

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

May 1, 2017

Elsa Kircher Cole, University Counsel
The University of New Mexico
MSC05 3440, 1 University of New Mexico
Albuquerque, NM 87131-0001

Re: Open Meetings Act Complaint – Associated Students of the University of New Mexico

Dear Ms. Cole:

We have reviewed the complaint dated April 5, 2016 alleging that meetings held by the Associated Students of the University of New Mexico (“ASUNM”) in January and February of 2016 violated the Open Meetings Act (“OMA”), NMSA 1978, §§ 10-15-1 to -4 (as amended through 2013), and ASUNM’s response to our inquiry regarding the complaint, *see* letter from Nasha Y. Torrez, Esq., to Dylan K. Lange, (May 6, 2016) (“ASUNM’s Response”). According to the complaint, ASUNM violated OMA by failing to make agendas available 72 hours before ASUNM Senate meetings and by failing to prepare and make available draft minutes within ten working days after the meetings. As discussed below, we conclude that ASUNM violated OMA as alleged in the complaint, but has since taken appropriate corrective action.

ASUNM Senate Meetings are Subject to OMA

As an initial matter, although ASUNM’s Response acknowledges that the ASUNM Senate voluntarily submits to OMA’s requirements, it questions whether OMA applies and is enforceable against the ASUNM. The answer to that question depends on whether ASUNM Senate is a “policymaking body” for purposes of OMA.

In pertinent part, OMA provides:

All meetings of a quorum of members of any ... *policymaking* body of any state agency ... held for the purpose of formulating public policy, ... discussing public business or for the purpose of taking any action within the authority or the delegated authority of any ... *policymaking* body are declared to be public meetings open to the public at all times....

Section 10-15-1(B) (emphasis added).

The ASUNM Senate is a “policymaking body” covered by OMA if the Senate has authority or delegated authority to make policy or final determinations affecting the administration and operations of the University of New Mexico.

The UNM Board of Regents expressly authorizes students “to provide for their own self-government in aspects of student affairs in accordance with Regents’ policies and student government constitutions approved by the Regents.” Regents’ Policy Manual – Section 4.1: Student Government (as amended through June 9, 1998). The Board of Regents recognizes ASUNM as the student government organization representing undergraduate students of UNM’s main campus. ASUNM’s constitution and any amendments to its constitution are “subject to approval and modification by the Board of Regents,” but the Board of Regents “intervene[s] in student government only in unusual circumstances or to ensure compliance with the law.” *Id.*

The ASUNM Constitution specifies the rights of undergraduate students, *see* ASUNM Const. art. I, § 2, and creates the ASUNM government, which is composed of a legislative, an executive and a judicial branch. *Id.* arts. II – IV. The constitution vests “all legislative powers of ASUNM Government ... in the Senate.” *Id.* art. II, § 1. The Senate is composed of twenty members elected by the undergraduate student body. *Id.* art. II, § 3. The Senate:

shall make all laws and regulations it deems necessary and proper for the ASUNM Government, prepare the budget, appropriate all funds of ASUNM ... approve or disapprove all appointments to constitutional and statutory student service agencies and legislative committees made by the [ASUNM Government] President and Vice-President, and impeach specified officials for due cause.

Id. art. II, § 2.

Aside from general oversight, the Board of Regents has delegated virtually all responsibility for undergraduate student government to ASUNM. The ASUNM Constitution vests the Senate with all legislative powers of the ASUNM Government, including authority to make laws and appropriate money. The exercise of those powers makes the Senate a quintessential policymaking body. As a policymaking body, the Senate’s meetings are subject to the requirements of OMA. *See also* ASUNM Law Book, Open Meetings Act, p. 66 (stating that ASUNM is a “public policy making body” and required to follow OMA) (updated Jan. 4, 2017) (on ASUNM website).

Meeting Agendas

OMA provides that the public notice of a meeting “shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda.” Section 10-15-1(F). Except for emergencies, as defined OMA, and public bodies that meet more than once a week, the agenda must be “available to the public and posted on the public body’s website” at least 72 hours before the meeting. *Id.*

According to the complaint, the ASUNM Senate did not post the agendas for its meetings held in January and February 2016 on its website. ASUNM's Response acknowledges that ASUNM may not have timely posted the meeting agendas on the ASUNM website but states that the agendas were available 48 hours in advance at the ASUNM Office and via email.

