

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

6/8/2018

VIA ELECTRONIC MAIL ONLY

Clara Garcia
1837 Camino Del Llano
Belen, New Mexico 87002
Email: cgarcia@news-bulletin.com

Re: Open Meetings Act Complaint- Valencia County Commission

Dear Ms. Garcia:

We have reviewed your complaint alleging the Valencia County Commission ("VCC") violated the Open Meetings Act ("OMA"), NMSA 1978 §§ 10-15-1(H)(7) (as amended through 2013) if the VCC discussed a hospital project in executive session when the topic was not on the agenda. We have also reviewed VCC's response to our inquiry regarding your complaint. See enclosed letter from Adren Nance, Valencia County Attorney. As discussed in more detail below, we conclude that there is insufficient evidence to find VCC violated OMA.

According to your complaint, the issue is in regard to the VCC allegedly discussing a "hospital project" during executive session when this topic was not on the agenda. Although your complaint did not specify a meeting date, VCC reviewed your complaint and determined the time frame most likely referred to a meeting held either March 1, 2017 or April 19, 2017. Without further information, we rely on these dates to make our determination.

OMA provides that "[m]eetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant" are not subject to OMA requirements. Section 10-15-1(H)(7). OMA further provides that such a closed meeting may be held while an open meeting is convened, otherwise referred to as "executive session," so long as the subjects discussed are properly noticed in the meeting's agenda. Section 10-15-1(I). Proper notice here means the agenda states with reasonable specificity the subject(s) that may be discussed in executive session. Section 10-15-1(I)(1).

The agendas for the above-referenced meetings both read that the VCC intends to enter into Executive Session to discuss, among other things, litigation relating to *Los Lunas v. Valencia County*, a case in which VCC is involved. VCC's response states the VCC typically refers to this

active case as the “hospital lawsuit.” Our Office finds the agendas reasonably specify the topic. In their response, the VCC explains that the “hospital lawsuit” involves a “hospital project.” The VCC further insists that no plan for a hospital project has been discussed in executive session, nor is their attorney aware of any plans for a hospital project.

Your complaint indicates the VCC may have discussed “the county’s future plan regarding the hospital project.” It appears you mean the hospital project in relation to *Los Lunas v. Valencia County*. Please understand the VCC and its attorney may discuss all possible aspects of the litigation during executive session, including the potential outcomes, whether to continue with an activity that is the basis of the litigation or effects the litigation, or—as VCC counsel points out in the response—hypothetical situations which could moot the litigation. On the other hand, if you mean the VCC may have discussed some other hospital project, there is insufficient information or evidence to make a determination.

Although we did not find a violation of the OMA as alleged in your complaint, we appreciate you bringing the issues discussed to our attention and allowing us the opportunity to address them. If you have any questions regarding this determination or OMA in general, please let me know. For your reference, a copy of the OMA Guide is enclosed, as well as a copy of VCC’s response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marylou Poli".

Marylou Poli
Assistant Attorney General

CC: Adren Nance, Valencia County Attorney

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

Your Contact Information:

First Name: Clara Last Name: Garcia
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):

Valencia County Commission

Specific date(s) of OMA violation(s): _____

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.

See attached Complaint

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

VALENCIA
COUNTY

News-Bulletin

1837 Camino del Llano • Belen, N.M., 87002 • Phone: 505-864-4472 • Fax: 505-864-3549

April 28, 2017

Dear New Mexico Attorney General Hector Balderas,

I am writing to you today to formally file an Open Meetings Act violation complaint against the Valencia County Commission.

To preface my complaint, I will start with a little history of the issue.

In 2013, the village of Los Lunas filed a lawsuit alleging the Valencia County Commission overstepped its authority by contracting with the city of Belen to allow the municipality to select a health care provider for a county hospital.

The suit also alleged that former Valencia County Commissioner Donald Holliday resigned and moved out of his commission district before he voted to approve the contract with Belen.

On Feb. 3, 2017, the city of Belen filed a separate lawsuit against the Valencia County Commission, alleging breach of contract with the city regarding the health care provider.

Later that month, the county commissioners asked both Los Lunas and Belen to dismiss their lawsuits, promising to move the hospital forward in the near future. Belen ultimately dropped its lawsuit. The Valencia County Commission has discussed the litigation in executive session numerous times before and after asking the municipalities to dismiss their respective lawsuits.

On Monday, April 17, 2017, following a Belen City Council meeting, County Commissioner David Hyder approached me in the parking lot. During our

conversation, I mentioned that people are frustrated that the commission has yet to publicly discuss how it intends to move forward with the hospital project.

I asked him when and if the commission is going to do something about it or if there were any plans in the making. Hyder responded, saying “Not that you know of.” I asked the commissioner what he meant by that and he said the commission has discussed a plan for the hospital project in executive session.

He did not specify during which executive session this was discussed in but indicated it was within the last few weeks.

Commissioner Hyder did mention that in one of these executive sessions Commissioners Charles Eaton and Helen Cole informed the other commissioners they had met with representatives with Presbyterian.

While we don't believe the meeting with Presbyterian violated the OMA because there wasn't a quorum of commissioners present, we do think the commission violated the Open Meetings Act by talking about their plans for moving forward with the hospital project.

It's one thing to discuss the ongoing litigation about the hospital, but if they were in fact talking about the county's future plan regarding the hospital project, that conversation should have been conducted in public and not behind closed doors in an executive session.

I encourage your office to investigate this matter in a timely and judicious manner. I thank you for your time, assistance and continued vigilance and defense of government transparency.

Sincerely,

Clara Garcia

Editor

Valencia County News-Bulletin

CC: Daniel Monette, Valencia County manager