

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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November 16, 2018

José Griego  
118 Lydia Street  
Clovis, NM 88101

**Re: Open Meetings Act Complaint – Clovis Community College**

Dear Mr. Griego:

We have reviewed your complaint alleging that the Clovis Community College Board of Trustees (“Board”) violated the Open Meetings Act, NMSA 1978, §§ 10-15-1 to -4 (1974, as amended through 2013) (“OMA”). According to your complaint, the Board violated OMA by (1) failing to provide public notice when it cancelled its April 5, 2017 meeting; (2) not allowing you to speak at the Board’s April 12, 2017 meeting; and (3) taking action on an item - administering the oath of office to two Trustees – that was not listed on the agenda.<sup>1</sup>

We also have reviewed the Board’s response to our inquiry regarding the complaint. *See* letter from David F. Richards, Greig & Richards, P.A. (July 11, 2017) (“Board’s Response”). As discussed below, based on our review and the information available to us at this time, we conclude that the Board did not violate OMA as alleged in the complaint.

1. Meeting Cancellation

We understand that the Board holds its regularly scheduled meetings on the first Wednesday of each month. According to your complaint, when you went to Clovis Community College for the Board’s meeting on April 5, 2017, you learned that the meeting had been cancelled and rescheduled for April 12. The complaint alleges that the meeting was cancelled and rescheduled without notice to the public.

OMA provides that a public body’s meetings may be held “only after reasonable notice to the public.” § 10-15-1(D). OMA does not require a public body to notify the public when a meeting is

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<sup>1</sup> The scope of our review is limited to allegations in the complaint that relate to the Board’s compliance with OMA. This determination does not address the complaint’s allegations regarding violations of laws other than OMA.

cancelled. Consequently, a public body may provide notice when a meeting is cancelled, but is not required to do so by OMA.

We note that, contrary to the allegations in the complaint, the Board provided advance notice to the public that the April 5 meeting had been cancelled. According to the agenda and minutes, the Board announced during its March 1, 2017 meeting that the meeting originally scheduled for April 5 was rescheduled for April 12. *See* March 1, 2017 meeting agenda and minutes (Board's Response, Exhibits 1 & 3). The Board also published notice of the April 12 meeting in the March 31, 2017 edition of the Eastern New Mexico News, which stated that the meeting had been moved from the originally scheduled date of April 5. *See* Board's Response, Exhibit 2. Although not required by OMA, the Board's efforts to notify the public about the cancelled meeting well in advance of the originally scheduled meeting date were reasonable and consistent with OMA's purpose of keeping the public informed about government affairs. *See* § 10-15-1(A).

## 2. Public Comment at a Meeting

The complaint alleges that you were not permitted to address the Board during the April 12 meeting. As discussed below, the Board did not violate OMA when it precluded you from speaking at the meeting.

With certain exceptions that do not apply here, OMA provides:

All meetings of any public body ... shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

§ 10-15-1(A). Under Section 10-15-1(A), a public body must permit interested members of the public to attend and listen to its meetings, and must reasonably accommodate the public's use of recording devices. OMA does not require a public body to permit members of the public to speak or comment during its meetings. A public body retains discretion to allow, limit or prohibit public comment at a meeting, provided the public body otherwise complies with OMA. *See* Attorney General's Open Meetings Act Compliance Guide, p. 6 & Example 2 (8<sup>th</sup> ed. 2015) ("OMA Compliance Guide") (available on the Office of Attorney General website at [www.nmag.gov](http://www.nmag.gov)).

## 3. Failure to List Oath of Office on Agenda

At the beginning of the April 12 meeting, District Court Judge David Reeb administered the oath of office to two Trustees whose terms of office began on April 1. *See* April 12, 2017 meeting minutes, p. 1 (Board's Response, Exhibit 6). The agenda for the April 12 meeting did not list the oath of office as an item of business.

OMA requires that meeting notices "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." § 10-15-1(F). In general, the agenda must be available to the public

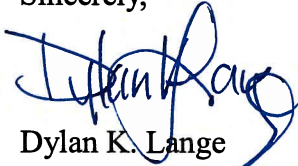
Mr. José Griego  
November 16, 2018  
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and posted on the public body's website, if one is maintained, at least 72 hours before the meeting. Except for emergency matters, as defined by OMA, "a public body shall take action only on items appearing on the agenda." *Id.*

Judge Reeb's administration of the oath of office to the two Trustees at the April 12, 2017 meeting did not constitute action by the Board. Because the Board did not act, the administration of the oath of office did not violate OMA even though it was not listed as an item of business on the meeting agenda.

Although we did not determine that the Board violated OMA as alleged in the complaint, we appreciate your bringing this matter to our attention. If you have any questions regarding this determination or OMA in general, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dylan K. Lange", written over a circular stamp or seal.

