



Attorney General Of New Mexico

HECTOR H. BALDERAS
Attorney General

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Chief Deputy Attorney General

February 23, 2016.

Lamy Mutual Domestic Water Association
Paul W. Grace, L.L.C.
117 North Guadalupe Street, Suite A
Santa Fe NM 87501

Re: Determination of Open Meetings Act Complaint

Dear Mr. Grace:

Thank you for your response to our request for information and for the documentation you provided regarding a complaint from Mr. Bob Sarr alleging that the Lamy Mutual Domestic Water Association (“Association”) violated the Open Meetings Act (“OMA”), NMSA 1978, § 10-15-1 through 10-15-4, during one or more meetings in 2015. Specifically, Mr. Sarr alleges that the public body took action on items that were not listed on the agenda. I have reviewed Mr. Sarr’s complaint, the Association’s response, the relevant agenda, minutes and the OMA. This determination addresses only the issue subject to the complaint. As discussed below, it appears that the Association violated the OMA as alleged in the complaint and subsequently cured the violation.

Mr. Starr complains that while the agenda for the June 18th meeting lists “a base rate committee”, the minutes reflect that action was taken on the actual base rate increase. Section 10-15-1 (F) of the OMA 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 no vote would be taken and the action item referenced involved only the appointment of a committee. This lack of specificity conflicts with the OMA notice requirements. We find that the agenda for the June 18, 2015 meeting lacked specificity to ensure that the public had notice of the actions taken by the public body.


LMDWA
Feb 23, 2016
Page 2

The OMA provides that “No ... ordinance or 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.” Under the OMA an invalid action can be cured.

It appears that subsequent to learning of the complaint filed with the Office of the Attorney General, the Association took action to correct the June 18, 2015 deficiency. The Association apparently recognized that it may have violated the OMA and followed these procedures set forth in §10-15-3(B) by placing the issue of base rate increase on the agenda for its August 18, 2015 meeting. That agenda lists both the base rate increase and ratification of the base rate increase as specific agenda items. The minutes reflect that a vote was taken on the listed items. It thus appears that the Association cured the deficiency of specificity by convening and holding a later meeting, re- discussing the matters considered at its prior meeting and voting again on these matters. We believe these remedial steps have brought the Association into compliance with the OMA.

Further, we are encouraged by the meeting minutes from August 18, 2015, whereby the Association took action to retain you as attorney for services which include consultation on agendas. To assist you in your efforts in working with the Association, I have provided you with copies of the Attorney General’s Open Meetings Act Compliance Guide. We trust that these actions to educate itself and obtain legal consultation reflect a good faith effort on the part of the Association to continue in the process of full compliance with the OMA. If this office can be of any further assistance in this process, please do not hesitate to contact us.

Very truly yours,


Susan Sullivan
Assistant Attorney General

cc: Bob Sarr

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

Your Contact Information:

First Name: Bob Last Name: SARR

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): Lamy Mutual Domestic Water Association

Specific date(s) of OMA violation(s): June 16, 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

At 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.

Detailed Explanation of Alleged OMA Violations:

The April 21, 2015 minutes of the Lamy Mutual Domestic Water Association state, "**Base Rate Increase:** Put on agenda at annual meeting which is to be next month." (May '15) A base rate increase was not put on the agenda. (Draft minutes of the May meeting are not yet available) A member made a proposal to create a committee composed of board and non board members to study the financial situation and make a rate increase recommendation. This proposal was voted on and accepted by the membership and the board.

Agenda published for the June board meeting listed the creation of the base rate study committee as an agenda item. There was no item stating that a base rate increase would be considered at the June meeting. Copy of June agenda attached.

At the June meeting a motion was made and seconded to increase the base rate. Eventually a base rate increase of \$5 a month was passed. The minutes attached describe the process and result.

Not only is it inappropriate for the board to pass a rate increase when the proposed action is not listed on the agenda but it is particularly problematic when the agenda says that a committee is being formed to study the financial situation and make rate increase recommendations. The discussion and voting which led to the decision I contest was an ill informed largely emotional discussion. The \$5 increase that passed was seen by some on the board as a "better than nothing" option although most informed parties believe the committee if allowed to function will recommend a greater increase or other action to shore up the financial situation. The inappropriate action taken weakens the process and reduces the opportunity for a good decision.