

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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June 7, 2017

Brian VanDenzen  
Administrative Hearings Office  
P.O. Box 6400  
Santa Fe, NM 87502

Re: Open Meeting Act Complaint by Pete Callahan

Dear Mr. VanDenzen:

We are in receipt of an Open Meetings Act Complaint from Mr. Pete Callahan. He believes that violations of the Open Meetings Act ("OMA"), NMSA 1978, Sections 10-15-1 to 10-15-4 (as amended through 2013), occurred on January 7, 2016, in Santa Fe New Mexico. We have reviewed the complaint form, your response, and the applicable law. As discussed in more detail below, we conclude that the Administrative Hearing Officer did not violate the Open Meetings Act because the Open Meetings Act is not applicable to tax protest hearings.

**Summary of relevant facts:**

- A tax protest hearing was held in Santa Fe on January 7, 2016 regarding the protest of Springer Electric v. TRD.
- Mr. Callahan entered the hearing room and took a seat.
- Springer Electric did not request that the hearing be public.
- Mr. Mizner, attorney for Springer Electric objected to the presence of Mr. Callahan.
- Only named parties and witnesses were allowed in the hearing room.
- Mr. Callahan was asked to leave the hearing, which he did.

**Discussion:**

"Excepted from the rule that meetings of a public body are subject to OMA, are hearing officers specifically authorized by statute." Attorney General's Open Meetings Act Guide p. 9 (8th ed. 2015).

In those situations, the legislature has placed responsibility for holding a hearing with either the public body or the hearing officer, and the hearing officer's authority to hold a hearing is not based solely on delegation by the public body. Because, under these circumstances, the hearing officer

acts under separate authority rather than as a replacement for the public body and because such a statutory hearing officer is not itself a public body, a hearing held by the hearing officer would not be subject to OMA. *Id.*

In this case, The Administrative Hearing Officers Act specifically prohibits a tax protest hearings to be open to the public. See, NMSA 1978 § 7-1B-8<sup>1</sup>. Additionally, NMSA 1978, Section 7-1B-6, states that the Administrative Hearing Office shall “maintain confidentiality regarding taxpayer information as required by the provisions of NMSA 1978. § [7-1-8](#).” Therefore, the Open Meeting Act does not apply to the tax protest hearing which is the subject of this complaint.

### **Conclusion**

Because the Open Meetings Act is not applicable to tax protest hearings:

- there were no deficiencies in the notice of the hearing;
- there were no violations regarding the closed hearing;
- there were no violations in the conducting the hearing.

We therefore conclude that the Administrative Hearings Office did not violate the Open Meetings Act.

Sincerely,



Audrey K. McKee  
Assistant Attorney General

Cc: Peter Callahan

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<sup>1</sup> NMSA 1978 § 7-1B-8(B) states:

A taxpayer may appear at the hearing on the taxpayer's own behalf or may be represented by a bona fide employee, an attorney, a certified public accountant or, with respect only to tax imposed pursuant to the Income Tax Act [Chapter [7](#), Article [2](#) NMSA 1978], a person who is an enrolled agent for federal income tax purposes. If the taxation and revenue department and the taxpayer agree, the hearing may be conducted via videoconference. At the beginning of the hearing, the hearing officer shall inform the taxpayer of the taxpayer's right to representation. A hearing shall not be open to the public except upon request of the taxpayer. A hearing officer may postpone or continue a hearing at the hearing officer's discretion.

**OPEN MEETING ACT ("OMA") COMPLAINT FORM**

New Mexico Office of the Attorney General

Open Government Division

**Your Contact Information:**

First Name: Pete Last Name: Callahan

Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Phone Number: [REDACTED]

Email: [REDACTED]

Name of Public Body that is the Subject of this Complaint (including city/town, district, county or region, if applicable): Administrative Hearing Office

Specific date(s) of OMA violation(s): 1-7-2016

**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.

Attached please find:

- ① Amended Decision & Order (1st page)
- ② Assessor Callahan's statement
- ③ Motion for Order To Show Cause (1st page)

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

Pete Callahan  
25 Lake Front Blvd  
Mosquero, NM 87733

To Whom This May Concern:

I am Pete Callahan, an elected Assessor for the County of Harding. In that capacity I attended an Administrative Hearing in Santa Fe, January 2016 regarding the Protest of Springer Electric V. Taxation and Revenue Department. Prior to this Hearing there was a judicial determination in the form of a Writ of Mandamus instructing TRD/PTD to value certain power lines in Harding County. I thought the issue was concluded as a matter of law, however the Hearing took place.

