

Open Meetings Act: Myths or Realities

Presented to NMSBA Board Institute
February 12, 2021

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Overview

- OMA Public Policy Considerations
- Commonly held myths about the Application of OMA
 - When does OMA apply/not apply?
 - Meeting notices and agendas
 - Meeting minutes
 - Violation consequences/penalties
- Further questions/discussion

OMA Public Policy

- New Mexico Open Meetings Act, NMSA 1978, Sections 10-15-1 through 10-15-4
- Section 10-15-1(A)
 - Government is dependent on an informed electorate
 - All persons are entitled to the greatest possible information regarding the affairs of government and official acts of those officers and employees who represent them

OMA Public Policy Considerations

- Issues to consider:
 - How to ensure access by the public:
 - Meeting room size?
 - Language translator/devices for hearing impaired?
 - **Live streaming on internet/YouTube?**
 - **COVID-19 has changed the way we go to meetings.**
 - Appropriate use of 2 member subcommittees
 - Superintendent searches?
 - Superintendent evaluations?
 - Other?
 - Rolling quorum problems

Myth or Reality?

The Attorney General's Office
won't prosecute an Open
Meetings Act Complaint.

Myth!

- Ripped from the Headlines:
 - 2012 – AG forces City to redeliberate the appointment of the City’s Mayor, due to not allowing all of the people who wanted to attend and speak into the City Hall
 - 2002 – AG prosecuted all five school board members for OMA violations; including improper executive sessions.
- Sections 10-15-3 and 10-15-4
 - No Board action is valid unless taken at a valid meeting
 - If OMA was violated, the action is invalid
 - OMA is enforced by the Attorney General, District Attorney, or private individual
 - Successful Plaintiff may receive costs and reasonable attorneys’ fees
 - Frivolous claimants may have to pay reasonable attorneys’ fees
 - Possible criminal misdemeanor penalties/fines

Myth or Reality?

The Open Meetings Act
only applies to Regular
School Board meetings?

MYTH!

- OMA applies any time there is a quorum of members present, and you are conducting business as a school board member.

Section 10-15-1(B)

- All meetings of a quorum of members ... held for the purpose of formulating public policy
 - Development of policies
 - Discussing public business
 - Taking action within the Board's authority
 - Certain exceptions
 - The Board cannot be divided up for the purpose of keeping actions secret
- Exceptions include Special Events
- Best Practice: Issue Notice of a quorum with no business being conducted.

Myth or Reality?

Executive Session is a time for the Board to discuss any business that they have, out of the view of the public.

MYTH!

- **Section 10-15-1(H)** closed meetings (executive sessions) are permitted for:
 - (2) **Limited personnel matters:** discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or investigation or consideration of complaints or charges against **any individual public employee**
 - (4) Discussion of personally identifiable **student information**

Executive Sessions (Cont.)

- (5) The discussions relating to **collective bargaining** strategy and negotiations
- (6) Reviewing the contents of **competitive sealed proposals and negotiations** under the Procurement Code, for proposals over \$2,500
- (7) **Attorney-client privileged** discussions of pending or threatened litigation
- (8) Discussions of the acquisition or disposal of **real property or water rights**

Executive Sessions (Cont.)

- Additional requirements for executive sessions:
 - Public notice required, stating specific provision of law and reasonable specificity of the subject to be discussed
 - Generally, no action can be taken in executive session
 - Roll call vote to go into executive session
 - Motion to return to open session requires a statement that only those topics listed were discussed in executive session, voice vote ok
 - **NO “Placeholder” Executive Session**

Myth or Reality ?

Board agendas can have placeholder language, that is used on every agenda to set aside time for general discussion?

MYTH!

- Section 10-15-1(D) – Any meetings ... and any closed meetings, .. shall be held only after reasonable notice to the public.
 - Board’s annual OMA resolution sets parameters (recitation of the law)
 - Notice shall include broadcast stations and newspapers of general circulation that have requested notice

Meeting Notices and Agendas

- Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted
- You can have an agenda item seeking input for future agendas.
- Notice and agenda must be posted at least 72 hours before meeting
 - Must be available to the public (posted in public places)
 - Must be posted on the website
 - NMSBA Policy Service: At central office AND all school sites

Myth or Reality?

Unless I am the Board President, I can't put anything on the agenda.

MYTH!

- Who places items on the agenda are typically determined by Board Policy
- Board member addition of items varies
 - One Board member?
 - Two Board members?
 - Consensus from a previous meeting?
- Superintendent and Board President lead the process

Myth or Reality ?

The Board can call an emergency meeting to authorize a contract that was mistakenly left off the last meeting's agenda.

MYTH!

- Very high standard to show that the emergency meeting was necessary
- Bottom Line: Highly unlikely and very difficult to prove
- Section 10-15-1(C)
 - “Emergency” is for unforeseen matters that, if not addressed immediately ... will likely result in injury or damage to persons or property or substantial financial loss to the district
 - Within 10 days, the meeting must be reported to the Attorney General explaining the need
 - Attorney General may rule meeting invalid

Myth or Reality ?

The Board only has to approve the meeting minutes twice a year.

MYTH!

- Draft minutes shall be prepared within 10 working days of meeting
- Minutes shall be approved at the next meeting where a quorum is present
- Section 10-15-1(G) the Board shall keep written minutes of all its meetings with:
 - Date, time, and place of meeting
 - Members in attendance and absent
 - Substance of the proposals considered
 - A record of any decisions made and votes taken to show how each member voted

Other Meeting Considerations

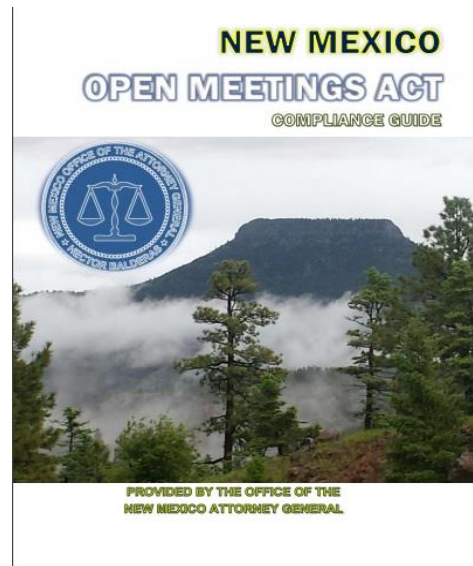
- Board member telephonic/remote attendance
 - Times have changed
 - When difficult or impossible for the member to attend in person (unusual, not regular)
 - Remote member must be able to be identified and heard by the other members and public
- Public Comment Period
 - How do you handle it while having a remote board meeting?
 - OMA does not require, but Board policy might
 - Can set basic rules: 2 to 3 minutes, no sharing of time, no student information, etc.

Recent Issues

- **Online Meetings**
 - **Public Participation**
 - **Staff location during board meetings**
 - Discussions during a meeting recess
 - Compliance with minutes requirements
 - Enforcement of public comment rules
 - Properly posted meeting notices
- ATTORNEY GENERAL INQUIRIES**
- Costly – monetarily and public opinion

Resources

- New Mexico Statutes Annotated, Sections 10-15-1 through 10-15-4
- New Mexico Open Meetings Act Compliance Guide, Issued by the NM Attorney General's Office



<https://www.nmag.gov/oma-and-ipra-nm-sunshine-laws.aspx>

Questions/ Discussion

- Public policy
- When OMA applies
- Executive sessions
- Proper notices and agendas
- Minutes and other considerations
- Penalties

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