTOR H. BALDERAS**  
Attorney General

**ELIZABETH A. GLENN**  
Chief Deputy Attorney General

December 28, 2015

Raphael Nevins  
706 Solano Drive SE  
Albuquerque NM 87108

### **Re: Open Meetings Act Complaint – Health Sciences Academy**

Dear Mr. Nevins,

This letter is in response to the complaint you filed with this Office regarding possible violations of the Open Meetings Act (“OMA” or the “Act”), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013) at the April 23, 2015 board meeting of the Health Sciences Academy (“HSA”) located in Santa Teresa, New Mexico. You allege that the HSA Board took action on items that did not appear on the agenda for the April 23, 2015<sup>1</sup> meeting – specifically by removing board members and appointing new members to the board. You also raised several other issues in your complaint, however our determination is limited to whether any violations of the Act occurred.

We have reviewed your complaint, HSA’s response<sup>2</sup> to our inquiry, the agenda and minutes for the April 23, 2015 emergency meeting, and the agenda and minutes for the May 8-9, 2015 special meeting. It is unclear to this Office how certain actions taken by the Board at the April 23<sup>rd</sup> meeting pertained to the stated emergency circumstances which led to that meeting. Nevertheless, we believe that the Board cured OMA violations which may have occurred at the April 23, 2015 meeting when it re-discussed and voted again, on May 8-9, 2015, on the matters which it had voted on at the April 23<sup>rd</sup> meeting. Accordingly, and as discussed below, we conclude that although the Board may have violated OMA, the violation(s) have been cured.

The OMA provides in pertinent part that “[a]ny meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public...” Section 10-15-1(D). This Office considers ten days for regular meetings, three days for special meetings and 24 hours’ notice, if possible, for emergency meetings to be reasonable.

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<sup>1</sup> Your complaint states that the meeting was on April 23, 2014, however the agenda and minutes received from the HSA indicate that the meeting was on April 23, 2015.

<sup>2</sup> HSA’s response was submitted by Ms. Adriana Romero. Ms. Romero was appointed as board president at the April 23, 2015 meeting. In a letter to this Office dated July 28, 2015, Ms. Romero stated that “as of June 30, 2015, the school is no longer in operation and therefore the board is no longer a public body.”

See N.M. Att’y Gen. OMA Compliance Guide, 8<sup>th</sup> ed. 2015, p. 13 (“OMA Guide”). The OMA further provides that “[e]xcept for emergency matters, a public body shall take action only on items appearing on the agenda.” Section 10-15-1(F). The OMA defines “emergency” to mean “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.” *Id.* Within ten days of taking action on an emergency matter, the public body must report to this Office the action taken and the circumstances creating the emergency. *Id.*

1. The April 23, 2015 Meeting

Your complaint states that the April 23<sup>rd</sup> meeting was a special meeting. In contrast, Ms. Adriana Romero, HSA governing board president, stated that the April 23, 2015 meeting was “originally noticed as a special meeting, however the board chose not to adopt the special meeting noticed some days before but instead adopted the emergency meeting agenda posted the day before.”<sup>3</sup> Ms. Romero provided a copy of the Agenda for the April 23<sup>rd</sup> meeting, which is marked “Emergency Meeting Pursuant to NMSA 10-15-1(F)” and “Posted 04/21/2015”. Based on Ms. Romero’s statement that the board adopted an emergency agenda, and the fact that the agenda is marked “emergency”, we reviewed the April 23<sup>rd</sup> meeting for compliance with OMA’s emergency meeting requirements listed above. We note that that the emergency agenda was posted on April 21, 2015 for a meeting on April 23<sup>rd</sup>, thus meeting the 24 hours’ minimum notice for emergency meetings recommended in the OMA Guide.

Several items are listed on the April 23<sup>rd</sup> agenda, although the following two items pertain specifically to action on board composition:

4. Election of New Governing Board Member  
.....
6. Reorganization of the Governing Board

According to the Minutes, a majority of the board voted in favor of the following actions: under the Agenda item “Election of new Governing Board Member”, Dr. Brian Ormand was appointed to the board; under Agenda item “Reorganization of the Governing Board”, Raphael Nevins was removed as President and board member; board member Ms. Romero was appointed President; board member Joseph Tapia was appointed Vice President, and board member Elizabeth Acosta was appointed as Secretary.

