

ARTICLE 15

Open Meetings

10-15-1. Formation of public policy; procedures for open meetings; exceptions and procedures for closed meetings.

A. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

B. All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency or any agency or authority of any county, municipality, district or political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act. No public meeting once convened that is otherwise required to be open pursuant to the Open Meetings Act shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting.

C. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

D. Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. That notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

E. A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the public body specifies the date, time and place for continuation of the meeting and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held and in at least one other location appropriate to provide public notice of the continuation of the meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.

F. Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. Except in the case of an emergency or in the case of a public body that ordinarily meets more frequently than once per week, at least seventy-two hours prior to the meeting, the agenda shall be available to the public and posted on the public body's web site, if one is maintained. A public body that ordinarily meets more frequently than once per week shall post a draft agenda at least seventy-two hours prior to the meeting and a final agenda at least thirty-six hours prior to the meeting. Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this subsection, "emergency" refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body. Within ten days of taking action on an emergency matter, the public body shall report to the attorney general's office the action taken and the circumstances creating the emergency; provided that the requirement to report to the attorney general is waived upon the declaration of a state or national emergency.

G. The board, commission or other policymaking body shall keep written minutes of all its meetings. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. All minutes are open to public inspection. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Minutes shall not become official until approved by the policymaking body.

H. The provisions of Subsections A, B and G of this section do not apply to:

(1) meetings pertaining to issuance, suspension, renewal or revocation of a license, except that a hearing at which evidence is offered or rebutted shall be open. All final actions on the issuance, suspension, renewal or revocation of a license shall be taken at an open meeting;

(2) limited personnel matters; provided that for purposes of the Open Meetings Act, "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided further that

this paragraph is not to be construed as to exempt final actions on personnel from being taken at open public meetings, nor does it preclude an aggrieved public employee from demanding a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview;

(3) deliberations by a public body in connection with an administrative adjudicatory proceeding. For purposes of this paragraph, "administrative adjudicatory proceeding" means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. Except as otherwise provided in this section, the actual administrative adjudicatory proceeding at which evidence is offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;

(4) the discussion of personally identifiable information about any individual student, unless the student or the student's parent or guardian requests otherwise;

(5) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policymaking body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are present;

(6) that portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars (\$2,500) that can be made only from one source is discussed and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code are discussed during the contract negotiation process. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting;

(7) meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant;

(8) meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body;

(9) those portions of meetings of committees or boards of public hospitals where strategic and long-range business plans or trade secrets are discussed; and

(10) that portion of a meeting of the gaming control board dealing with information made confidential pursuant to the provisions of the Gaming Control Act [Chapter [60](#), Article [2E](#) NMSA 1978].

I. If any meeting is closed pursuant to the exclusions contained in Subsection H of this section:

(1) the closure, if made in an open meeting, shall be approved by a majority vote of a quorum of the policymaking body; the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting; the vote shall be taken in an open meeting; and the vote of each individual member shall be recorded in the minutes. Only those subjects announced or voted upon prior to closure by the policymaking body may be discussed in a closed meeting; or

(2) if a closure is called for when the policymaking body is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law authorizing the closed meeting and stating with reasonable specificity the subject to be discussed is given to the members and to the general public.

J. Following completion of any closed meeting, the minutes of the open meeting that was closed or the minutes of the next open meeting if the closed meeting was separately scheduled shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the public body under Subsection G of this section as part of the minutes.

History: 1953 Comp., § 5-6-23, enacted by Laws 1974, ch. 91, § 1; 1979, ch. 366, § 1; 1989, ch. 299, § 1; [1993, ch. 262, § 1](#); [1997, ch. 190, § 65](#); [1999, ch. 157, § 1](#); [2013, ch. 42, § 1](#).