Dylan K. Lange  
Assistant Attorney General

cc: David F. Richards, Greig & Richards, P.A.

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

OFFICE OF THE ATTORNEY GENERAL  
MAY -5 AM 8:43

**Your Contact Information:**

First Name: Jose Last Name: Griego  
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):

Glovis Community College Glovis, NM Curry County

Specific date(s) of OMA violation(s): April 5<sup>th</sup> & April 12<sup>th</sup> 2017

**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

- 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.

APRIL 5<sup>th</sup> I attended the Clouis Community College meeting on the first wed. of the month April 5<sup>th</sup> 2017 8:00 AM. I asked our instructor if there was a Trustee Meeting? He called security to open the door Room 512, it was at that time I found out the meeting had been postponed for April 12<sup>th</sup> 2017 8:00 AM. There no postings at the entire way of Room 512. The meeting had been rescheduled for wed. April 12<sup>th</sup> 8:00 AM 2017, there was NO NOTICE in the Clouis local newspaper or on-line that the Trustee had been rescheduled from April 5<sup>th</sup> to April 12<sup>th</sup> 2017.

APRIL 12<sup>th</sup> ON APRIL 12<sup>th</sup> 2017 8:00 AM I attended the CCC Board of Trustee meeting Room 512. I signed the registry and sat down in attendance throughout the meeting. The first event that occurred was the oath of office for two Trustee Members (Mr Martinez & Mrs Leal) This swearing to office event was not posted on the Agenda - Mr. Martinez had been elected unopposed in March and Mrs. Leal was elected unopposed approximately one year before she was taken her oath of office. As the meeting progressed and a Quorum had been declared, I stood up and asked the chair, Mr. Raymond Montragon if I could address the board of Trustees. He stayed in rather a rude manner and NO, Sit Down I sat down the remainder of the meet. After the meeting I talked to Mr. Terry Martin, my representative member of the Board of Trustees the issues that I wanted to point out.

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

I Believe My 1<sup>st</sup> amendment Right to free speech was violated by Chairman Raymond Montragon please find enclosed and event that occurred on June 28, 2016



## *Board of Trustees*

# **AGENDA**

**April 12, 2017 • 8:00 a.m. • Room 512**

### **ROUTINE MATTERS**

1. Declare a Quorum
2. Approval of Agenda (action item)
3. Approval of March 1, 2017 Minutes (action item)
4. Board of Trustees Officer Elections (action item)
5. Employee Service Awards

### **OLD BUSINESS**

NONE

### **NEW BUSINESS**

#### **I. Instructional Matters**

- A. Fees (action item)
- B. Tuition Rate Change (action item)

### **NEW BUSINESS**

#### **II. Non-Instructional Matters**

- A. St. Pat's Racquetball Tournament
- B. Emeritus Status for Becky Carruthers (action item)
- C. Energy Savings Performance Contracting Project Submittal (action item)
- D. Budget Adjustment Request #2 for FY 2016-2017 (action item)
- E. Proposed Operating Budget for FY 2017-2018 (action item)

### **OTHER BUSINESS**

NONE

### **ANNOUNCEMENTS**

1. Next Meeting – May 3, 2017 | 8:00 a.m. | Room 512
2. Calendar of April Events



TO: Sandy Chancey, Executive Director – Eastern Plains Council of Governments

FROM: Jose A. Griego, Local Citizen – 118 Lydia Street, Clovis, New Mexico 88101

SUBJECT: Letter of Grievance – Raymond Mondragon, Economic Development

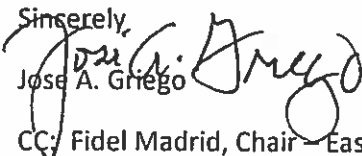
DATE: July 13, 2016

On June 28, 2016 I attended a Board of County Commissioners Meeting in Clovis, New Mexico. It was a rather lengthy meeting, lasting more than three hours in duration. I stayed throughout the meeting, as the Recognition of Visitors and Public Input was the last item on the Agenda. As I approached the Speaker's Podium, I addressed Chairman Bostwick and the Board of Commissioners with four of the five commissioners present.

