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September 14, 2016

Brandon Huss, Esq.  
Wallin, Huss and Associates LLC  
PO Box 696  
Moriarty, NM 87035

Re: Open Meetings Act Complaint – Lonnie Freyburger

Dear Mr. Huss:

We have reviewed the complaint filed by Lonnie Freyburger alleging that the Torrance County Commission (“Commission”) violated the Open Meetings Act, NMSA 1978, §§ 10-15-1 to -4 (2013) (“OMA”), and your response, on behalf of the Commission, to our inquiry regarding the complaint (“Response”). The complaint alleges that the Commission violated OMA’s requirements for notice of several meetings in 2015. Based on our review of the complaint, the Response, and applicable law, we are willing to provide the Commission with the benefit of the doubt in the January 19, and April 11, meetings that the Commission complied with OMA’s notice requirements. Nevertheless, as discussed below, we believe the notice for the March 15, 2015 meeting fell short of OMA’s requirements although the Commission did reconvene a meeting on March 18, 2015 to cure the deficiencies of the March 15, meeting.

First, Mr. Freyburger raises concerns related the January 19, 2015, special meeting notice. The OMA provides that, “any meeting of a quorum of the Board held to formulate public policy, take action or discuss public business may be held only after reasonable notice of the meeting’s date, time and location has been given to the public, so as to permit the public to attend.” *See* § 10-15-1(B), (D). In your Response provided and the attachments, we note that the notice appears to

have been published seventy two hours in advance of the special meeting, in the form of an agenda in which the Commission published and made available. As such, the notice meets the OMA requirements for a special meeting.

Second, Mr. Freyburger also raised concerns related to the constituent Meeting of April 11, 2015. He alleges that a quorum of members discussed public business without proper notice. There is a presumption that a public body acted in accordance with the OMA. *See* § 10-15-3(A). In the Response, the Commission states that the commissioners who attended the constituent meeting did not discuss public business with one another. The meeting was described as simply an opportunity for the public to express themselves to their commissioners. Thus, based on the information available at this time, we are unable to find sufficient evidence to overcome the presumption that the public body acted in accordance with the OMA. However, OMA's requirement for proper notice of a public meeting applies to any discussion of public business among a quorum of a public body's members. Therefore, the Commission should ensure that they refrain from discussing public business at public or private events so not to violate the OMA or appear to potentially violate the OMA.

Third, Mr. Freyburger alleges and the Response confirms that the Commission met on March 15, 2015, to select a nomination for the senate seat vacated by the resignation of Senator Phil Griego. The Response indicates that the Commission determined that the lack of representation at the legislative session represented an "unforeseen circumstance" which would "likely result in substantial financial loss to the" county. "An emergency is an action which could not be foreseen by the public body and that requires immediate attention by the public body to avoid imminent personal injury or property damage or substantial financial loss to the public body." *See Open Meetings Compliance Guide*, p. (8<sup>th</sup> ed. 2015). We do not find that there was sufficient justification presented to support the conclusion that the resignation of Senator Griego constituted an emergency as contemplated by the OMA. Moreover, the OMA requires that within ten (10) days of taking action on an emergency matter, the public body shall report to the attorney general's office the action taken and the circumstances creating the emergency. *See* § 10-15-1(F). We have no evidence that the Commission reported the emergency meeting to the Office of the Attorney General as required by law.

The OMA provides that, "no...action of any...policy making body shall be valid unless taken or made at a meeting in accordance with the requirements of NMSA 1978, § 10-15-1 to - 4." In the Response, the Commission 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 March 18, 2015, to select a nominee. Further, the minutes of the Commission's March 18, 2015, reflect the Commission's adoption of a resolution intended to cure the OMA violation. These remedial steps brought the Commission into compliance with the OMA.

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In enforcing the law, our office educates public bodies about their legal obligations under OMA. In the future, we trust that the Commission will ensure that it complies fully with the OMA. If you have any questions about this determination or OMA in general, please let me know.

Sincerely,

A handwritten signature in blue ink that reads "Dylan K. Lange". The signature is written in a cursive style with a large, looped initial "D".