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, required agendas to be available to the public seventy-two hours prior to a public meeting; required the attorney general to review a public body's action on emergency matters; in Subsection F, in the second sentence, after "emergency", added "or in the case of a public body that ordinarily meets more frequently than once per week, at least seventy-two hours prior to the meeting" and after "available to the public", deleted "at least twenty-four hours prior to the meeting" and added "and posted on the public body's web site, if one is maintained", and added the third and fifth sentences; in Paragraph (6) of Subsection H, after "from one source", added "is discussed"; in Paragraph (1) of Subsection I, at the beginning of the first sentence, added "the closure"; and in Paragraph (2) of Subsection I, at the beginning of the sentence, after "if", added "a closure is" and after "in an open meeting", added "the closed meeting".

The 1999 amendment, effective June 18, 1999, rewrote Paragraph H(9) which read: "those portions of meetings of committees or boards of public hospitals that receive less than fifty percent of their operating budget from direct public funds and appropriations where strategic and long-range business plans are discussed; and".

The 1997 amendment, effective June 20, 1997, in Subsection H, added Paragraph (10) and made minor stylistic changes at the end of Paragraphs (8) and (9).

The 1993 amendment, effective June 18, 1993, in Subsection B, inserted "administrative adjudicatory body" near the beginning of the first sentence; added

Subsections C, E, F, and J, redesignating the remaining subsections accordingly and making a related reference change in present Subsections H and I; added Paragraphs (3) and (4) to Subsection H, redesignating the remaining paragraphs accordingly; added the language beginning "and that portion of meetings" to the end of the first sentence of present Paragraph (6) and substituted "or final action regarding the selection of a contractor shall" for "is to" in the second sentence of that paragraph; in Subsection I, inserted "and the subject to be discussed" and "with reasonable specificity" in Paragraph (1) and deleted "the closed meetings" following "in an open meeting" and inserted "and stating with reasonable specificity the subject to be discussed" in Paragraph (2); and made stylistic changes in Subsection B and Subsections D, G, H, and I.

I. GENERAL CONSIDERATION.

Purpose of the Open Meetings Act is to open the meetings of governmental bodies to public scrutiny by allowing public attendance at such meetings, not to unduly burden the appropriate exercise of governmental decision-making and ability to act. *Gutierrez v. City of Albuquerque*, [1981-NMSC-061](#), [96 N.M. 398](#), [631 P.2d 304](#).

The doctrine of res judicata applies to claimed violations of the Open Meetings Act. *Anaya v. City of Albuquerque*, [1996-NMCA-092](#), [122 N.M. 326](#), [924 P.2d 735](#), cert. denied, 122 N.M. 194, 922 P.2d 576.

Record of meeting. — Duly approved, written minutes of a policy making body can be sufficient to constitute an official transcript for review and duly approved and executed resolutions of a policy-making body can appropriately serve as a statement of the legal and factual basis for the body's decision. *Village of Angel Fire v. Wheeler*, [2003-NMCA-041](#), [133 N.M. 421](#), [63 P.3d 524](#), cert. denied, 133 N.M. 413, 63 P.3d 516.

Election of officers did not require a record of how voters voted. — Where defendants installed a new headgate on the association's acequia system without obtaining the approval of the association or the mayordomo; the mayordomo and a commissioner, on behalf of the association, obtained a temporary restraining order prohibiting defendants from continuing work on the ditch; defendants claimed that the association's meeting to elect officers violated the Open Meeting Act, Chapter [10](#), Article [15](#) NMSA 1978, because the minutes of the meeting did not record how each member voted as required by [10-15-1\(G\)](#) NMSA 1978 and that consequently, the commissioner and the mayordomo were not properly elected as officers and lacked standing to file the petition for injunction on behalf of the association; in the association's practice, each person meeting the voter requirements of [73-2-14](#) NMSA 1978 was accorded one vote; and the voters did not represent others, they represented their own interests in the ditch, the election of the commissioner and the mayordomo was not void because the purpose of recording the "yeas and nay's" of votes as required by [10-15-1\(G\)](#) NMSA 1978 was not relevant where the recording of the votes would not serve the purpose of greater accountability. *Parkview Cmty. Ditch Ass'n v. Peper*, [2014-NMCA-049](#).

