

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

January 23, 2020

VIA ELECTRONIC MAIL ONLY

Las Vegas Lodgers Tax Advisory Board
Esther Garduño Montoya, Esq.
1700 N Grand Ave.
Las Vegas, NM 87701-4731
Email: emgarduno@yahoo.com

Re: Open Meetings Act Complaint – Lee Einer

Dear Ms. Montoya:

Thank you for your response to our inquiry into the complaint filed with the Office of the Attorney General by Mr. Lee Einer, alleging that the Las Vegas Lodgers Tax Advisory Board¹ (hereinafter the “Board”) violated the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013). As you know, Mr. Einer alleges that the Board violated OMA in connection with its approval of prior meeting minutes at its August 12, 2019 meeting. Having carefully reviewed both the complaint and your response, we conclude that the Board violated OMA in all of the respects alleged by Mr. Einer, including by taking action at its August 12, 2019 meeting on items not listed on the agenda and by previously voting to approve meeting minutes through email.

Background

The Open Meetings Act reflects the longstanding public policy of the State of New Mexico that the people are entitled to “the greatest possible information” regarding governmental affairs. Section 10-15-1(A). *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 order to facilitate this public policy, OMA declares that all meetings of all public

¹ In response to our inquiry into this complaint, the Board did not contest the fact that it was a public body for the purposes of the OMA.

bodies in New Mexico are open to the public, limited only by the few exceptions contained in the statute itself. Section 10-15-1. 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").

Mr. Einer's complaint alleges a number of violations of OMA arising out of the Board's approval of meeting minutes at its special meeting held on August 12, 2019. The agenda for that meeting did not include as an item of business (or even mention) the approval of prior meeting minutes. However, notwithstanding the absence of that item on the agenda, the draft minutes of the meeting show that the Board did indeed discuss and vote to approve its prior meeting minutes. The minutes themselves read as follows:

Krutik Bhakta indicates the approval of minutes should be on the agenda.

...

APPROVAL OF MINUTES:

Virginia Marrujo indicated all minutes were presented to the board and emailed to the board prior to the meeting. The minutes include the April minutes which voting was held through email. All minutes are included in meeting packets.

Emilio Aragon motions to approve minutes.

Allan seconded the motion as amended and all vote "Yes".

Motion Passes.

Notably, it is entirely unclear from the draft minutes of the meeting which particular meeting minutes the Board voted to approve. Although the Board's minutes clearly state that the Board voted through email to approve "the April minutes," the language in the (draft) August 12 minutes suggest that the Board was voting to approve the minutes from additional meetings.

In any event, based on the draft minutes and the Board's meeting on August 12, 2019, Mr. Einer's complaint alleges that the Board violated OMA in two ways. First, he argues that the Board's vote and action on its prior meeting minutes was a violation of OMA because it was not listed as an item of business on the agenda. Additionally, he argues that the Board had previously violated OMA by voting to approve the "April minutes" by email rather than in an open meeting. In addition, our review of the draft minutes from the August 12, 2019, meeting raised an additional issue as to whether they contain the requisite information required by OMA. We will review each of these three issues in turn.

Analysis

OMA requires that public bodies provide the public, at least seventy-two hours prior to any meeting, an agenda containing a list of specific items of business to be discussed or transacted. *See* § 10-15-1(F) (providing that agendas contain “a list of specific items of business to be discussed or transacted at the meeting” and be published in most cases “at least seventy-two hours prior to the meeting”). OMA states that, as a firm and inarguable rule, “Except for emergency matters, a public body shall take action *only* on items appearing on the agenda.” Section 10-15-1(F) (emphasis added). In interpreting OMA, our Office repeatedly has emphasized this requirement: public bodies simply cannot take action unless that item of business is listed on the agenda with reasonable specificity. *See, e.g.*, N.M. Atty. Gen. Letter to Christina J. Aspaas, at 3 (Aug. 30, 2019) (concluding that the Central Consolidated School District Board of Education violated OMA by appointing an interim superintendent despite that item of business not appearing on the agenda) and N.M. Atty. Gen. Letter to Kevin Gick, University of New Mexico, at 4 (Aug. 8, 2018) (concluding that the agenda item for “Discussion and Action on Athletics” was not reasonably specific enough to permit the Board of Regents to eliminate a number of specific athletics programs).

In applying this basic OMA principle to the Board’s meeting on August 12, 2019, we must agree with Mr. Einer that the Board violated OMA by voting to approve (unspecified) meeting minutes. As the agenda clearly did not contain any item of business even remotely related to meeting minutes, Section 10-15-1(F) inarguably operated to prohibit the Board from taking any action on them. As the Board seemingly recognized in response to our inquiry into this complaint, the Board’s action to approve these meeting minutes was taken in direct violation of OMA.