By failing to post agendas on its website at least 72 hours before the Senate's January and February 2016 meetings, ASUNM violated Section 10-15-1(F). However, according to ASUNM's Response, the Senate held a meeting on April 27, 2016, to address potential issues resulting from ASUNM's failure to timely post the agendas. During that meeting, the Senate re-voted on business conducted in meetings where the agendas had not been properly posted 72 hours in advance. *See* Agenda for Apr. 27, 2016 meeting, included in Exhibit D to ASUNM's Response.¹

OMA permits a public body to cure a violation by taking prompt corrective action. *See* Section 10-15-3(B); Attorney General's OMA Compliance Guide, pp. 40-41 (8th ed. 2015) ("OMA Compliance Guide") (available on the Office of Attorney General's website at www.nmag.gov). *See also New Mexico State Inv. Council v. Weinstein*, 2016-NMCA-069, ¶ 28, 382 P.3d 923, 946 (OMA violation may be cured if action is retaken at a meeting properly held in compliance with OMA's requirements), *cert. denied*, July 20, 2016. We conclude that the Senate's actions during the April 27, 2016 meeting effectively cured ASUNM's failure to post agendas for the Senate's January and February 2016 meetings.

Meeting Minutes

According to the complaint, ASUNM did not make copies of the minutes of Senate meetings available on the ASUNM website or respond to email requests for copies of minutes. ASUNM's Response states that, contrary to the allegations in the complaint, ASUNM makes draft minutes available upon request immediately following Senate meetings and makes final minutes available on ASUNM's website.

OMA requires a public body to keep written minutes of its open meetings. *See* Section 10-15-1(G). The minutes must include, "at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted." *Id.* Section 10-15-1(G) requires the public body to prepare draft minutes within ten working days after a meeting, and makes "all minutes," including draft minutes, "open to public inspection." Minutes are not official until they are approved by the public body.

In contrast to agendas, OMA does not require a public body to post meeting minutes on its website or otherwise specify procedures for making minutes available for public inspection. Nevertheless, based on the language of Section 10-15-1(G), we believe that regardless of how a public body makes them available - on its website, upon request or otherwise - draft minutes should be available no later

¹ ASUNM's Response states that, in addition to the agenda, the draft minutes for the April 27, 2016 meeting were attached as an exhibit, but we were unable to find that exhibit. For purposes of this determination, we assume that the draft minutes show that the Senate took the corrective action described in the agenda for the April 27 meeting.

than ten days after a meeting and official (or final) minutes should be available as soon as practicable after they are approved by the public body. *See OMA Compliance Guide, pp. 18-19.*

Although we do not have sufficient information to confirm whether, as stated in ASUNM's Response, ASUNM now makes draft minutes available upon request, it appears that ASUNM makes final meeting minutes, as well as meeting notices and agendas, available on its website. As of the date of this determination, the most recent minutes posted on ASUNM's website are for the February 22, 2017 Senate meeting. The official minutes for the Senate's March 8, March 29, and April 12 meetings, which the Senate would have approved at the March 29, April 12, and April 26 meetings, respectively, are not yet posted. Although not conclusive, the delay in posting final minutes on the ASUNM website suggests that ASUNM may need to further improve its procedures for making Senate minutes open to the public.

In addition to the issues addressed above, our review of the minutes available on ASUNM's websites shows that the Senate is not consistently adhering to Section 10-15-1(G)'s minimum requirements for minutes. Most significantly, the minutes often do not include "a record of decisions and votes taken that show how each member voted." Except for measures that pass unanimously, the minutes should provide sufficient information so that it is clear how individual members voted. *See OMA Compliance Guide, p. 19.*

Because ASUNM responded to the allegations in the complaint by acting promptly to correct its violation of OMA's requirements for posting meeting agendas and by making meeting minutes more readily available to the public, we believe they have undertaken the proper steps to cure the violations contained in the complaint. To ensure that it reliably complies with OMA, and avoids future complaints, we recommend that ASUNM carefully review its current procedures for Senate meetings and make any changes necessary to make them consistent with OMA. For additional guidance on complying with OMA, we encourage ASUNM to take advantage of resources provided by the Office of Attorney General, including the OMA Compliance Guide and OMA workshops.

If you have any questions about this determination or OMA in general, please let me know.

Sincerely,



Dylan K. Lange
Assistant Attorney General

cc: David Lynch

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

Your Contact Information:

First Name: David Last Name: Lynch

Address: [REDACTED]

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

Phone Number: [REDACTED]

Email: managingeditor@dailylobo.com

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

Specific date(s) of OMA violation(s): Jan. 25-27, 2016; Feb. 8-10, 2016; Feb. 22-24, 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)

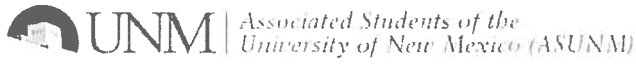
___ A committee was created by the public body that constitutes a policymaking body that formulated recommendations that were binding on the public body or otherwise established policy for the public body, outside of an open meeting

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.