To "attend and listen," as used in Subsection A, means that persons desiring to attend shall have the opportunity to do so, that no one will be systematically excluded or arbitrarily refused admittance, and that the meeting will not be "closed" to the public. *Gutierrez v. City of Albuquerque*, [1981-NMSC-061](#), [96 N.M. 398](#), [631 P.2d 304](#).

II. APPLICABILITY.

City-owned utility. — A city-owned electric utility corporation is a governmental board within a statute that requires the governing bodies of municipalities, etc., and all other governmental boards and commissions of state or its subdivisions that are supported by public funds to make all final decisions at meetings open to the public. *Raton Pub. Serv. Co. v. Hobbes*, [1966-NMSC-150](#), [76 N.M. 535](#), [417 P.2d 32](#) (decided under prior law).

City board of education. — A city board of education is a policymaking body covered by the public meeting law. *State v. Hernandez*, [1976-NMSC-081](#), [89 N.M. 698](#), [556 P.2d 1174](#).

Litigation committee of the New Mexico state investment council. — A litigation committee, acting under the delegated authority of the New Mexico state investment council (NMSIC) to settle legal matters, was subject to the Open Meetings Act because the committee was intended to be a policy-making body and its meetings were for the purpose of taking an action within the authority of the NMSIC. *N.M. State Inv. Council v. Weinstein*, [2016-NMCA-069](#), cert. denied.

Working group authorized to negotiate development agreement not subject to the Open Meetings Act. — In consolidated appeals arising from petitioners' collective opposition to the development of the proposed Santolina planned community on Albuquerque's west side mesa in Bernalillo county, where the Bernalillo county board of county commissioners (board) approved a master plan for the development of the Santolina community, a zone map amendment which rezoned the land from rural agricultural to planned community zoning, and a development agreement between Bernalillo county and the owners of the land at issue, and where petitioners claimed the development agreement was negotiated and approved in violation of the Open Meetings Act, the district court did not err in dismissing petitioners' claim on the grounds that the development agreement was not subject to the Open Meetings Act, because the working group that drafted the development agreement had no authority to act in a way that could bind the board to any action or decision it negotiated or developed; rather, the working group drafted the development agreement in order for it to be handed off to the board, and it was subsequently the Board, not the working group, that heard public comments on the draft prior to its vote to approve the development agreement. *Benavidez v. Bernalillo Cnty. Bd. of Comm'rs*, [2021-NMCA-029](#), cert. denied.

The child protective services task force is not a public body subject to the Open Meetings Act. — The Open Meetings Act applies to any "public body" and this section provides that the Open Meetings Act applies to all meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency or any agency or authority of any county, municipality, district or political subdivision. The child protective services task force, which was created by a house joint memorial during the 2019 legislative session for the purpose of making recommendations to generally improve the safety and well-being of children in the care of the child protective services system, is not subject to the Open Meetings Act, because it is not a policymaking entity as it holds a purely advisory role and exists only to make recommendations to real policymakers. *Applicability of Open Meetings Act to Child Protective Services Task Force* (1/30/20), [Att'y Gen. Adv. Ltr. 2020-01](#).

Applicability of the Open Meetings Act to volunteer nursing board advisory committees. — The Open Meetings Act, [10-15-1](#) to [10-15-4](#) NMSA 1978, applies to a

quorum of members of any board or commission or other policy making body of any state agency held for the purpose of formulating public policy or taking any action within the authority of, or the delegated authority of, any board or commission or other policymaking body, and therefore, meetings of a volunteer advisory committee appointed by the nursing board to provide advice and recommendations to the nursing board on various topics would not implicate the Open Meetings Act, unless the advisory committee includes among its members a quorum of the nursing board, in which case the committee meeting would need to be noticed as a public meeting and the minutes would need to be taken, and any minutes that are taken must be open to public access. *Use of Volunteers at the New Mexico State Board of Nursing* (11/26/18), [Att'y Gen. Adv. Ltr. 2018-09](#).

