

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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ATTORNEY GENERAL

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SONYA CARRASCO-TRUJILLO
Chief of Staff for Policy and Public Affairs

November 10, 2016

Debra L. Ingle, Operational Supervisor
Greentree Solid Waste Authority
P.O. Box 2405
Ruidoso Downs, NM 88346
Email: gswa@greentreeswa.org

Re: Open Meetings Act Complaint

Dear Ms. Ingle:

On September 20, 2016, the Office of the Attorney General Open Government Division ("OGD") received your complaint alleging that the County of Lincoln ("County") violated the Open Meeting Act ("OMA"), NMSA 1978, Sections 10-15-1 to -4 (2013).

The OGD received correspondence from the County on October 27, 2016, stating that once the County received notice of the OMA complaint dated October 14, 2016, out of an abundance of caution, it decided to hold another special meeting to affirm the actions that were taken on September 9, 2016. At the special meeting held October 25, 2016, the Commission adopted Resolution 2016-20 which, once again, affirmed the actions taken at the September 9, 2016 Commission meeting. The County provided a copy of its Resolution 2016-20 passed on October 25, 2016.

NMSA 1978, Section 10-15-3(B), allows a public body that receives written notice of a claimed violation, fifteen days from the day it receives the notice, to cure the violation if the public body decides the claim is valid and wants to avoid a lawsuit. At the meeting held to address the claimed violations, the public body must include a summary of the comments that were made at the meeting where the violation occurred. However, this does not mean that the public body must necessarily repeat the entire previous meeting.

Debra L. Ingle
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The OGD believes that the County has cured any potential violation by holding a subsequent special meeting and passing Resolution 2016-20. Therefore, the County 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). As such, we consider this matter closed.

Thank you for affording our office this opportunity to be of assistance.

Sincerely,



Dylan K. Lange
Assistant Attorney General

Cc: Nita Taylor, Lincoln County Manager

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

Your Contact Information:

First Name: Deora Last Name: Tingle

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): County of Lincoln

Specific date(s) of OMA violation(s): Sept 6 - Sept 9

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.

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



Greentree Solid Waste Authority

PO Box 2405/ 26590 US Hwy 70

Ruidoso Downs, NM 88346

*(575) 378-4697 * 1-877-548-8772 Fax (575) 378-4896*

www.greentreeswa.org

September 15, 2016

Office of the Attorney General
Open Government Division
P.O. Drawer 1508
Santa Fe, New Mexico 87504-1508

Re: Open Meetings Act Violation; County of Lincoln; Sept. 6-9, 2016

Dear Sir or Madam:

On September 9, 2016, the Lincoln County Commission held a special meeting. Notice of the meeting was not posted on the county's website. Also, the agenda did not include a list of specific items the commission would discuss. Instead, the emailed agenda was titled "Tentative Agenda," which generally suggest items that the commission might or might not be discuss. Further, the county did not provide information on how the public may obtain a copy of the agenda of specific items to be discussed.

Attached is a copy of the agenda that was emailed to me on September 6 and 8, 2016.

I've also attached a copy of the county's open meetings resolution. As you will see, the resolution does not comply with current law.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Debra L. Ingle".

Debra L. Ingle
Operational Supervisor
Greentree Solid Waste Authority
gswa@greentreeswa.org