We also agree with Mr. Einer that the Board appears to have engaged in a relatively flagrant violation of OMA by voting through email to approve “the April minutes.” The Open Meetings Act – *obviously* – prohibits public bodies from taking action outside of an open meeting unless otherwise permitted by the statute itself. *See* § 10-15-1(A) (providing that “the conduct of business by vote shall not be conducted in closed meeting”). This includes voting to approve meeting minutes, which the statute itself specifies must be done at an open meeting. *See* § 10-15-1(G) (requiring that draft minutes “shall be approved, amended or disapproved at the next meeting where a quorum is present”). As a result, unless the Board’s statement in the August 12 minutes that “voting was held through email” was a typographical error, we conclude that this email vote was illegal and clearly a violation of OMA.²

Finally, we would identify one additional source of concern that Mr. Einer did not raise in his complaint. Based on our review of the Board’s draft minutes for the August 12, 2019 meeting, it does not appear that the draft minutes contain enough information as to the actions taken by the Board. Specifically, although the draft minutes show that the Board (improperly) voted to approve

² Voting through email is by definition a rolling quorum. *See* R. I. Att’y Gen. Op. No. 05-01 (2005) (explaining that a rolling quorum “typically involves the situation where public business is conducted in a series of individual encounters that may not constitute a quorum, but which collectively do so”).

“all minutes,” they do not specify which particular meeting minutes the Board voted to approve. This level of specificity as to the actions taken by the Board is required by OMA. *See* § 10-15-1(G) (providing that all meeting minutes must contain “the substance of the proposals considered and a record of any decisions and votes taken”). As a result, the Board should amend these draft minutes as soon as possible to provide more specific information as to which particular meeting minutes it voted to approve at the August 12, 2019 meeting.

Conclusion

Because we have concluded that the Board violated OMA as alleged by Mr. Einer’s complaint, we strongly advise it to take remedial action. *See Kleinberg, 1988-NMCA-014, ¶ 30* (holding that OMA permits public bodies to remedy past procedural violations of OMA by taking “prompt, appropriate and effective” action). This should consist of convening a new meeting to reconsider all of the unspecified meeting minutes that it improperly approved on August 12, 2019. Prior to holding this meeting, the Board will need to publish an agenda that is reasonably specific so as to alert the public as to the actions it may take. In addition, the Board should promptly revise its draft minutes in order to describe in more detail the actions that it took at the meeting on August 12, 2019.

In general, the Board must be more cognizant of its statutory responsibilities in the future. It is unacceptable for any public body in New Mexico to engage in such a flagrant violation of OMA as taking a vote on public business through email, and it is incumbent upon the Board to familiarize itself with its legal obligations to know not to engage in such misconduct. The public policy of the State of New Mexico is that the people are entitled to “the greatest possible information” as to the affairs of its government, and the Board must honor and abide by that principle. Section 10-15-1(A).

For your reference, a copy of the OMA Guide is available on the website of the Office of the Attorney General at www.nmag.gov. If you have any questions regarding this determination or OMA in general, please let me know.

Sincerely,



John Kreienkamp
Assistant Attorney General

Enclosure

cc: Lee Einer

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

Electronic Complaint Submission

Submission Detail

ECS Reference Number	NMOAG-ECS-20190905-1692
Final Submit Date	9/5/2019 4:07:24 PM

Disclosure of your complaint: This complaint is a public record, thus available under provisions of the NM Inspection of Public Records Act.

Disclosure to other entities: This complaint, its content, and other information may be disclosed to other law enforcement and regulatory agencies.

I understand this complaint and any submitted documents are public record and may be shared with other law enforcement and regulatory agencies.

DECLARATION: By submitting this form, I attest that the information in this complaint is true and accurate to the best of my knowledge. I further understand that by submitting this form I may be called to testify as a witness in this matter.

I understand declaration statement.

The New Mexico Office of the Attorney General cannot give legal advice regarding this complaint and will not act as your personal attorney. If you have questions regarding your rights please contact a private attorney.

Submission of this complaint is not confirmation that an investigation will be initiated.

Complaint Detail

Complaint Type Open Meetings (OMA) Complaint

Retained Attorney

Parties

Complainant

Mr. Lee Einer

Person

Address

[REDACTED]

Contact information

[REDACTED]
[REDACTED]

Complaint against

City of Las Vegas, NM - Casandra Fresquez, City Clerk

Public Body (Government Entity)

Address

1700 N. Grand Ave
Las Vegas, New Mexico 87701

Contact information

(505) 454-1401
www.lasvegasnm.gov

Complaint Specifics

Specific date(s) of OMA violation(s)	August 12, 2019
Agenda	Public body took action on items that were not listed on the agenda
Minutes	The minutes were not approved, amended, or disapproved at the next meeting where a quorum of the public body was present
Other Violation	The minutes of the August 12 meeting state in part, APPROVAL OF MINUTES: Virginia Marrujo indicated all minutes were presented to the board and emailed to the board prior to the meeting. The minutes include the April minutes which voting was held through email. The April minutes are not posted on the website and I have no further particulars, but how can voting held through email be compliant with OMA? The April 2 Lodgers Tax meeting agenda does not list any need for executive session. Minutes for multiple meetings were approved during the August 12 special meeting. Neither the agenda nor the minutes indicate which specific minutes were reviewed and approved, but this seems to be a violation of the requirement that minutes be approved at the next meeting where a quorum of the public body is present.