III. EXCEPTIONS.

Meetings with attorney. — Subsection H(7) does not apply only when a public body has already become involved in litigation or has been informed it will likely become involved. Also, it does not require that a decision regarding litigation be made in an open meeting. *Board of Cnty. Comm'rs v. Ogden*, [1994-NMCA-010](#), [117 N.M. 181](#), [870 P.2d 143](#), cert. denied, 117 N.M. 215, 870 P.2d 753.

Settlement agreements entered into between parties are outside the attorney-client privilege, and therefore Paragraph (7) of Subsection H of this section has no bearing on their disclosure. *Board of Comm'rs v. Las Cruces Sun-News*, [2003-NMCA-102](#), [134 N.M. 283](#), [76 P.3d 36](#).

Decisions to settle litigation may be made in a closed meeting. — A litigation committee, acting under the delegated authority of the New Mexico State Investment Council to settle legal matters, did not violate the Open Meetings Act (OMA) when it approved settlement agreements under the Fraud Against Taxpayers Act, [44-9-1](#) to [44-9-14](#) NMSA 1978, in private meetings, but because the litigation committee failed to comply with the notice provisions of the OMA, the litigation committee's approval of the settlement agreements was invalid. *N.M. State Inv. Council v. Weinstein*, [2016-NMCA-069](#), cert. denied.

Communications regarding limited personnel matters. — In an underlying enforcement action under the New Mexico Inspection of Public Records Act, 14-2-1 to -12 NMSA 1978, where plaintiffs made a combined seven written requests of the Albuquerque public schools (APS) to inspect documents referencing complaints or allegations of misconduct regarding the former superintendent of APS, the district court did not err in ordering the non-party appellant to answer plaintiffs' deposition questions, because appellant failed to identify any privilege, either adopted by the New Mexico supreme court or recognized under the New Mexico constitution, on which to base her argument that communications regarding "limited personnel matters" that occur during a closed public meeting are immune from discovery, and failed to meet her burden of establishing the essential elements necessary to prove the applicability of the attorney-client privilege, based on a claimed common interest, to her communications with APS attorneys. *Albuquerque Journal v. Board of Educ.*, [2019-NMCA-012](#), cert. granted.

County hospital physician's contract. — The Open Meetings Act was not applicable to a county hospital's contract with a physician since the board's bylaws gave authority to the CEO to enter into employment contracts with his subordinates, the contract was discussed at a closed-door meeting of the board conducted by the hospital's attorney,

which was proper under the personnel exclusion of the Open Meetings Act. Also, since it did not appear that any "final actions" were taken by the board on the employment contracts, there was no action taken, and the Open Meetings Act did not apply. The contract did not have to be adopted by either the hospital's board or the county commission in order to be valid. *Treloar v. County of Chavez*, [2001-NMCA-074](#), [130 N.M. 794](#), [32 P.3d 803](#).

Quorum not required. — Where livestock board's executive director's largely unilateral action in negotiating with the Forest Service and executing a memorandum of understanding did not involve a meeting of a quorum of the Board members, the Open Meetings Act did not apply. *Paragon Found., Inc. v. N.M. Livestock Bd.*, [2006-NMCA-004](#), [138 N.M. 761](#), [126 P.3d 577](#), cert. denied, 2006-NMCERT-001, 139 N.M.272, 131 P.3d 659.

IV. GENERAL REQUIREMENTS.

Reasonable public access required. — A governmental entity must allow reasonable public access for those who wish to attend and listen to its proceedings. *Gutierrez v. City of Albuquerque*, [1981-NMSC-061](#), [96 N.M. 398](#), [631 P.2d 304](#).

Meeting with overflow crowd qualifies as open and public. — When the size of a crowd exceeds the capacity of the meeting place and every effort is made to allow those who cannot gain entrance to listen to the proceedings, the requirements of this article are satisfied and the meeting qualifies as both open and public. *Gutierrez v. City of Albuquerque*, [1981-NMSC-061](#), [96 N.M. 398](#), [631 P.2d 304](#).

