

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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August 18, 2016

Larry Thrower, City Attorney
City of Aztec
411 North Auburn Ave.
Farmington, NM 87401

Re: Open Meetings Act complaint – Joe Hubbard

Dear Mr. Thrower:

Thank you for providing information on behalf of the City of Aztec (“City”) regarding Joe Hubbard’s December 28, 2015 complaint to the Office of the Attorney General alleging that the City violated the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013), in relation to its December 21, 2015 Special Meeting. I have reviewed Mr. Hubbard’s complaint and your February 2, 2016 response. We conclude that by posting notice of the Special Meeting seventy-two hours in advance the City is in substantial compliance with the OMA. *See, Gutierrez v. City of Albuquerque*, 1981-NMSC-061, 96 N.M. 398, 631 P.2D 304 (S.Ct. 1981).

The OMA provides that a public body “at least seventy-two (72) hours prior to the meeting [shall make] the agenda [...] available to the public and posted on the website if one is maintained.” Section 10-15-1(F). It appears from your response that the Notice for the December 21, 2015 meeting was advertised and posted on December 17, 2015 well beyond the three day requirement for special meetings, and the City’s 2013 OMA Resolution. However, the OMA requires each public body adopt an OMA Resolution annually; therefore, the City needed to refer to its 2015 OMA Resolution. If the City has not yet adopted a more recent OMA Resolution, it should do so.

In addition, the footnote pertaining to Persons with Disabilities on the Special Meeting Agenda reads the “final agenda will be posted 24 hours prior to the meeting.” (Emphasis added). The OMA was amended by the Legislature in 2013 to require a final agenda for regular or special meetings be made available to the public and posted on the public body’s website, if one is maintained, at least seventy-two hours before the meeting. Please make the necessary correction.

Larry Thrower, City Attorney


August 18, 2016

Page 2

Finally, the City's 2013 OMA Resolution does not require that a Notice for a Special Meeting be published in a newspaper. If the City chooses to publish such a Notice for a Special Meeting in a newspaper, the City should adhere to the three day advance notice requirement and include information on how to obtain the agenda.

We trust the City will take all steps necessary to ensure compliance with the Open Meetings Act requirements. If you have questions about the specific matters addressed in this letter, or about the Open Meetings Act in general, please let me know.

Sincerely,



Dylan K. Lange
Assistant Attorney General

cc: Mr. Joe Hubbard

OPEN MEETING ACT ("OMA") COMPLAINT FORM DEC 28 AM 11:16
New Mexico Office of the Attorney General
Open Government Division
LR

Your Contact Information:

First Name: JOE Last Name: HUBBARD

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): CITY OF AZTEC, SAN JUAN COUNTY, NM

Specific date(s) of OMA violation(s): 12-21-2015

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)

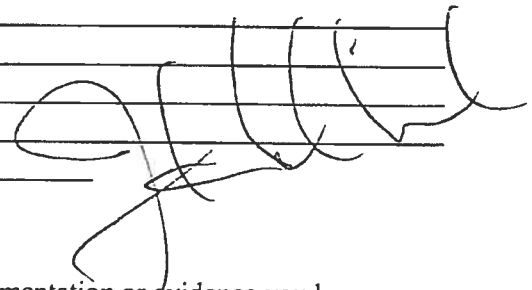
___ A committee was created by the public body that constitutes a policymaking body that formulated recommendations that were binding on the public body or otherwise established policy for the public body, outside of an open meeting

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.

WITH NO NOTICE POSTED ON THE CITY OF AZTEC WEBSITE NOTIFYING THE PUBLIC OF THE SPECIAL SESSION THAT WAS HELD ON DECEMBER 21, 2015, THE CITY OF AZTEC APPROVED A NEW ELECTRICAL CONTRACT.

THE FARMINGTON DAILY TIMES INFORMED THE PUBLIC THE MORNING OF THE MEETING, GIVING THE CITIZENS APPROXIMATELY 8 HOURS NOTIFICATION, AND NOT 72 HOURS.

AS A RESULT, CITY HALL APPROVED THE NEW CONTRACT WITHOUT PUBLIC INSPECTION.

A large, stylized handwritten signature in black ink, written over several horizontal lines. The signature is cursive and appears to be the name of the person providing the information.

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