OMA states that the agenda must contain “... a list of specific items of business to be discussed or transacted at the meeting...” Section 10-15-1(F). This requirement ensures that interested members of the public are given reasonable notice about the topics a public body plans on discussing or addressing at a meeting. OMA Guide, p. 17. Furthermore, a public body should avoid describing agenda items in general, broad or vague terms, which might be interpreted as an attempt to mislead the public about the business the public body intends to transact. *Id.* Items 4

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<sup>3</sup> Per Ms. Romero’s letter to this Office dated July 28, 2015.

and 6 of the Agenda pertain to changing the board composition, specifically the election of a new board member and reorganization of the board, respectively. We believe that items 4 and 6 are sufficiently specific with regard to the actions contemplated. We are unclear, however, as to how the election of a new board member and reorganization of the board pertains to the underlying “emergency”, as described below, which led to the April 23, 2015 meeting.

2. Reporting of emergency meeting pursuant to the OMA

By letter dated April 30, 2015, Ms. Romero informed this Office that the Board held an emergency meeting on April 23, 2015. In the letter, Ms. Romero states as follows:

“The circumstance creating this emergency was the vote of the Public Education Commission [PEC] to revoke the school’s charter. Failure to have this meeting would have resulted in substantial financial loss to the public body, including loss of the existence of this public body.

The actions taken at this meeting were:

1) *Reorganization of the Governing Board*, as well as authority to modify or cancel contracts to address the reasons for the revocation of the charter in an attempt to rectify the situation that resulted in the revocation. (*Emphasis added.*)

2) A vote to approve the school’s IDEA-B application as not doing so would have resulted in a loss to the school of monies for Special Education.”

As an initial matter, we note that HSA timely reported to this Office within ten days following the meeting the action taken and the circumstances creating the emergency, as required by Section 10-15-1(F). We agree, solely for purposes of this OMA determination, that revocation of the school’s charter was an “unforeseen circumstance[] that, if not addressed immediately by the public body, will likely result in ... substantial financial loss to the public body.” *Id.* While this Office appreciates HSA’s timely compliance with the emergency reporting requirement, we fail to see how the actions taken at the meeting to “reorganize the governing board”, i.e., elect a new member to the board, remove a member and reassign several other board members to different positions, pertained to or were necessary to address the emergency of the PEC’s vote to revoke the school’s charter. Accordingly, based on the information available to us at this time, we have determined that the actions reorganizing the board were not appropriately taken at the April 23, 2015 emergency meeting and therefore these actions violated OMA.

The OMA provides that “no resolution, rule, regulation, ordinance or action of the board . . . shall be valid unless taken or made at a meeting held in accordance with the requirements of [the OMA].” Section 10-15-3(A). Therefore, based on our conclusions discussed above, actions taken to reorganize the Board at its April 23, 2015 emergency meeting were invalid. *See* § 10-15-3(B). However, as described below, the Board has already acted to cure these violations by placing all actions taken at the April 23, 2015 meeting on the agenda for a properly noticed meeting and voting again on each action item.

3. The May 8-9, 2015 Meeting

On May 5, 2015, HSA posted an agenda for a special board meeting to be held on May 8-9, 2015.<sup>4</sup> The meeting agenda includes several items, including the following pertaining to the April 23, 2015 meeting:

"May 8, 2015

4. Approval of Minutes from 04/23/2015 Governing Council Meeting

May 9, 2015

4. Ratification of Actions Taken at Emergency Meeting

...

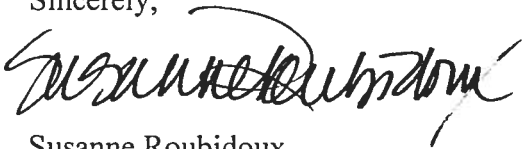
9. Decision on Whether to Appeal Public Education Commission Revocation"

The Minutes for the May 8-9, 2015 meeting reflect that on May 8-9, the Board voted again on each item that was noticed on the agenda for the April 23, 2015 meeting, including specifically the election of Dr. Ormand, the removal of Mr. Nevins, the appointment of Ms. Romero as President, Mr. Tapia as Vice President and Ms. Acosta as Secretary.

A public body that has violated the OMA is provided the opportunity to correct the violation and avoid an enforcement action. *See* Section 10-15-3(B). Based on the information available to us, and after consideration of the actions taken by the Board at the meeting held on May 8-9, 2015, we conclude that the Board has cured the OMA violations alleged in your complaint and described by us in this letter.

We appreciate you bringing this matter to our attention.

Sincerely,



Susanne Roubidoux  
Assistant Attorney General

cc: Adriana Romero, Health Sciences Academy  
Daniel A. Ivy-Soto, Attorney for Health Sciences Academy

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<sup>4</sup> In her July 28, 2015 letter, Ms. Romero stated that "... as a precaution anticipating that Mr. Nevins would file a complaint about the emergency meeting because the decisions made at the meeting were not in his favor, the governing board ratified all of the decisions made at the emergency meeting at the subsequent meeting of the board on May 9, 2015."