

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

June 5, 2020

VIA ELECTRONIC MAIL ONLY

Public Employees Retirement Association of New Mexico Board of Trustees
John Melia, Board Chair
33 Plaza La Prensa
Santa Fe, NM 87507
Email: jmelia@nmpera.org

Re: Open Meetings Act Complaint – New Mexico Foundation for Open Government

Dear Mr. Melia:

Thank you for your response to the complaint filed with the Office of the Attorney General by the New Mexico Foundation for Open Government (hereinafter “FOG”). As you know, FOG alleged that the Public Employees Retirement Association of New Mexico Board of Trustees (the “Board”) violated the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013) at its May 29, 2020 meeting. Our Office appreciates that you, on behalf of the Board, have admitted this error and acknowledged this statutory noncompliance. We are issuing this determination to you in the interest of clearly setting out OMA’s requirements and ensuring that the Board takes sufficient remedial action.

FOG alleges that the Board violated OMA at its May 29, 2020 meeting by taking action on an item not listed on the meeting agenda. In relevant part, the agenda for the meeting in question contained the action item for “Termination of withholding of RPENM membership dues from PERA retirement benefits.” It is undisputed that, upon reaching this item of business, the Board voted to not only terminate the withholding of RPENM membership dues, but also to terminate the withholding of AFSCME membership dues despite the fact that this was not listed on the agenda. FOG argues that this represented a violation of OMA. The Board, in its response to FOG’s complaint, admitted that “the action with regards to AFSCME was not on the meeting agenda, and that the Board’s action as it relates to AFSCME dues is therefore void under the Open Meetings Act.”

OMA specifically provides that “a public body shall take action only on items appearing on the agenda.” Section 10-15-1(F). As the termination of withholding of AFSCME membership dues was not a specific item of business listed on the agenda, there is no doubt that the Board’s action on that item was in violation of the statute. *See id.* As the statute also states that no action of any public body is valid unless it was taken in compliance with

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OMA, the Board's action is also invalid.¹ *See* § 10-15-3(A) (“No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.”).

Notwithstanding these specific provisions of law, the Open Meetings Act does permit – and our Office encourages – public bodies to take remedial action to cure prior noncompliance. *See* § 10-15-3(B) (requiring an individual claiming an OMA violation to provide the public body a notice of the alleged violation and a fifteen-day window to take remedial action prior to filing suit). In the past, our Court of Appeals has determined that action must be “prompt, appropriate and effective” to properly remedy an OMA violation. *Kleinberg v. Board of Education of Albuquerque Public Schools*, 1988-NMCA-014, ¶ 30. The statute itself also states that the public body must “include a summary of comments made at the meeting at which the claimed violation occurred.” Section 10-15-3(B).

As a result, we direct the Board to take remedial action at its next meeting. This should include a brief summary of the AFSCME membership dues item as discussed at its May 29, 2020 meeting as well as the complaint filed with our Office by FOG. Obviously, this item of business must be listed on the agenda for the meeting. As our Office will continue to monitor this situation to ensure that the Board takes adequate remedial action, we also request that the Board send our Office a copy of its next agenda prior to the meeting and the draft minutes of the meeting when prepared by the Board's staff.

Our Office appreciates both FOG for bringing this matter to our attention and the Board for readily acknowledging its error. We further appreciate the Board's recognition of its obligation to provide the public with access to “the greatest possible information” about its affairs. Section 10-15-1(A). If you have any questions regarding this determination or OMA in general, please let me know.

Sincerely,



John Kreienkamp
Assistant Attorney General

Enclosure

cc: Melanie Majors, New Mexico Foundation for Open Government

¹ It appears that when the Board acted to terminate the withholding of AFSCME membership dues, it also voted simultaneously (pursuant to one combined motion) to terminate the withholding of RPENM membership dues. For the purposes of OMA, the Board's action with respect to RPENM membership dues was valid because the Board complied with all applicable provisions of OMA, including the requirement that the item of business be listed with reasonable specificity on the meeting agenda.