My comments were primarily based as a Proposal Recommendation. I made an analogy using a local governmental community at Cannon Air Force Base, as a global community of its personal and the New Mexico State Fair as the ethnic diversity population of the State of New Mexico. I then turned the attention to our Curry County Fair and stated, "we have a Pioneer Village". I recommend three additional Village, to celebrated more the diversity of our county. We need an Indian Village, a Hispanic Village and an Afro-American Village. That been said, I thanked the commissioners and as I turned to exit the podium and before I reached my chair in the audience section, Mr. Mondragon abruptly stated to me, "that is the reason we have the Ethnic Affiliate," I responded to Mr. Mondragon, in the affirmative, "No, this is not working." I went on to say, if you want to make more comments on this, come to the podium and make your comment to the board of commissioners. Mr. Mondragon continued and made a rhetorical statement, that meant to say, "no, I won't listen to you." At that point of the exchange of dialog, Chairman Bostwick, said nothing and was not in charge of the spontaneous comments by Mr. Mondragon. Commissioner Angelica Baca, to close the discussion stated, "I will listen to his comments and recommendation" or something to this affect

In conclusion of this letter of Grievance, Mr. Mondragon has made a derogatory comment to me in another Public Meeting. Which leads me to believe he is suggesting an impasse to proceed and questions my first amendment right to free speech. It also appears, Mr. Mondragon is dancing to the beat of a different ambiance drummer and not adherent to the EPCOG Mission. Furthermore, the loss of the Home Rehabilitation Program has hurt man elderly citizens in this district. Also, the fact of the mismanagement of federal, state, and local funds has left this office in a cloud of doubt in your ability to serve the needs of citizens in this district.

As a former employee of EPCOG as Coordinator of Rural Development, I come from the Old School, you are all Ambassadors of EPCOG and if not, you can go somewhere else to milk the cow.

Sincerely,  
  
Jose A. Griego

CC: Fidel Madrid, Chair – Eastern Plains Council of Governments



The Law Offices of  
Erika E. Anderson

201 Third Street NW  
Suite 500  
Albuquerque, NM 87102  
(505)-944-9039  
(505)-944-9091 (fax)  
erika@eandersonlaw.com

August 8, 2016

Jose Griego  
118 Lydia Street  
Clovis, NM 88101

Dear Mr. Griego:

This law firm has been retained by the Eastern Plains Council of Governments (EPCOG) to respond to your Letter of Grievance against Raymond Mondragon, dated July 13, 2016. In your letter you allege that on June 28, 2016, during a Board of Curry County Commissioners ("County Commissioners) meeting, during public comment, Mr. Mondragon made inappropriate comments to you and that he had made a derogatory comment to you in another public meeting, which violated your United States Constitution and New Mexico Constitution First Amendment right to free speech. Based upon our investigation of this matter, we have determined that Mr. Mondragon did not violate your First Amendment right to free speech in any way during the June 28, 2016 County Commissioners meeting. We are also unaware of any other public meetings in which Mr. Mondragon allegedly violated your United States Constitution or New Mexico Constitution First Amendment right to free speech, and you have failed to provide an exact date. Therefore, your grievance is unfounded.

We have serious concerns, however, that after the June 28, 2016 County Commissioners meeting at approximately 1:30 pm, you went to the EPCOG office, and in front of other employees, threatened and harassed Mr. Mondragon in a loud and threatening voice. During this interaction, you told Mr. Mondragon that he needed to be careful because he worked for the government. You also inappropriately and disrespectfully referred to Mr. Mondragon as a "boy" and told him that he was "bought and sold and on a leash." Such harassment is completely unacceptable. If you continue to harass Mr. Mondragon or any of the employees at EPCOG, or engage in this type of conduct again, please be advised that EPCOG will file a criminal complaint against you for assault.

If you have any questions or want to discuss these issues further, please contact our office directly.

Sincerely,

  
Erika E. Anderson

EEA/mtf

cc: Sandy Chancey

**HARMON ♦ BARNETT ♦ MORRIS, P.C.**

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TYE C. HARMON, J.D.  
KAMERON BARNETT, J.D., LL.M.  
JARED MORRIS, J.D.  
HOLLIE L. BARNETT, J.D.

EST. 1999

August 22, 2016

Jose Griego  
118 Lydia  
Clovis, New Mexico 88101

**Re: *Raymond Mondragon***

Dear Mr. Griego,

Please be advised that my law firm, Harmon Barnett & Morris, P.C., has been retained by Mr. Raymond Mondragon due to his ongoing concerns with respect to your escalating behaviors and threats.

While Mr. Mondragon completely respects your freedom of speech and ability to voice your opinion during public meetings, he believes your actions and personal threats at his place of employment on or about June 28, 2016 crossed the line. Your name calling and threats of physical violence against Mr. Mondragon at his place of employment are not protected speech and must stop immediately.

Please be advised if your inappropriate and illegal conduct toward Mr. Mondragon does not cease, then my office and Mr. Mondragon will have no choice but to pursue all legal remedies including, but not limited to, obtaining a protective order and contacting law enforcement.

Thank you in advance for your cooperation in this matter.

Sincerely,



Tye C. Harmon

TCH/nd