

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

September 3, 2021

VIA ELECTRONIC MAIL ONLY

New Mexico State Parks Advisory Board
Cheryl L. Bada, Esq.
1220 S Saint Francis Dr., Ste. 138
Santa Fe, NM 87505-4226
Email: cheryl.bada@state.nm.us

Re: Open Meetings Act Complaint – Randy Bates

Dear Ms. Bada:

Thank you for your response to our inquiry into the complaint submitted to the Office of the Attorney General by Mr. Randy Bates alleging that the New Mexico State Parks 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. Bates alleges that the Board violated OMA by failing to properly maintain meeting minutes for its meetings in 2020 and 2021 and by failing to adopt an OMA resolution in 2020. Having carefully reviewed his complaint and your response to our inquiry, we do not find that the Board violated OMA as alleged. Nevertheless, going forward, we strongly encourage the Board to expedite its responses to public records requests for meeting minutes as well as “determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body.” Section 10-15-1(D).

Background

Mr. Bates’ complaint to our Office appears to arise out of a public records request he sent to the Energy, Minerals and Natural Resources Department (the “Department”) on February 24, 2021. This request, which we understand Mr. Bates sent to the Department hours before a scheduled meeting of the Board, requested the “Minutes of all 2020 and 2021 [Board] meetings” as well as the Board’s “OMA Annual Resolution or announcement for 2020 and 2021.” The Department responded to this request several hours later by explaining that the Board meeting scheduled for

¹ The Board is a statutorily created public body, see Section 16-2-2(A), and as such is subject to OMA.

that day had been “postponed for a later date” and stating that the Department would “provide you the information you requested on or before Thursday, March 11, 2021.” One day prior to this deadline, on March 10, 2021, the Department emailed Mr. Bates and informed him that the records he requested were available on the Board’s website. However, and although this was not mentioned in the Department’s email, these records uploaded on the Board’s website did not include the requested “OMA Annual Resolution or announcement for 2020 and 2021.”

It appears that the Board last adopted an annual OMA resolution at its meeting on November 25, 2019. Since that date, the Board has held three meetings, on March 6, 2020, May 27, 2020, and October 7, 2020, respectively, without adopting another resolution. In response to our inquiry, the Board explained that it “has not met since October 7, 2020, so has not adopted a new annual Open Meetings Act resolution.”

In his complaint to our Office, Mr. Bates alleges that the Board violated OMA in connection with both its meeting minutes and its annual OMA resolution (or lack thereof).² In particular, in his original complaint, he argued that “[n]o draft or approved minutes are available to the public” because they were not posted to the Board’s website. He further stated that the Department’s statement that it would provide him the information he requested by March 11, 2021 led him “to opine that minutes for these meetings are not available contrary to the OMA.” Moreover, even after the Board responded to our inquiry, Mr. Bates continues to argue that it is in violation of OMA by failing to post its October 7, 2020 meeting minutes online. He also (still) argues that the Board violated OMA by failing to adopt an OMA resolution in 2020. For its part, the Board responded to our inquiry by denying that it had violated OMA.

Analysis

The Open Meetings Act provides the public 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) (emphasis added). As our Court of Appeals has observed, “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.” *Kleinberg v. Bd. of Educ. of Albuquerque Pub. Sch.*, 1988-NMCA-014, ¶ 18. In accordance with this public policy, 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”).

Preliminarily, we disagree with Mr. Bates’ apparent contention that the Board violated OMA by failing to post its meeting minutes online. While the statute requires public bodies to post meeting agendas online, see Section 10-15-1(F), it does not contain such a requirement for meeting

² Mr. Bates replied to the Board’s response to our inquiry by raising a number of new “observations” as to the Board’s alleged non-compliance with OMA. Although we will not address these new allegations at length, we would simply remind the Board that OMA requires it to post “an agenda containing a list of specific items of business to be discussed or transacted at the meeting” no later than 72 hours prior to any meeting. Section 10-15-1(F). The Board cannot add items to any agenda after this deadline has expired.

minutes. *See* § 10-15-1(G); see also N.M. Att’y Gen. Letter to Matthew Baca, Governing Body of the Village of Roy, at 3-4 (Mar. 12, 2019) (concluding that “OMA does not require meeting minutes to be posted online or in some other prominent location, unlike meeting notices and agendas”). Instead, meeting minutes simply must be available for public inspection upon request (through a public records request, for instance). To the extent he intends to argue that the Board is in violation of OMA by failing to consistently post its meeting minutes online, then, Mr. Bates is clearly incorrect.

The Board’s failure to adopt an annual OMA resolution in 2020 also does not likely represent an OMA violation.³ Importantly, the Board adopted an OMA resolution on November 25, 2019, and has since only met on three occasions (March 6, 2020, May 27, 2020, and October 7, 2020), all within a year of the adoption of that 2019 resolution. Where the public body simply has not met (for whatever reason), we cannot say that its failure to adopt an OMA resolution or otherwise determine “what notice for a public meeting is reasonable when applied to that body” is necessarily a violation of the statute. Section 10-15-1(D). *See also Parkview Cmty. Ditch Ass’n v. Peper*, 2014-NMCA-049, ¶ 14 (holding that OMA “requires substantial, not strict, compliance”). As a result, since the Board has not met since October 7, 2020, we think it is unlikely that a court would find that the Board violated OMA by failing to adopt an OMA resolution since then.

With that being said, on this issue too we think the Board has room for improvement. At a minimum, it is a best practice for any statutorily created public body to meet at least once per year, and we do not think the requirement in Section 10-15-1(D) to “determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body” is especially arduous. Especially given the Board’s important statutory role with respect to New Mexico’s state parks, we strongly encourage the Board to address the issue of its annual OMA resolution soon by holding a meeting and adopting a new resolution.

Conclusion

Notwithstanding the fact that OMA clearly did not require the Board to post its meeting minutes on its website, we would still strongly encourage the Board to respond faster to public records requests seeking those meeting minutes. More broadly, it should try to expedite its responses to future public records requests seeking copies of meeting minutes, both so that requestors do not develop misimpressions as to the Board’s compliance with OMA and so that the Board generally does everything possible to provide the public “the greatest possible information” about its affairs. Section 10-15-1(A). We also would encourage the Board to call a meeting in the near future and, among its other items of business, “determine ... what notice for a public meeting is reasonable when applied to that body.” Section 10-15-1(D).

³ Speaking literally, OMA requires each public body to “determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body,” but not necessarily to formally adopt a resolution. Section 10-15-1(D). The annual OMA resolution has become a customary practice in New Mexico to satisfy this requirement. *See* N.M. Att’y Gen. Letter to Francis Bee, Gallup Business Improvement District, at 2 (July 8, 2019) (explaining that “OMA does not explicitly require public bodies to adopt an OMA resolution” but adding that “this practice is highly advisable” and “has become the custom in New Mexico”).

New Mexico State Parks Advisory Board

September 3, 2021

Page 4

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,

A handwritten signature in blue ink, appearing to read "John Kreienkamp", is written over a light blue rectangular background.

John Kreienkamp
Assistant Attorney General

Enclosure

cc: Randy Bates