2016 SEP 20 PM 9:14

ATTORNEY GENERAL

Debra Ingle

From: Billie-Jo Guevara <BGuevara@lincolncountynm.gov>
Sent: Tuesday, September 06, 2016 8:19 AM
To: Alan P Morel; Billie-Jo Guevara; Carol Virden (cvirden@ruidosodowns.us); Charlotte Emmons; 'Corona Village Hall'; Curt Temple; Dallas Draper; 'Debra Ingle' (gswa@greentreeswa.org); diane stallings (dcsontheroad@gmail.com); 'Dianne Stallings' ; distallings@windstream.net; Elaine Allen; Elaine Allen; 'George A Douds'; 'Harvey Twite'; 'James Miller Jr. Ph. D'; 'Jim Howard'; Judy Fitzpatrick; karyl williams; Kathleen Phillips-Hellman (mairimouse@gmail.com); Leann Weighbrecht; Lynn Willard ; MAJOR GAIL ; 'Marsha Palmer'; Mary Ann Siegel-Russ (siegbieg1@hotmail.com); Mary E Prudencio; Mike Caggiano (mcaggiano@scmr.cd.org); Nita Taylor; Patrice Brazie (pbrazie11@windstream.net); Peter Aguilar (j.p.aguilar44@hotmail.com); Preston Stone; Samantha Mendez; Santos, Alfred; Steve Duffy; Stuart Butzier ; SUE HUTCHISON (SUEHUTCH@VALORNET.COM); Tom Stewart; 'Todd Russell'; tom; 'Tony Seno'; Van Patton (gvpatton@gmail.com); Beverly Calaway; Donna Harkey; Kim Roper; Linda Archuleta; Paul Baca; Charlene "Punkin" Schlarb; Renee Montes; Rhonda Burrows; Robert Shepperd; Sherrie Huddleston; Whitney Whittaker; Yovanne Lucero
Subject: Special Commission Meeting

NOTICE OF SPECIAL COMMISSION MEETING September 9, 2016

NOTICE is hereby given that the Lincoln County Board of Commissioners will hold a Special Commission Meeting commencing at 8:30 am on Friday, September 9, 2016 in the Commission Chambers of the Courthouse, Carrizozo, New Mexico. A final agenda will be available 72 hours prior to the meeting. The tentative agenda is listed below:

Tentative Agenda September 9, 2016

1. Call to Order – 8:30 A.M.
2. Roll Call
3. Invocation
4. Pledge to State Flag "I salute the flag of the state of New Mexico, the Zia symbol of perfect friendship among united cultures."
5. Approval of Agenda
6. Approval of Consent agenda
 - a. Approval of Sun Valley Water & Sanitation District Mill Levy Request
7. Approval/Imposition of 2015-2016 Property Tax Rates
8. Approve Per Diem & Mileage Policy by Resolution 2016-10
9. Approve Resolution 2016-11 & Proclamation call for approval of a General Obligation Bond on the 2016 General Election for the funding and construction of a new hospital
10. Lincoln County Solid Waste Billing-Fox Run Subdivision
11. Signing of Official Documents

12. Next Meeting - Regular – September 27, 2016

13. Adjournment

Debra Ingle

From: zozocommunity@tularosa.net
Sent: Thursday, September 08, 2016 2:35 PM
To: zozolist@tularosa.net
Subject: [zozolist] Carrizozo Community News Update -- Special Lincoln County Commission Meeting

NOTICE OF
SPECIAL COMMISSION MEETING
September 9, 2016

NOTICE is hereby given that the *Lincoln County Board of Commissioners* will hold a Special Commission Meeting commencing at 8:30 am on Friday, September 9, in the Commission Chambers of the Courthouse, Carrizozo, NM. A final agenda will be available 72 hours prior to the meeting. The tentative agenda is listed below:

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September 9, 2016

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the Zia symbol of perfect friendship among united cultures."
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11. Signing of Official Documents
12. Next Meeting - Regular – September 27, 2016
13. Adjournment

RESOLUTION NO. 2015-17

OPEN MEETINGS ACT

WHEREAS, the Lincoln County Board of Commissioners met in regular session at Carrizozo, New Mexico, on the 17th day of November, 2015, at 8:30 a.m. as required by law; and

WHEREAS, Section 10-15-1(B) of the Open Meetings Act (NMSA 1978, Sections 10-15-1 to 10-15-4) states that, except as may be otherwise provided in the Constitution or the provisions of the Open Meetings Act, all meetings of a quorum of members of any board, council, commission, administrative adjudicatory body or other policymaking body of any state or local public agency held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and

WHEREAS, any meeting subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs shall be held only after reasonable notice to the public; and

WHEREAS, Section 10-15-1(D) of the Open Meetings Act requires the Lincoln County Board of Commissioners to determine annually what constitutes reasonable notice of its public meetings.

