Condensed OMA Training Virtual 6.22.2021.pdf

Open Meetings ActNMSA 1978, Sections 10-15-1 to -4

Assistant Attorney General

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Open Government Division

New Mexico Office of the Attorney General

June 22, 2021

New Mexico Commission for the Blind

State Rehabilitation Council

About the Open Government

Division

list of 3 items

•

Office of the Attorney General Structure: Civil

Affairs & Criminal Affairs

list of 1 items nesting level 1

•

OGD is within Civil Affairs

list end nesting level 1

•

Represent approximately 80 state boards and commissions

•

Have a variety of functions:

list of 6 items nesting level 1

•

Client representation

•

Contract review

•

Draft Official Attorney General Opinions

•

Bill analysis

•

Other duties as assigned

•

Enforce Open Meetings Act (OMA) and Inspection of Public Records Act (IPRA)

list end nesting level 1

list end

This Presentation

list of 3 items

•

30 minute overview of OMA

list of 4 items nesting level 1

•

Who and what is subject to OMA?

•

Notices

•

Agendas

•

Minutes

list end nesting level 1

•

Not a full training, leaving out:

list of 2 items nesting level 1

•

Procedures for closed session

•

Exceptions to go into closed session

list end nesting level 1

•

Focus on what members need to know

list end

OMA as Public Policy

list of 3 items

•

Public is entitled to greatest possible information about government affairs

•

Representative government depends on informed electorate

•

All meetings of a public body are public

meetings

list of 2 items nesting level 1

•

Anyone can “attend and listen”

•

No closed meetings for formation of public policy or conduct of business by vote

list end nesting level 1

list end

Section 10-15-1(A)

Who and what is subject to

OMA?

list of 4 items

•

“Public body”= very broad definition

list of 2 items nesting level 1

•

Must be multi-member, policymaking

•

Not purely advisory bodies, unless created by statute

list end nesting level 1

•

OMA applies to all meetings of a quorum held to:

list of 3 items nesting level 1

•

Formulate public policy

•

Discuss public business

•

Take any action

list end nesting level 1

•

OMA does not apply when public body is not discussing public business

•

Keep in mind:

list of 3 items nesting level 1

•

Committees are subject to OMA when they wield policymaking authority

•

Avoid rolling quorums

•

Meetings of quorum can go by many names (work session, retreat, etc.)

list end nesting level 1

list end

Section 10-15-1(B)

Examples

The Public Regulation Commission is a full-time salaried commission regularly engaged in the conduct of public business, i.e., utility rate regulation.

The PRC holds a special meeting for the purposes of discussing public business, but takes no action at the meeting. Is the meeting subject to OMA, requiring

notice, agenda, minutes, etc.?

Two members of a three-member school board attend the retirement party of the District’s longtime superintendent. While at the party, the Board members

discuss the basketball playoffs. After the meeting, one of these Board members sends a text message to the other urging him to vote in favor of the proposed

budget at the next meeting. The other Board member texts back that he will vote in favor of the budget. Was this a violation of OMA?

Meeting Notices -Generally

list of 4 items

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Reasonable advance notice of all meetings

list of 2 items nesting level 1

•

Applies to both open and closed meetings

•

No secret meetings

list end nesting level 1

•

All public bodies must determine reasonable notice once per

year

list of 1 items nesting level 1

•

Custom is to adopt annual OMA resolution

list end nesting level 1

•

Must include:

list of 2 items nesting level 1

•

Date, time, and location

•

Agenda (or how to get a copy)

list end nesting level 1

•

Provided to, at minimum:

list of 3 items nesting level 1

•

Published or posted in place and manner accessible to the public

•

Broadcast stations and newspapers of general circulation that make a written request for notice

•

Other requirements found by the public body to be reasonable

list end nesting level 1

list end

Section 10-15-1(D)

Meeting Notices: General

Deadlines

list of 3 items

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Regular meetings

list of 2 items nesting level 1

•

Notice: at least 10 days

•

Agenda: at least 72 hours

list end nesting level 1

•

Special meetings

list of 2 items nesting level 1

•

Notice: at least 3 days

•

Agenda: at least 72 hours

list end nesting level 1

•

Emergency meetings

list of 2 items nesting level 1

•

Only allowed if significant threat to public health, safety, or imminent and irreparable financial harm to public body

•

Notice and agenda = 24 hours or less depending on emergency

list end nesting level 1

list end

Section 10-15-1(D)

Agendas

list of 3 items

•

Meeting notice must include agenda (or information on how to get a copy)