Dylan K. Lange  
Assistant Attorney General

cc: Lonnie Freyburger

New Mexico Attorney General's Office

OMA Complaint 4/17/15

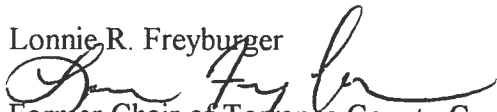
This is a complaint concerning multiple potential violations of the Open Meetings Act by the Torrance County Commission. The potential violations are listed below:

1. On 1/19/15, a Commission Meeting was held concerning the Estancia Valley Solid waste Authority loan application. This was discussed in the regular meeting on 1/14/15 and was tabled since the County Chair stated there was no hurry and could wait until the next scheduled meeting on 1/21/15. The County Chair, Mr. Leroy Candelaria met with the the EVSWA manager privately on 1/14/15 at 2:00pm and shortly after scheduled a meeting for the following Monday, 1/19/15, a legal holiday. There was no advertised of the meeting, the County Clerk was not notified to record, and the County Manager, Joy Ansley, who sets on the EVSWA Board of Directors only sent emails to the sitting Commissioners. The County Clerk later stated in the Public Meeting on 1/21/15 that she would have attended had she been notified. No County Personnel and very few attended the meeting due to the holiday and lack of notification to the public. An agreement to six years of EGRT taxes was committed to pay for the loan by EVSWA.
2. The second violation, was committed on 3/15/15. In the attempt to submit a name for the Governor to fill the vacant Senator position, the Commission met on Sunday afternoon. Prior to the Commission meeting, two Commissioners, Jim Frost and Leroy Candelaria attended the Republican Party meeting to help select a candidate, both participated in the meeting, both voted in the meeting for the candidate and all of this took place in the Commission Chambers. After selecting the candidate, both proceeded to the Commission table and waited for the third Commissioner to arrive. As soon as the Commission meeting began, the candidate that both Commissioners selected together, nominated the selection and rapidly took a vote to select. The third Commissioner objected to the rapid selection but was outvoted and the meeting was adjourned. In the regular meeting held on 3/18/15, they preselected the same candidate but the Democrat Chairman for Torrance County inquired as to why she was not notified and allowed to meet to select a candidate for consideration. She also ask who notified who, and it was Leroy Candelaria who had called and spoke to the Republican Chairman and then allowed them to meet prior to the Commission meeting in the public building.
3. The third violation occurred on 4/11/15. On this date, the County advertised to come speak with your Commissioner concerning a proposed road policy. Each Commissioner was to meet with their respective constituents concerning their Districts. Jim Frost met with people from his District 1 at 9:00am at the Edgewood Water Conservation Building. Attending was the County Manager and the Road Foreman. I attended the meeting and listened and partook in the discussions on how to improve the maintenance of County Roads. Mr. Frost explained that each Commissioner was meeting with the

public group and that the Commission would then meet in May to discuss a solution as to the needs of each group. Mrs. Ducharme's meeting was held at the Moriarty Civic Center at 2:00pm. I attended the meeting also and when I walked into the room, Mr. Frost was sitting at the back speaking with people about his meeting that morning. I spoke to him and stated that his being present was a violation, especially if he was speaking to constituents about his meeting. He denied that it was a violation, but as I watched, he took the time to state to everyone that came in, he was only there to watch and not participate. He was introduced in the meeting as the Commissioner for District One, the County Manager explained what had taken place at his meeting earlier that morning, and at the end, was asked if he had a comment which he said he did not. I believe he participated in the meeting by being there and listening to the other Commissioner's comments and preventing him from forming his own opinion, or was present to intimidate the other Commissioner and blocking her ideas prior to the Commission meeting. Either way, County business was discussed at length with a quorum present.

I beg you find reason to stop this blatant violation and help the County have a fair and equitable chance to have a fair and open government. The people of Torrance County deserve better than the "I will do what I want to" attitude that is present. Thank you for your help on this matter.

Lonnie R. Freyburger



Former Chair of Torrance County Commission.