

OPEN MEETING ACT ("OMA") COMPLAINT FORM

New Mexico Office of the Attorney General

Open Government Division

Your Contact Information:

First Name: Steffani Last Name: Cochran

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): New Mexico Gaming Control Board

Specific date(s) of OMA violation(s): 7/15/15

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.

Please see attached letter

Lined area for providing a detailed explanation of alleged OMA violations.

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



Attorney General Of New Mexico

HECTOR H. BALDERAS
Attorney General

ELIZABETH A. GLENN
Chief Deputy Attorney General

January 20, 2016

Ms. Carrie A. Frias, Acting Chief General Counsel
Pueblo of Pojoaque
Legal Department
58 Cities of Gold Road, Suite 5
Santa Fe, NM 87506

RE: Open Meetings Act Complaint against the Gaming Control Board

Dear Ms. Frias:

This Office has completed its review of the complaint submitted by former Chief General Counsel Steffani Cochran alleging that the New Mexico Gaming Control Board ("Board") violated the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013) (the "Act") at its July 15, 2015 meeting. Specifically, the Pueblo of Pojoaque ("Pueblo") alleged that the Board improperly discussed the Pueblo's continued operation of its Class III gaming facilities after the expiration of the 2001 Tribal-State Gaming Compact during the executive session at that meeting. As part of our review, we considered materials attached to the complaint, the materials and responses provided by the Board in response to the complaint (a copy of which was provided to your office), as well as your letter dated October 5, 2015 addressing the Board's response. Based on the information available to this Office and as explained more fully below, we conclude that Board's actions in questions did not violate the Act.

As noted in your complaint, the agenda for the Board's July 15, 2015 meeting included notice that during executive session the Board would discuss "Tribal Gaming Matters (Confidential Pursuant to Section 4(E)(3) of the 2001 Compact) 1. Various Compliance Issues." You further noted that upon returning to open session at that meeting the Board "placed in abeyance approval of applications for license or renewal of vendors doing business with the Pueblo's gaming operations." Your complaint included a letter emailed from the Pueblo to the Board on July 13, 2015 alerting the Board that it was the position of the Pueblo that the Board would be in violation of the Act if it discussed taking action against the Pueblo's vendors during executive session.

In its September 4, 2015 response to the Pueblo's complaint, the Board asserts that it did not discuss either tribal matters or personnel matters during the executive session of the July 15, 2015 meeting. The Board noted that although its Chairman's statement regarding what was discussed in executive session suggested tribal gaming matters had been discussed, he later stated at the August 19, 2015 meeting that his affirmation on July 15th was incorrect, and that the Board had in fact not discussed tribal gaming matters in executive session on July 15, 2015. Thus, while the Chairman's erroneous affirmation regarding what was discussed in executive session is concerning, we are unable to confirm a violation of the OMA.

The Act expressly creates a presumption that actions taken by public bodies at public meetings conform to the requirements of the Act. Section 10-15-3(A) (2013). As this office has recognized in the Open Meetings Act Compliance Guide, "[t]he presumption of validity established by Section 10-15-3(A) of the Act means that any action taken by a public body will stand unless challenged and proven otherwise." N.M. Atty. Gen. Open Meetings Act Compliance Guide, p. 38 (8th Ed. 2015) (emphasis added). In this case, the complaint points to several circumstances, including statements by Governor Martinez regarding vendors who continued to do business with Pueblo gaming enterprises after the expiration of the 2001 Compact, and the Board's decision upon leaving its executive session to take no action on the pending license and renewal applications of several Pueblo vendors, that support a supposition the Board discussed Pueblo gaming and compliance in closed session. However, without more, such circumstantial evidence does not overcome the Board's unequivocal denial that it discussed those matters in executive session at its July 15th meeting. Id.

Accordingly, we find no violation of the Act by the Board at the July 15, 2015 meeting as alleged in the complaint. However, in order to avoid confusion in future meetings where the Board intends not to discuss a matter listed on the agenda – particularly when listed under the executive session – we recommend the Board consider amending its agenda to delete items that it does not intend to discuss.

Your letter to this Office dated October 5, 2015 also expresses concern that the description contained in the Board's minutes of its action to defer action on vendor applications was insufficient and did not comply with the Act. The Act provides in relevant part: "The minutes shall include at a minimum . . . the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted." Section 10-15-1(G). The Act does not require that minutes contain description of arguments considered or the basis for a public body's action, only the action taken and how the members voted. Id., Open Meetings Act Compliance Guide, p. 38, (8th Ed. 2015). We therefore also find no violation of the Act in connection with the Board's minutes in question.

Although we do not find a violation of the Act, we thank you for bringing to our attention your concerns about possible violations. Please contact me if you have any questions about this determination.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Word". The signature is fluid and cursive, with a large initial "R" and "W".

Richard B. "Rick" Word
Assistant Attorney General
Open Government Division
Tel.: (505) 827-6029
Email: rword@namg.gov

cc: Steffani A. Cochran, Esq.
Stefen Sloane, Esq.
Donovan Lieurance