Transaction

Documents



Lodgers Tax Agenda August Special Meeting2019.pdf

Agenda packet for August 12 special Lodgers Tax Board meeting

Comments

Note, approval of minutes not on the agenda.



Lodger Tax Minutes Aug2019.pdf

Minutes of August 12 2019 Special Lodgers Tax meeting.

Comments

Approval of minutes added to agenda during meeting, then acted on during meeting.



Lodgers Tax Agenda April2019.pdf

April 2 2019 Lodgers Tax Agenda

Comments

No need for executive session listed.

*** END OF COMPLAINT ***



City of Las Vegas

1700 N. Grand Avenue | Las Vegas, NM 87701 | T 505.454.1401 | lasvegasnm.gov

Madam Mayor Tonita Gurulé-Girón

LODGERS TAX ADVISORY BOARD

REGULAR MEETING

CITY COUNCIL CHAMBERS

1700 N. GRAND AVENUE, LAS VEGAS NM 87701

Tuesday April 2, 2019 2:00pm - 5:00pm

AGENDA

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. APPROVAL OF MINUTES - JULY 2018 and NOVEMBER 2018 and JANUARY 2019
- V. PUBLIC INPUT - NOT TO EXCEED 5 MINUTES
- VI. INTRODUCTION/UPDATE OF NEW MEMBER
- VII. REQUEST FOR FUNDING FOR FIREMANS BALL
- VIII. PRESENTATION - VINCE CHAVEZ/ART TRUJILLO W/ ALBUQUERQUE JOURNAL
- IX. APPROVAL OF FUNDING FOR LAS VEGAS FILM FESTIVAL
- X. VISITOR GUIDE/DESTINATION GUIDE APPROVAL FOR FUNDING
- XI. APPROVAL OF FUNDING FOR THE NM TRUE FY20 GRANT
- XII. FRIENDS OF MUSEUM PROPOSAL
- XIII. GORDONS JEWELRY DISCUSSION
- XIV. SELECTION OF A NEW BOARD MEMBER CHAIR
- XVI. NEW AND OTHER BUSINESS
- XV. ADJOURNMENT



City of Las Vegas

1700 N. Grand Avenue | Las Vegas, NM 87701 | T 505.454.1401 | lasvegasnm.gov

Madam Mayor Tonita Gurulé-Girón

**LODGERS TAX ADVISORY BOARD
REGULAR MEETING
CITY COUNCIL CHAMBERS**

1700 N. GRAND AVENUE, LAS VEGAS NM 87701
Tuesday April 2, 2018 2:00pm - 5:00pm

ATTENTION PERSONS WITH DISABILITIES: The meeting room and facilities are accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office prior to the meeting so that arrangements may be made.

ATTENTION PERSONS ATTENDING LODGERS TAX ADVISORY BOARD MEETING: By entering the City Chambers, you consent to photography and audio recording.

NOTE: A final agenda will be posted 72 hours prior to the meeting. Copies of the agenda may be obtained from the website at www.lasvegasnm.gov or Community Development Department, 1700 N. Grand Avenue, Las Vegas, NM 87701.

DRAFT

LODGERS TAX ADVISORY BOARD SPECIAL MEETING MINUTES CITY COUNCIL CHAMBERS

1700 N. GRAND AVENUE, LAS VEGAS NM 87701

Monday August 12, 2019

2:00pm -5:00pm

ROLL CALL:

Meeting called at 2:03 p.m.

PRESENT:

Emilio Aragon

Allan Affeldt

Krutik Bhakta

Abraham Garcia (Late 5 min - Excused)

ABSENT:

APPROVAL OF AGENDA:

Krutik Bhakta indicates the approval of minutes should be on the agenda.

Kruik Bhakta asks if there is a motion to approve the agenda

Allan Affeldt made a motion to approve the agenda as amended.

Emilio Aragon seconded the motion.

All vote Yes.

APPROVAL OF MINUTES:

Virginia Marrujo indicated all minutes were presented to the board and emailed to the board prior to the meeting. The minutes include the April minutes which voting was held through email.

All minutes are included in meeting packets.

Emilio Aragon motions to approve minutes.

