

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



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August 17, 2016

Anthony Dimas, Jr.
Acting County Manager
McKinley County Commission
207 West Hill Street
Gallup, NM 87031

Re: Open Meetings Act Complaint

Dear Mr. Dimas:

The Office of the Attorney General Open Government Division ("OGD") has received and reviewed McKinley County Commission's ("MCC") response to Ms. London's complaint, which alleged that MCC violated the Open Meetings Act ("OMA"), NMSA 1978, Sections 10-15-1 through -4 (2013), by engaging in a "rolling quorum" to conduct public business outside of a public meeting. The OGD also reviewed the other documents provided by MCC, the emails sent to and by the commissioners that related to an increase in the travel budget, and an audio recording of the May 20, 2016 special meeting. After doing so, we have determined that MCC violated the OMA by using a "rolling quorum" to take action on a budget item outside of an open meeting.

Ms. London alleges that a "rolling quorum" was used to discuss/take action on public business in violation of OMA. More specifically, Ms. London states that travel expenses for commissioners were raised from \$7,000 to \$8,000 after when two commissioners via email supported increasing the travel budget. Along with the emails mentioned above, Ms. London cites an audio record of the May 20, 2016 meeting in support of her allegations.

The OMA states that "[t]he formation of public policy or the conduct of business by vote shall not be conducted in closed meetings." §10-15-1(A). Additionally, it states that any meeting by a quorum of members of any commission of a county held to discuss public business or "for the purpose of taking any action within the authority of . . . the] commission . . . are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act." §10-15-1(B).

The MCC does not cite any exceptions to the OMA in response to Ms. London's allegations. Rather, MCC states that the emails indicate that a "poll" asking whether travel expenses should be

Mr. Anthony Dimas, Jr.
August 17, 2016
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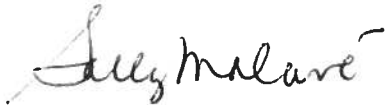
raised was taken. MCC further states that this “poll” was conducted so that the staff could be up to date on the information that they put on the preliminary budget. Lastly, MCC denies that the emails constitute a “rolling quorum.” We disagree.

While the emails indicate that each commissioner was asked individually whether he or she wanted to raise the budget for travel expenses, county finance staff increased the Commissioners’ travel budget based on the Commissioners’ responses. At the special meeting on May 20, 2016, in response to question from Commissioner Jackson about the increased travel budget, County Finance Director Sara Keeler stated that the “vote” came back 2-1 to raise the budget. Commissioner Jackson noted her disapproval of the raise, but there is no further discussion on the matter and no vote regarding the change to the travel budget at the open meeting, as compared to the next budget item (economic development), where Ms. Keeler discussed and Commissioner Tanner recused himself from voting on the change to that item. Thus, the individually sent emails were used to take the action of raising the travel budget for the commissioners from \$7,000 to \$8,000. As stated in §10-15-1(B), this is prohibited by the OMA. *See* N.M. Att’y Gen. Open Meetings Act Compliance Guide at 6 (8th ed. 2015) (noting that a “telephone poll” of individual commissioners used to secure the approval of commissioners outside an open meeting would be improper).

The OGD recognizes that the change in the travel budget was made to the preliminary budget and that the MCC needs to meet deadlines imposed by DFA. However, the MCC must still comply with all requirements of the OMA, which include not discussing or taking action on public business outside of an open meeting. The OMA provides that a public body can legally correct, or cure, prior mistakes and give legal force to its prior invalid actions. *See* §10-15-3(B). In this instance, it appears that the MCC may have cured the violation when it voted to approve the Interim Budget for Fiscal Year 2017, inclusive of the increased travel budget, at its May 20, 2016 meeting. If such a cure has not yet occurred, we recommend that the MCC take remedial steps as soon as practicable.

Thank you for your attention in this matter. If you should have any further questions about this determination or the OMA in general, please feel free to reach out our office.

Sincerely,



Sally Malavé, Assistant Attorney General
Ravi Shah, Law Intern

Cc: Douglas W. Decker, County Attorney
Laura London

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

Your Contact Information:

First Name: Laura Last Name: London

Address: Gallup Independent, [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): McKinley County Commission

Specific date(s) of OMA violation(s): May 12-20, 2016

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)

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Laura London
Reporter, Gallup Independent

[REDACTED]
Gallup, NM 87301
505-409-2357
[REDACTED]

Office of the Attorney General
Open Government Division
P.O. Drawer 1508
Santa Fe, NM 87504-1508
505-827-6000
lroller@nmag.gov

To the Office of the Attorney General:

The Gallup Independent is convinced the McKinley County Commission violated the Open Meetings Act by engaging in a rolling quorum to discuss raising the budget for travel expenses. This subject was not discussed during an open meeting, but through emails dated May 12-May 17, 2016.

During a special meeting May 20, 2016, of the McKinley County Commission to approve the county's interim fiscal year 2017 budget, county Finance Director Sara Keeler said travel expenses for commissioners were raised from \$7,000 per commissioner to \$8,000. When Commissioner Genevieve Jackson asked why, Keeler explained the commissioners were polled via email and two of the commissioners supported increasing the travel budget.

The Independent believes this email poll constitutes a rolling quorum. To support this claim, I have enclosed an audio recording of the May 20 McKinley County Commission meeting and copies of the emails that were exchanged.

Thank you for your attention to this matter.

Sincerely,



Laura London
Gallup Independent