

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

July 10, 2017

VIA ELECTRONIC MAIL ONLY

Cebolleta Land Grant
HC-77, Box 6
Seboyeta, NM 87014

Richard Jaramillo
Email: cebolletita@aol.com

Phillip Chavez
Email: philrchavez@gmail.com

Debbie Lopez
Email: dlopez@phs.org

Kilino Marquez
Email: kilino.marquez@yahoo.com

William Hocker
Email: moquino@msn.com

Re: Open Meetings Act Complaint

Dear Cebolleta Land Grant Board of Trustees:

The Office of the Attorney General, Open Government Division ("OGD") has received a self-report regarding actions taken under an alleged "Emergency Situation" under the Open Meetings Act ("OMA"), NMSA 1978, Sections 10-15-1 to -4 (2013) by the Cebolleta Land Grant Board of Trustees ("Board of Trustees"), during its meeting held April 17, 2017. The OGD is charged with enforcement of the OMA. *See*, Section 10-15-3(B). We have reviewed the information provided by the Board of Trustees attorney, Charles N. Lakins, Esq. regarding the meeting held on April 17, 2017 along with the corresponding Agenda. Based on our review, as discussed in more detail below, we find that the Board of Trustees violated the OMA at its April 17, 2017 meeting, and the action taken to have a run-off election is thus invalid.

According to the information provided by Charles Lakins, Esq., a meeting was held on April 17, 2017, for the election of Board Officers, however, rather than electing Board Officers, the Board of Trustees took action that was not on its agenda. Attorney Lakins notes his letter was written in “the spirit of compliance with the 10-day self-reporting requirement of Section 10-15-1 (F) for “emergency” situations,” as he “considers the actions of the Board of Trustees to have been appropriate given the totality of circumstances.” However, it should be noted, he later states “the situation under which the three members of the Board acted was *not* an “Emergency Situation” in the strictest sense as defined in the OMA.” We agree that the action taken was not an emergency situation and we will address the allegations raised below.

April 17, 2017 Meeting

The Board of Trustees held a meeting on April 17, 2017. The notice for the meeting included an agenda. The items of business listed on the agenda were “1) Call to Order; 2) Roll Call; 3) Proof of notice of meeting; 4) Approval of Agenda; 5) Election of Officers (President, Vice-President, Secretary, Treasurer); 6) Next Meeting Date; 7) Comments from heirs; 8) Adjourn.” Agenda posted April 12, 2017

Mr. Lakins’ response primarily focused on the circumstances relating to the land grant election as purporting to be the emergency situation justifying the action taken by the Board of Trustees not listed on the agenda for the April 17, 2017 meeting. The official election results had already been determined on April 10, 2017 when the Board of Trustees met to canvass the votes. The meeting held on April 17, 2017 was intended for the election of Board Officers, however, rather than electing Board Officers, the Board of Trustees took action that was not on its agenda. Specifically, Board members Mr. Kilino Marquez, Mr. Phillip Chavez and Ms. Debbie Lopez voted to have a run-off election to be held by Mr. Jerry Pohl, Mr. Richard Jaramillo and Ms. Bernadette Marquez for two board positions. The action taken to have a “run-off election” violated OMA because the Board of Trustees did not provide notice of the action, the action to have a run-off election was not listed on the agenda and the action taken was not an emergency situation.

OMA applies to:

[a]ll meetings of a quorum of members of any board,... held for the purpose of formulating public policy, ... discussing public business or for the purpose of taking any action within the authority of ... [the] policymaking body....

§ 10-15-1(B). In pertinent part, OMA provides:

Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting.... [A]t least seventy-two hours prior to the meeting, the agenda shall be made available to the public and

posted on the public body's web site.... Except for emergency matters, a public body shall take action only on items appearing on the agenda....

§ 10-15-1(F). For purposes of Section 10-15-1 (F), an “emergency situation” refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body. We do not believe the action taken by the Board of Trustees meets the definition of an “emergency situation.”

As quoted above, Section 10-15-1(F) provides that an agenda must contain “a list of specific items of business” and a public body may act only on items appearing on the agenda. The purpose of the requirement for “a list of specific items of business” on the agenda is to give interested members of the public reasonable notice of the matters the public body intends to address at a meeting. *See* Attorney General’s OMA Compliance Guide, p. 17 (2015) (“OMA Guide”) (available on the Office of the Attorney General’s website at www.nmag.gov). Agenda items should not be described in overly broad, general, vague or other terms that may mislead the public. *Id.*

The posted agenda indicates that the Board of Trustees intended and members of the public expected that discussion and action taken at the meeting would be limited to only the listed items on the agenda. The April 17, 2017 meeting agenda included the Election of Officers. Based on the agenda, it would have been reasonable for members of the public to assume that the election had been concluded and the Board of Trustees would be limited to electing officers, not act to overturn the official election results for two positions on the board by voting to have a subsequent run-off election. The agenda for the April 17, 2017 meeting did not list any action specifically relating to a “run-off” election. Consequently, because the agenda did not contain notice of such action, and we do not find the action to constitute an “emergency situation” under the OMA, we believe the Board of Trustees action violated the underlying legislative intent, if not the precise letter, of Section 10-15-1(F).

We understand that it may seem expedient in some circumstances to act on matters not listed on the meeting agenda, however, Section 10-15-1(F) plainly limits a public body’s action – by formal vote or otherwise – to “specific items of business” listed on the agenda. We conclude that the Board of Trustees violated the OMA at its April 17, 2017 meeting, and the action taken outside of the stated agenda was not an emergency situation to be acted upon. Any action taken to have a run-off election is thus deemed invalid as are any subsequent actions that may have been taken regarding the run-off election if the violation has not been cured. It is our understanding that a meeting was held May 2, 2017 in regard to a run-off proclamation. Due to the April 17th violation, the matters taken on May 2, 2017 are also deemed invalid.

Please note that OMA permits a public body to cure a violation by taking prompt corrective action. *See e.g.*, Section 10-15-3(B); OMA Guide p. 38-41; *New Mexico State Inv. Council v. Weinstein*,

Cebolleta Land Grant

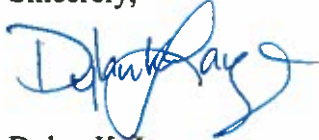
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2016-NMCA- 069, ¶ 28, 382 P.3d 923, 946 (OMA violation may be cured if action is retaken at a meeting properly held in compliance with the OMA's requirements), cert. denied, July 20, 2016.

If you have any questions about this determination or OMA in general, please do not hesitate to contact me.

Sincerely,



Dylan K. Lange

Assistant Attorney General

cc: Charles N. Lakins, Esq.