Allan seconded the motion as amended and all vote "Yes".

Motion Passes.

APPROVAL OF FUNDING FOR BILLBOARDS:

Krutik asks if these are the billboards which the board has had concerns.

DRAFT

Virginia Marrujo stated these billboards are not part of the concern. The billboards are part of a separate contract with Las Vegas First Independence Business Alliance. These particular billboards give us freedom of creative artwork. They are not restricted to just a photo, tag line and URL.

Virginia Marrujo stated the additional \$6,000 would be used for additional vinyl changes.

Allan Affeldt made a motion to approve funding.
Krutik Bhakta seconded the motion and all all vote "Yes".
Motion Passes.

APPROVAL OF FUNDING FOR CCHP:

Krutik asks if anyone is available from CCHP to present their event.

Virginia Marrujo states the representation for CCHP is usually the staff or board member Doyle Daves but neither are present.

Emilio Aragon made a motion to table the item for discussion.
Allan Affeldt seconded the motion and all vote "Yes".
Motion Passes.

APPROVAL OF FUNDING FOR CASTANEDA UNDER STARS:

Michael Peranteau presented information to the Lodger Tax board for funding of \$5000.

Krutik Bhakta asked why they number of tickets went from 300 to 250?

Michael explains the event will be held inside the Castaneda Hotel this year. He explains last year was held outside.

Abraham Garcia made a motion to approve funding.
Emilio Aragon seconded the motion and all vote "Yes".
Allan Affeldt made decision to abstain from vote.
Motion Passes.

DISCUSSION OF MEETINGS AND BUDGET MEETINGS:

Virginia Marrujo stated the reason she placed the discussion on the agenda was to create a budget meeting. The intention of the meeting is to break down the budget to distribute the funding properly. The Lodger Tax Advisory board did vote to enter the budget for 2019/2020 the same as 2018/2019.

Krutik Bhakta stated the items are on the agenda but never discussed. He stated the events take all the time of the meetings and then we do not complete the important discussion items.

DRAFT

Virginia Marrujo stated the reason for the meeting is to address the budget and the distribution process. She stated the process has been ready to present but have not been able to present at the meetings due to time. Virginia Marrujo requested the board hold the next meeting for the sole purpose of addressing the budget and event process. She stated any requests entered for the October meeting can be held at a special meeting to address their needs.

The board agreed the meeting needs to be held as they also have concerns to be addressed. The board and staff agreed to the meeting agenda items and a special meeting if needed.

NEW AND OTHER BUSINESS:

Wid Slick gave an update on state tourism department FY20 grant.

Steve Ledger gave a report on Fridays Al Fresco.

Allan Affeldt makes a motion to adjourn the meeting.

Abraham Garcia seconded the motion and all vote "Yes."

Motion Passes.



City of Las Vegas

1700 N. Grand Avenue | Las Vegas, NM 87701 | T 505.454.1401 | lasvegasnm.gov

Madam Mayor Tonita Gurulé-Girón

LODGERS TAX ADVISORY BOARD

SPECIAL MEETING

CITY COUNCIL CHAMBERS

1700 N. GRAND AVENUE, LAS VEGAS NM 87701

Monday August 12, 2019 2:00pm - 5:00pm

AGENDA

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. APPROVAL OF FUNDING FOR BILLBOARDS
- VIII. APPROVAL OF FUNDING FOR CCHP
- VI. APPROVAL OF FUNDING FOR CASTANEDA UNDER STARS
- VII. DISCUSSION OF MEETINGS AND BUDGET MEETING
- IX. NEW AND OTHER BUSINESS
- X. ADJOURNMENT



City of Las Vegas

1700 N. Grand Avenue | Las Vegas, NM 87701 | T 505.454.1401 | lasvegasnm.gov

Madam Mayor Tonita Gurulé-Girón

LODGERS TAX ADVISORY BOARD

SPECIAL MEETING

CITY COUNCIL CHAMBERS

1700 N. GRAND AVENUE, LAS VEGAS NM 87701

Monday August 12, 2019 2:00pm - 5:00pm

ATTENTION PERSONS WITH DISABILITIES: The meeting room and facilities are accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk's Office prior to the meeting so that arrangements may be made.

ATTENTION PERSONS ATTENDING LODGERS TAX ADVISORY BOARD MEETING: By entering the City Chambers, you consent to photography and audio recording.

NOTE: A final agenda will be posted 72 hours prior to the meeting. Copies of the agenda may be obtained from the website at www.lasvegasnm.gov or Community Development Department, 1700 N. Grand Avenue, Las Vegas, NM 87701.

David Ulibarri
Councilor Ward 1

Vince Howell
Councilor Ward 2

Barbara Perea-Casey
Councilor Ward 3

David G. Romero
Councilor Ward 4