I ~~have~~ covered ASUNM for the Daily Labo from Nov. 2014 - Dec. 2015. In that whole time, their website (asunm.com.nh) has not updated, but I will focus on this semester for the purpose of this complaint. ASUNM has not been posting their agendas online AT ALL let alone 72 hours before meetings. We always have to ask for agendas via e-mail. Even then, we only get them the day off, sometimes a few hours before the ~~next~~ meeting. They also do not post meeting minutes on their site, even though there is a clearly defined place to do so (see attached documents). All it says is "Check back in Spring 2016 for updates!" When I ask the ASUNM Communications Director via e-mail for meeting minutes, they have never responded. I've tried this multiple times to no avail. Further, ASUNM is not transparent with their online schedule for meetings, there is only the meeting dates for the fall semester (2015).

Thank you for your attention on this matter.
David Lynch, ~~David~~ *DL*
Managing Editor, Daily Labo

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



Quick Links

- Governing Documents
- Appreciation Request
- Job Application



ASUNM
 MSC03 Z210
 1 University of New Mexico
 Albuquerque, NM 87131

Physical Location:
 Student Union Building
 1016

Phone (505) 277-5528
 (505) 277-5528

UNM > [Home](#) > [\[Senate\]](#) > [Schedule](#)

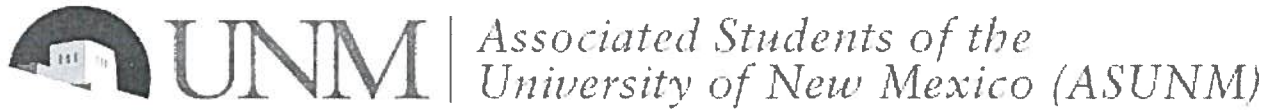
Schedule



**ASUNM SENATE MEETING SCHEDULE
 FALL 2015**

AUGUST 19, 2015:	COMMITTEE
AUGUST 26, 2015:	FULL SENATE
SEPTEMBER 2, 2015:	COMMITTEE
SEPTEMBER 9, 2015:	FULL SENATE
SEPTEMBER 16, 2015:	COMMITTEE
SEPTEMBER 23, 2015:	FULL SENATE
SEPTEMBER 30, 2015:	COMMITTEE
OCTOBER 7, 2015:	FULL SENATE
OCTOBER 14, 2015:	COMMITTEE
OCTOBER 21, 2015:	FULL SENATE
OCTOBER 28, 2015:	COMMITTEE
NOVEMBER 4, 2015:	FULL SENATE
NOVEMBER 11, 2015:	COMMITTEE
NOVEMBER 18, 2015:	FULL SENATE

**Full Senate Meetings will begin at 6:00 pm.
 All Committee Meetings will begin at 6:00 p.m.
 The locations of the meetings are as follows:
 FULL SENATE: SUB, LOBO A & B ROOM (3rd floor)
 Finance Committee: SUB, Lobo B (3rd floor)
 Outreach and Appointments Committee: SUB, Jemez Room (3rd floor)
 Steering and Rules Committee: SUB, Cherry/Silver (3rd floor)**



Quick Links

- [Governing Documents](#)
- [Appropriation Request](#)
- [Job Application](#)



ASUNM
MSC03 2210
1 University of New Mexico
Albuquerque, NM 87131

Physical Location:
Student Union Building
1016

Phone: (505) 277-5528
asunm@unm.edu

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Agendas/Minutes

Check back in Spring 2016 for an up to date page with ASUNM Senate meeting agendas and minutes!

Until then email asunm@unm.edu for any information.

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Legislation Tracker

We will be releasing all legislation that is passed through full senate on this page soon!

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Open Meetings Act

Article I: Open Meetings Act

Section 1. Open Meetings

In recognition of the fact that a representative government is dependent on an informed electorate and ASUNM is a public policy making body, it is required that ASUNM follow the Open Meetings Act of the State of New Mexico. (NMSA 10-15-1 to 4). All ASUNM senate meetings of quorum are declared to be open to the public at all times, except as otherwise provided by the Open Meetings Act of the State of New Mexico.

Article II: The ASUNM Senate

Section 1.

The ASUNM Senate is required to pass a Standing Resolution at the first meeting of each session of the ASUNM Senate. The Standing Resolution will provide the following information.

- A. Location, dates, and times of every full Senate meeting
- B. Guidelines for Emergency Meetings
- C. Requirements for informing the public as to the location, time, and date of every meeting of the full Senate and where the public can obtain an agenda
- D. Means of accommodating persons that may have a disability
- E. Guidelines for closing a meeting
- F. Guidelines for public input to an open meeting
- G. Procedure regarding the preparation and approval of the minutes