Restrictions on public's right to speak at open meetings. — The Open Meetings Act does not require a county commission to allow the public to speak at its meetings. However, the commission in this case had an intentional practice and tradition of allowing public comment at its meetings, and it failed to identify a significant government interest justifying the prohibition of plaintiff's speech at a commission meeting. Therefore, the district courts order of summary judgment in favor of the commissioners was reversed. *Mesa v. White*, 197 F.3d 1041 (10th Cir. 1999).

V. NOTICE.

Notice reasonable. — Where notice of the meeting at which a board adopted regulations under the Environmental Improvement Act was mailed at least 10 days prior to the scheduled date to 64 individuals, committees and organizations (including the appellant who had and exercised the opportunity to appear at two preliminary meetings at which evidence was taken regarding the proposed regulations), the notice of these preliminary meetings was published in nine newspapers, a news release was issued on April 16, 1974, giving the time and place of the April 19 meeting and stating that the board would take action on proposed regulations for solid waste and New Mexico's ambient air standard for sulfur dioxide, notice of the meeting, citing a U.P.I. release, appeared in two other papers on April 18, 1974, and April 17, 1974, respectively, and moreover, April 19 was the regular monthly meeting date for the board, it was held that all of these efforts by the board constituted reasonable notice to the public within the meaning of this subsection. *N.M. Mun. League, Inc. v. N.M. Env'tl. Imp. Bd.*, [1975-NMCA-083](#), [88 N.M. 201](#), [539 P.2d 221](#), cert. denied, 88 N.M. 318, 540 P.2d 248.

VI. CORRECTION OF ERRORS.

Reinstatement of termination proceedings after initial ones defective. — Where the original termination proceedings against a teacher were reversed based upon a

procedural defect (failure to comply with this article), the school board was entitled to reinstate terminational proceedings, correct the procedural defect, and rely upon the same alleged acts of misconduct that had been relied upon in the original proceedings. *Board of Educ. v. Sullivan*, [1987-NMSC-062](#), [106 N.M. 125](#), [740 P.2d 119](#).

Correction of procedural error. — A local school board's procedural error in, following private deliberations, issuing its written decision affirming a teacher's dismissal without convening an open meeting and without a public announcement of the vote, may be corrected by holding a prompt public meeting, affording the teacher an opportunity to be present, and publicly voting on and ratifying its decision. *Kleinberg v. Board of Educ.*, [1988-NMCA-014](#), [107 N.M. 38](#), [751 P.2d 722](#).

Corrective action taken thirty months after procedural error was valid. — Where the New Mexico State Investment Council (NMSIC) ratified settlement agreements approved by a litigation committee, which violated the Open Meetings Act when acting under the delegated authority of the NMSIC, the NMSIC's ratification of the settlements in a properly-noticed public meeting, which included a public agenda, was open to the public, was publicly voted on by a quorum of the NMSIC, and the minutes of which were published online, was sufficient to remedy the litigation committee's improper action, because the legislature did not intend to unduly burden the appropriate exercise of governmental decision-making and ability to act. *N.M. State Inv. Council v. Weinstein*, [2016-NMCA-069](#).

Moot claim not vacated. — Although the drug-testing policy in issue was replaced, making the claim under this act moot on appeal, the city is not entitled to vacate the trial court's judgment on that claim. *19 Solid Waste Dep't Mechanics v. City of Albuquerque*, 76 F.3d 1142 (10th Cir. 1996).

Mutual domestic water association is a public body and must comply with the Open Meetings Act. 2006 Op. Att'y Gen. No. [06-02](#).

Dental hygiene committee must comply fully with the Open Meetings Act. 1987 Op. Att'y Gen. No. [87-82](#).

