

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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July 8, 2021

**VIA ELECTRONIC MAIL ONLY**

Dr. E. J. Johnson  
1808 Paseo de la Conquistadora  
Santa Fe, NM 87501  
Email: [ej734263@gmail.com](mailto:ej734263@gmail.com)

**Re: Open Meetings Act Complaint – West Las Vegas Schools Board of Education**

Dear Dr. Johnson:

This letter addresses the complaint you submitted to the Office of the Attorney General alleging that the West Las Vegas Schools Board of Education (the “Board”) violated the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013). Specifically, your complaint alleged that the Board violated OMA by failing to post a reasonably specific agenda at least seventy-two hours prior to its meeting on August 27, 2020. Having carefully considered both your complaint and the Board’s response to our inquiry, we have insufficient information to conclude that the Board violated OMA as alleged.

In New Mexico, the Open Meetings Act provides the public with access to “the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.” Section 10-15-1(A) (emphasis added). *See also Kleinberg v. Bd. of Educ. of Albuquerque Pub. Sch.*, 1988-NMCA-014, ¶ 18 (noting that “the public policy of this state, as expressed in the Act, is to conduct the public’s business in the open, allowing persons, so desiring, to attend and listen to the proceedings”). In line with the public policy behind the statute, OMA is broadly construed in favor of transparency. *See* Attorney General’s Open Meetings Act Compliance Guide, p. 7 (8th ed. 2015) (“OMA Guide”) (noting that “doubt as to the proper course of action should be resolved in favor of openness whenever possible”).

Your complaint to our Office alleges that the Board failed to post a reasonably specific agenda at least seventy-two hours prior to its special meeting held on August 27, 2020 at 4:00 PM. You argue that, approximately twenty-four hours prior to the meeting, you

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reviewed the agenda posted to the Board's website and found that it did not contain any items of business beyond a call of the meeting to order, the establishment of a quorum, the approval of an agenda, and an adjournment. However, upon visiting the Board's website sometime afterwards, you found an updated agenda containing one additional item of business, which read: "Work session to secure community input on and establish priorities for upcoming bond session." In effect, you argue that this demonstrates that the Board did not post its real agenda to its website at least seventy-two hours in advance of the meeting, as required by Section 10-15-1(F) of the Open Meetings Act.

In response to our inquiry into your complaint, the Board denies your allegation and maintains that the agenda "was provided... and posted at least 72 hours prior to the meeting." To substantiate this statement, the Board provided our Office with a copy of an email sent to the Las Vegas Optic on August 24, 2020 at approximately 1:21 PM, to which a copy of its meeting agenda was attached. This email was sent more than seventy-two hours prior to the meeting, and the attached agenda did include the "work session" language allegedly missing from the agenda you found on the Board's website. The Board further states that this agenda was posted to its website more than seventy-two hours before the meeting.

Based on these conflicting accounts of the posting of the agenda, we are unable to find that the Board has violated OMA as alleged. Notwithstanding your account of having located an agenda on the Board's website approximately twenty-four hours before the meeting that did not include the "work session" language, the Board maintains that the agenda which did include this language was posted timely, and it has provided evidence to support that assertion. As such, we do not have enough information to conclude that it violated OMA. We would emphasize, though, that you are correct that public bodies must, with only limited exceptions, post their agendas online at least seventy-two hours prior to that meeting and substantive items of business cannot be added after that deadline has passed. *See* § 10-15-1(F) ("Except in the case of an emergency or in the case of a public body that ordinarily meets more frequently than once per week, at least seventy-two hours prior to the meeting, the agenda shall be available to the public and posted on the public body's web site, if one is maintained.").

Finally, it is worth noting that the Board did not take formal action during the "work session" at the meeting on August 27, 2020. Although this alone would not necessarily excuse the Board from failing to include all items of business on its agenda, the fact that the Board did not take action would almost certainly render a violation, had it occurred, of a lesser magnitude. *See* § 10-15-3(A) ("No resolution, rule, regulation, ordinance or *action* of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.") (emphasis added).

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Because we do not have sufficient evidence to conclude that the Board violated OMA as alleged, we consider this matter closed. However, we appreciate you bringing possible violations to this office and will welcome any further complaints you may submit. If you have any concerns in the future, please do not hesitate to contact us. Additionally, the OMA Guide is available on the website of the Office of the Attorney General at [www.nmag.gov](http://www.nmag.gov).

Sincerely,



John Kreienkamp  
Assistant Attorney General

Enclosure

cc: Geno Zamora, Esq.  
Counsel to West Las Vegas Schools