NOW, THEREFORE, BE IT RESOLVED by the Lincoln County Board of Commissioners that:

1. Regular meetings of the Lincoln County Board of Commissioners shall ordinarily be held each month at a time and place designated in the notice. The agenda will be available at least seventy-two (72) hours prior to the meeting from the Lincoln County Manager's Office located in the Lincoln County Courthouse, Carrizozo, New Mexico
2. Special meetings of the Lincoln County Board of Commissioners may be called by the Chairman or a majority of the members upon three (3) days' notice. The notice shall include an agenda for the meeting or information on how members of the public may obtain a copy of the agenda. The agenda shall be available to the public at least seventy-two (72) hours before any special meeting.
3. Emergency meetings of the Lincoln County Board of Commissioners will be called only under unforeseen circumstances that demand immediate action to protect the health, safety and property of citizens or to protect the public body from substantial financial loss. The Lincoln County Board of Commissioners will avoid emergency meetings whenever possible. Emergency meetings may be called by the Chairman or a majority of the members upon three (3) hours notice, unless threat of personal injury or property damage requires less notice. The

notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda.

4. For the purposes of regular meetings described in paragraph 1 of this resolution, notice requirements will be complied with by the Lincoln County Clerk's Office permanently posting on the bulletin board at the Lincoln County Courthouse a copy of this resolution, as well as a notice setting forth the days and times of the regular meetings which have been set by resolution. Changes effecting the date of a regular scheduled meeting will be mailed to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.
5. For the purposes of special meetings and emergency meetings described in paragraphs 2 and 3 of this resolution, notice requirements shall be met by posting notices in the offices of the Lincoln County Clerk and the Lincoln County Manager. The Lincoln County Manager's Office shall provide telephonic notice to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.

Every effort shall be made to follow the latest version of Robert's Rules of Order. Robert's Rules of Order shall be specifically modified to allow the Chairman to vote in all instances.

7. Individuals with disabilities who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in hearings or meetings may contact the County Manager's Office at 575-648-2385 at a suggested minimum of one (1) week prior to the hearing or meeting, or as soon as is possible. Individuals with disabilities who are in need of a summary or any other type of accessible format may contact the County Manager's Office.
8. The Lincoln County Board of Commissioners may close a meeting to the public only if the subject matter of such discussion or action is excepted from the open meeting requirement under Section 10-15-1(H) of the Open Meetings Act.
 - (1) If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of the Lincoln County Board of Commissioners taken during the open meeting. The authority for the closed meeting and the subjects to be discussed shall be stated with reasonable specificity in the motion to close and the vote of each individual member on the motion to close shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in the closed meeting.

- (2) If a closed meeting is conducted when the Lincoln County Board of Commissioners is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting and the subjects to be discussed with reasonable specificity, is given to the members and the general public.
 - (3) Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.
 - (4) Except as provided in Section 10-15-1(H) of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by vote of the Lincoln County Board of Commissioners in an open public meeting.
9. Pursuant to 10-15-1 NMSA 1978, paragraph C, a member or members of the Lincoln County Board of Commissioners may participate in a meeting of the Board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member or members to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

PASSED, ADOPTED AND APPROVED this 17th day of November 2015.

**BOARD OF COMMISSIONERS OF
LINCOLN COUNTY, NEW MEXICO**


Preston Stone, Chairman


Elaine Allen, Member


Dr. Lynn Willard, Member


Dallas Draper, Vice-Chair


Thomas F. Stewart, Member

ATTEST:


Rhonda Burrows, County Clerk