Intercommunity water supply association. — An association composed solely of two incorporated villages for purposes of securing an adequate and economic supply of water for the residents of the villages was a public body subject to the Open Meetings Act, particularly in light of the considerable public authority the association had over the creation, maintenance and distribution of the water to the two villages. 1991 Op. Att'y Gen. No. [91-07](#).

Denial to citizen of right to address board. — A local school board president has authority to deny citizens the right to address the local school board during a meeting of the board, if he is authorized to do so by rules promulgated by the board and he does not exercise that authority arbitrarily or capriciously. 1990 Op. Att'y Gen. No. [90-26](#).

All stages to be open. — All stages of the meetings must be open to the public because if the body were allowed to conduct a closed meeting in the determination of a matter, and then merely open the meeting to the public and announce its decision, the clear intent of the legislature would be defeated. 1959 Op. Att'y Gen. No. [59-105](#) (decided under prior law).

Decisions made by telephone, etc. — Final decisions made by telephone, mail or telegraph are not made at a meeting open to the public within the meaning of the act. A clear intention of the words "meeting open to the public" is to provide a situation where

all of the attending members of the board or commission assembled together arrive at final decisions and determinations in such a manner as to allow the press and the general public to be present. Any other interpretation would defeat the legislative intent of the statute. 1959 Op. Att'y Gen. No. [59-105](#) (decided under prior law).

A county commission may not, consistently with this article, approve purchases by telephone. When it approves purchases, a county commission is conducting public business and taking official action. Therefore, to be valid, this action must be taken by the commissioners acting as a body at a meeting open to the public and according to the requirements of the Open Meetings Act. 1991 Op. Att'y Gen. No. [91-12](#).

Recording and broadcasting of meetings. — News reporters may record public meetings and may later broadcast those recordings, if the recording process does not effectively interfere with certain legitimate governmental interests such as the need to provide for order, decorum, etc. 1973 Op. Att'y Gen. No. [73-10](#) (decided under prior law).

Notice of meetings. — Notice must be posted in a timely manner prior to the anticipated meeting. 1990 Op. Att'y Gen. No. [90-29](#).

The reasonable notice standard contained in the Open Meetings Act involves an analysis of its substance and procedure, and no hard and fast rule can be applied to what constitutes "reasonable notice" under the Act. 1990 Op. Att'y Gen. No. [90-29](#). Procedurally, it is acceptable to post notice in a prominent location like city hall or in the county courthouse. However, where notice has been posted in a prominent location but the public is denied access, such notice is defective and therefore not reasonable. 1990 Op. Att'y Gen. No. [90-29](#).

It is recommended that public policy-making bodies post notice at least 10 days prior to regular meetings, three days prior to special meetings and as practicable for emergency meetings. However, emergency meetings called with little or no notice must involve issues which, if not addressed immediately by a policy-making body, will threaten the health, safety or property of its citizens. 1990 Op. Att'y Gen. No. [90-29](#).

A violation of the Open Meeting Act's notice provisions must be considered to be substantial because the act's policy goals and intent cannot be achieved without sufficient notice. 1990 Op. Att'y Gen. No. [90-29](#).

Publication in New Mexico register. — A notice of proposed rulemaking in the New Mexico Register probably would not constitute reasonable notice under the Open Meetings Act, Sections [10-15-1](#) to [10-15-4](#) NMSA 1978, because the register is not widely circulated and is not readily available to the general public. 1993 Op. Att'y Gen. No. [93-02](#).

"Limited personnel matters" exception. — If a public policy-making body desires to meet in executive session to discuss an individual employee's dismissal, promotion, resignation, complaint or shortcomings, then such a meeting could properly be closed pursuant to the "limited personnel matters" exception set forth in Subsection H(2). Conversely, budgetary discussions and the like, while sometimes tangentially related to personnel matters, are not to be held behind closed doors. 1990 Op. Att'y Gen. No. [90-28](#).

Use of proxy votes is not permitted. — The Open Meetings Act does not allow a member of the New Mexico sentencing commission to use a designee to cast the member's vote at a meeting. 2010 Op. Att'y Gen. No. [10-02](#).

