

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

July 20, 2021

VIA ELECTRONIC MAIL ONLY

Mr. Andrew J. Garcia
13A Ber Ben Rd.
Los Lunas, NM 87031
Email: ajgarcia@llschools.net

Re: Open Meetings Act Complaint – Los Lunas Schools Board of Education

Dear Mr. Garcia:

This letter addresses your complaint alleging that the Los Lunas Schools Board of Education (hereinafter the “Board”) violated the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013), in connection with its meeting on April 21, 2020. As you know, your complaint alleges that the Board violated OMA by taking action on an item of business not listed on the meeting agenda. Having carefully reviewed the documentation available to us, we conclude that the Board did not violate OMA as alleged.

The Open Meetings Act is intended to provide the public with access to “the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.” Section 10-15-1(A). The OMA governs all actions taken by “any board, commission, committee or other policymaking body,” Section 10-15-3(A), requiring that all public bodies open their meetings to the public and allow interested individuals the opportunity to attend and listen. Section 10-15-1(A). Among other specific procedural requirements, the OMA provides that public bodies may only take action on items listed on the agenda prior to the meeting. *See* § 10-15-1(F).

In the complaint you submitted to our Office, you allege that the Board violated the OMA at its April 21, 2020 meeting by taking action on a particular contract item not listed on the agenda. At the meeting, the Board appears to have voted to approve its then-legal counsel’s entry into a contract with a company to conduct a financial investigation. This contract is identified by your complaint and is identified as “the REDW contract.” It appears that, prior to the attorney’s entry into the contract, he received at least one other proposal from a different company.

With respect to the agenda itself, we note that there is a contrast between the agenda you provided to our Office and the one sent to us by the Board in response to your complaint. Although both agendas contain an agenda item for “Approval of Retention of, and Contract For, Financial

Investigator by Legal Counsel,” only the agenda you provided to our Office included an embedded PDF document titled “JAG Engagement Letter.” The agenda provided to us by the Board does not contain that additional PDF document and instead only included the item description. Importantly, however, the Board maintains its meeting agendas on its website and the version of the April 21, 2020 meeting agenda available online is identical to the agenda sent to us by the Board. This difference is relevant because your complaint argues that the Board could only act on the “JAG Engagement Letter” because it was contained in the Board’s agenda.

Preliminarily, the documentation available to us leads us to believe that it is unlikely that the agenda available to the public seventy-two hours in advance of the meeting listed the “JAG Engagement Letter,” as your complaint suggests. Because the Board’s response to our inquiry indicates that the agenda stated only “Approval of Retention of, and Contract For, Financial Investigator by Legal Counsel,” and because the agenda posted to its website contains only this language, we do not have sufficient information to conclude that the agenda stated, seventy-two hours prior to the meeting, “JAG Engagement Letter.”¹

The item description “Approval of Retention of, and Contract For, Financial Investigator by Legal Counsel” was likely reasonably specific as to the Board’s subsequent action on “the REDW contract.” The Open Meetings Act requires “reasonable specificity,” not exacting and extreme detail, see Section 10-15-1(F), and we think this language was reasonably clear as to the action the Board eventually took. *See* N.M. Atty. Gen. Letter to Pete Dunavant, at 3 (Apr. 15, 2019) (opining that the Village of Angel Fire Council did not violate OMA by discussing the possibility of renaming a road pursuant to the agenda item description “Discussion on Renaming a Village Road Bill Burgess Boulevard”). The agenda language was not overly broad. It informed the public that the Board would act to approve the action of its legal counsel to select and contract for financial investigatory services, and this appears to be precisely what the Board did.

Because we do not have sufficient evidence to conclude that the Board violated OMA as alleged, we consider this matter closed. However, we appreciate you bringing possible violations to this office and will welcome any further complaints you may submit. If you have any concerns in the future, please do not hesitate to contact us. Additionally, the OMA Guide is available on the website of the Office of the Attorney General at www.nmag.gov.

Sincerely,



John Kreienkamp
Assistant Attorney General

Enclosure

cc: Jacqueline Archuleta-Staehlin, Esq.

¹ To the extent that you may disagree with this conclusion, only a District Court would be in a position to hear testimony and conclude otherwise.