•

Must contain a list of specificitems of

business

list of 1 items nesting level 1

•

Must be reasonably specific

list end nesting level 1

•

No action may be taken at a meeting

unless the item appears on final agenda

list of 2 items nesting level 1

•

Posted 72 hours in advance

•

Exception for emergency meetings

list end nesting level 1

list end

Section 10-15-1(F)

Agendas: Timing

list of 3 items

•

Must be posted at least 72 hours before a meeting

•

Must be on website

list of 2 items nesting level 1

•

If public body has one

•

Again, 72 hours in advance

list end nesting level 1

•

Exception: public bodies that meet more

than once a week

list of 2 items nesting level 1

•

Draft agenda: 72 hours before a meeting

•

Final agenda: 36 hours before a meeting

list end nesting level 1

list end

Section 10-15-1(B)

Example

School Board Agenda

123 Fictitious Ave.,

Santa Fe, NM

May 23, 2021

5:00 PM

list of 6 items

I.

Call to order

II.

Approval of Meeting Agenda

III.

Approval of Minutes from March 4, 2021 Meeting

IV.

Old Business

V.

New Business

list of 2 items nesting level 1

a)

Vending machines in the cafeteria

b)

Limited personnel matters

list end nesting level 1

VI.

Adjourn

list end

OMA Guide, Ex. 26

5

mc-ref

The Board discusses and acts on three contracts. Was this agenda item reasonably specific?

7

mc-ref

The Board discusses and votes to allow vending machines in the school cafeteria. Was this agenda item reasonably specific?

9

mc-ref

The board dismisses the director of the district’s administrative office and reorganizes the remaining staff positions. Was this agenda item reasonably

specific?

Minutes

list of 3 items

•

Must keep minutes of all meetings

•

At minimum, must include:

list of 4 items nesting level 1

•

Date, time, and place

•

Names of members present and absent

•

Substance of proposals considered

•

Record of decisions made and any votes

list end nesting level 1

•

Voting: how each member voted

list of 1 items nesting level 1

•

No secret ballots

list end nesting level 1

list end

Section 10-15-1(G)

Minutes: Timing

list of 4 items

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Minutes are available for inspection

list of 2 items nesting level 1

•

Includes draft minutes

•

Even if not yet approved by public body

list end nesting level 1

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Draft minutes must be prepared in 10 working days

•

Must be considered at next meeting

list of 1 items nesting level 1

•

Including special meetings, work sessions, retreats, etc.

list end nesting level 1

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Subject to IPRA

list end

Section 10-15-1(G)

Open Meetings and COVID-19

list of 3 items

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Generally, public bodies must meet in person

list of 1 items nesting level 1

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COVID-19 pandemic is an exception to the rule

list end nesting level 1

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Can meet virtually or telephonically during the state of emergency

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Attorney General’s Guidelines:

list of 6 items nesting level 1

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Provide alternative means of attendance to public (virtual or telephonic)

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Announce members of public body participating remotely

•

All members must be audible when speaking

•

Suspend discussion when audio/video interrupted

•

All votes by roll call vote

•

Produce and maintain a recording of the meeting

list end nesting level 1

list end

Section 10-15-1(C)

Enforcement: Civil and

Criminal

list of 4 items

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Attorney General and District Attorneys

•

Private individuals

list of 2 items nesting level 1

•

Written notice to public body required; public body has 15 days to act on alleged violation

•

Individual can recover reasonable costs & attorneys’ fees

list end nesting level 1

•

Actions taken in violation of Act may be

deemed invalid

list of 1 items nesting level 1

•

Presumption: public body complied with OMA

list end nesting level 1

•

Criminal sanction: violation

of OMA is full misdemeanor

list of 1 items nesting level 1

•

Punishable by up to $500 per violation

list end nesting level 1

list end

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In Review

list of 3 items

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Any meeting of quorum where public

business is discussed is a meeting subject

to OMA

list of 1 items nesting level 1

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Even if you call it a retreat or work session

list end nesting level 1

•

Avoid “rolling quorums”

•

Agendas must be reasonably specific

list end

Questions?

list of 4 items

•

Consult your attorney

•

Attorney General Open Meetings Act and

Inspection of Public Records Act

Compliance Guides,

www.nmag.gov

•

NM Attorney General’s Office

list of 1 items nesting level 1

•

Open Government Division, (505) 490-4060

list end nesting level 1

•

NM Foundation for Open Government

list of 1 items nesting level 1

•www.nmfog.org

list end nesting level 1

list end

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