Official acts. — An "official act" for purposes of the Open Meetings Act broadly encompasses any activity related to an agency's official business, authority and responsibilities. 2010 Op. Att'y Gen. No. [10-02](#).

Sanctions for violations. — Sanctions for violating the Open Meetings Act include invalidation of agency action, award of attorney fees and costs to plaintiffs who prevail in a court action to enforce the Open Meetings Act, and criminal penalties. 2010 Op. Att'y Gen. No. [10-02](#).

No general right of public sector collective bargaining. — It would be incorrect to infer that by including a provision allowing closed meetings to discuss strategy preliminary to collective bargaining negotiations, Paragraph H(5) of this section, the legislature recognized the general right of public sector collective bargaining. To the contrary, that provision was enacted only because the legislature specifically had authorized cities to bargain collectively with transit workers in [3-52-14](#) to [3-52-16](#) NMSA 1978. 1987 Op. Att'y Gen. No. [87-41](#).

The Las Cruces Selection Advisory Committee is a policy-making body for purposes of the Open Meetings Act. 1990 Op. Att'y Gen. No. [90-27](#).

Law reviews. — For annual survey of New Mexico law relating to administrative law, see 13 N.M.L. Rev. 235 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 101 et seq.

Emergency exception under state law making proceedings by public bodies open to the public, 33 A.L.R.5th 731.

Attorney-client exception under state law making proceedings by public bodies open to the public, 34 A.L.R.5th 591.

Pending or prospective litigation exception under state law making proceedings by public bodies open to the public, 35 A.L.R.5th 113.

Construction and application of exemptions, under 5 USCS § 552b(c), to open meeting requirement of Sunshine Act, 82 A.L.R. Fed. 465.

Exhaustion of administrative remedies as prerequisite to judicial action to compel disclosure under Freedom of Information Act (FOIA) (5 USC § 552), 112 A.L.R. Fed. 561.

73 C.J.S. Public Administrative Law and Procedure § 19.

10-15-1.1. Short title.

Chapter [10](#), Article [15](#) NMSA 1978 may be cited as the "Open Meetings Act".

History: 1978 Comp., § 10-15-1.1, enacted by Laws 1979, ch. 366, § 2; 1989, ch. 299, § 2.

10-15-2. State legislature; meetings.

A. Unless otherwise provided by joint house and senate rule, all meetings of any committee or policy-making body of the legislature held for the purpose of discussing public business or for the purpose of taking any action within the authority of or the delegated authority of the committee or body are declared to be public meetings open to

the public at all times. Reasonable notice of meetings shall be given to the public by publication or by the presiding officer of each house prior to the time the meeting is scheduled.

B. The provisions of Subsection A of this section do not apply to matters relating to personnel or matters adjudicatory in nature or to investigative or quasi-judicial proceedings relating to ethics and conduct or to a caucus of a political party.

C. For the purposes of this section, "meeting" means a gathering of a quorum of the members of a standing committee or conference committee held for the purpose of taking any action within the authority of the committee or body.

History: 1953 Comp., § 5-6-24, enacted by Laws 1974, ch. 91, § 2; [2009, ch. 105, § 1](#).

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, added "unless otherwise provided by joint house and senate rule" at the beginning of the sentence; after "all meetings of", deleted "a quorum of members of" and added the last sentence; in Subsection B, deleted the language after "adjudicatory in nature", deleted "or any bill, resolution or other legislative matter not yet presented to either house of the legislature or general appropriation bills" and added the remainder of the sentence; in Subsection C, after "gathering of", added "a quorum of"; after "members", deleted "called by the presiding officer" and after "standing committee", added the remainder of the sentence. **Open meetings not required.** — The open meetings requirement as defined in this section does not apply to a caucus of the majority party of the house of representatives. 1976 Op. Att'y Gen. No. [76-21](#).

10-15-3. Invalid actions; standing.