The parties were Springer Electric, Property Tax Division and Taxation and Revenue. The Chief Hearing Officer was Brian VanDenzen.

The doors to the hearing room were open and I entered and took a seat. Numerous Co-op board members and officers were present.

The Hearing Officer stated that the attorney for Springer Electric (Mr. Mizner) objected to my presence. The Hearing Officer asked all Co-op members to sit on the right side of the hearing room. This left me being the only person sitting on the left hand side of the room.

I was asked to identify myself and explain why I thought I had a right to attend the Hearing. I said I thought it was an open meeting and the issue was about property in Harding County, and I was the Assessor.

The Hearing Officer stated that I should leave the Hearing.

I stated that I felt I should be included in the hearing and then I complied with his request that I leave.

I think the interests of Harding County, the Schools and other beneficiaries of property taxes were harmed.

As a politician I receive a few slings and arrows. It comes with the territory, but, no one should be ejected from a hearing by an objection from the party to a lawsuit.

Maybe I am wrong, but I feel the Administrative Hearing Officer did the wrong thing by excluding me from the meeting.

Sincerely,

Pete Callahan  
arc@plateautel.net

**STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT**

**BOARD OF COUNTY COMMISSIONERS,  
HARDING COUNTY, MOSQUERO MUNICIPAL SCHOOLS,  
BOARD OF EDUCATION and ROY MUNICIPAL  
SCHOOLS, BOARD OF EDUCATION,**

**Petitioners,**

**No. D-101-CV-2015-01239**

**vs.**

**NEW MEXICO TAXATION AND REVENUE  
DEPARTMENT and DEMESIA PADILLA,  
SECRETARY OF THE NEW MEXICO  
TAXATION AND REVENUE DEPARTMENT,**

**Respondents.**

**MOTION FOR ORDER TO SHOW CAUSE**

Petitioners, by and through their counsel, file this Motion for Order to Show Cause requesting that the Court order Respondents ("Department") to show cause why they should not be held in contempt of Court for failure to comply with the Court's Corrected Writ of Mandamus issued on October 27, 2015 ("Writ"). As petitioners will establish, *infra*, the Department has not complied with any of the Writ commands, and the non-compliance is willful.

**1. Introduction and Facts Supporting the Order to Show Cause**

Petitioners initiated this action by filing their Verified Petition for Writ of Mandamus on May 18, 2015. Petitioners' requested a writ of mandamus to compel the Department to perform its non-discretionary duty to value for property tax purposes certain electric

STATE OF NEW MEXICO  
ADMINISTRATIVE HEARINGS OFFICE  
PROPERTY TAX CODE

**FILED**

APR 27 2016 

State of New Mexico  
Administrative Hearings Office  
Santa Fe, New Mexico

**IN THE MATTER OF THE PROTEST OF  
SPRINGER ELECTRIC COOPERATIVE INC.  
TO NOTICE OF VALUATION FROM PROPERTY TAX DIVISION  
ISSUED ON March 21, 2012; April 23, 2013; April 28, 2014 and April 30, 2015**

**AMENDED DECISION AND ORDER**

An amended decision and order is being issued in this matter on April 27, 2016 to correct a persistent typographical error related to the acronym CIAC (which at points was incorrectly noted as CAIC) and to add the County Assessor to the Certificate of Service as required by NMSA 1978, Section 7-38-23 (B) (2015). No other substantive changes were made to the original decision and order issued on March 25, 2016.

A protest hearing occurred on the above captioned matter on January 27, 2016 before Brian VanDenzen, Esq., Chief Hearing Officer, in Santa Fe. At the hearing, Attorneys Richard C. Minzner and R. Tracy Sprouls appeared representing Springer Electric Cooperative Inc. ("Protestant"). Witnesses Jack Moss, David Spradling, Ofelia Melendez, Damian Lara, Kevin Groenewold, and Luis Reyes were called to testify by Protestant. Staff Attorney Gabrielle Dorian appeared representing the State of New Mexico Taxation and Revenue Department ("Department"). Michael O'Melia, Deputy Director of the Property Tax Division, and Elaisa Romero, Supervisor in the Property Tax Division, testified on behalf of the Department. Protestant Exhibits 1-5 and 7-12 were admitted into the record. Department Exhibits A-G were admitted into the record. All exhibits are more thoroughly described in the Administrative Exhibit Coversheet. Both parties submitted proposed findings of fact and conclusions of law, some of which were partially incorporated into the findings of fact and conclusions of law