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. Every resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be presumed to have been taken or made at a meeting held in accordance with the requirements of Section [10-15-1](#) NMSA 1978.

B. All provisions of the Open Meetings Act shall be enforced by the attorney general or by the district attorney in the county of jurisdiction. However, nothing in that act shall prevent an individual from independently applying for enforcement through the district courts, provided that the individual first provides written notice of the claimed violation to the public body and that the public body has denied or not acted on the claim within fifteen days of receiving it. A public meeting held to address a claimed violation of the Open Meetings Act shall include a summary of comments made at the meeting at which the claimed violation occurred.

C. The district courts of this state shall have jurisdiction, upon the application of any person to enforce the purpose of the Open Meetings Act, by injunction, mandamus or other appropriate order. The court shall award costs and reasonable attorney fees to any person who is successful in bringing a court action to enforce the provisions of the Open Meetings Act. If the prevailing party in a legal action brought under this section is a public body defendant, it shall be awarded court costs. A public body defendant that prevails in a court action brought under this section shall be awarded its reasonable attorney fees from the plaintiff if the plaintiff brought the action without sufficient information and belief that good grounds supported it.

D. No section of the Open Meetings Act shall be construed to preclude other remedies or rights not relating to the question of open meetings.

History: 1953 Comp., § 5-6-25, enacted by Laws 1974, ch. 91, § 3; 1989, ch. 299, § 3; [1993, ch. 262, § 2](#); [1997, ch. 148, § 1](#).

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, added the proviso in the second sentence of Subsection B and rewrote Subsection C.

The 1993 amendment, effective June 18, 1993, purported to amend this section but made no change.

Memorandum of understanding entered into by regional forester of the forest service and the executive director of the livestock board was not a proper action under this section, and thus there was no Open Meetings Act violation. *Paragon Found., Inc. v. N.M. Livestock Bd.*, [2006-NMCA-004](#), [138 N.M. 761](#), [126 P.3d 577](#), cert. denied, 2006-NMCERT-001, 139 N.M.272, 131 P.3d 659.

Recall of school board members. — Violation of the Open Meetings Act provides a sufficient basis for a petition to recall school board members. *Dona Ana Cnty. Clerk v. Martinez*, [2005-NMSC-037](#), [138 N.M. 575](#), [124 P.3d 210](#).

Employment offer from two commissioners. — The action of two county commissioners orally extending an offer of a two-year employment was without statutory authority because it was not made at a duly constituted meeting of the board and, thus, it was not a valid act capable of binding the county. *Trujillo v. Gonzales*, [1987-NMSC-119](#), [106 N.M. 620](#), [747 P.2d 915](#).

Retroactive cure of invalid action. — When a public entity acts to cure an employment termination action that was taken in violation of the Open Meetings Act by taking a later action, the later action cannot be applied retroactively to make the prior action valid and effective as of the date it was taken. *Palenick v. City of Rio Rancho*, [2012-NMCA-018](#), [270 P.3d 1281](#), cert. granted, 2012-NMCERT-002.

Where a municipality terminated plaintiff as city manager in violation of the Open Meeting Act and in a meeting eleven months after the termination, the municipality passed a resolution ratifying and approving the prior action, the later attempt to ratify and approve the invalid action and make the termination retroactively effective as of the date of the prior action was not effective. *Palenick v. City of Rio Rancho*, [2012-NMCA-018](#), [270 P.3d 1281](#), cert. granted, 2012-NMCERT-002.

Waiver of breach of employment agreement based on a violation of the act. —

Where defendant's city council terminated plaintiff's employment agreement; even though plaintiff believed that the city council had violated the Open Meetings Act and that plaintiff was still an employee of defendant, plaintiff demanded the severance benefits provided in the agreement; the correspondence between plaintiff and defendant concerning plaintiff's demand for severance benefits did not mention the circumstances surrounding plaintiff's termination; plaintiff did not object to defendant's letter informing plaintiff that plaintiff was no longer an employee of defendant; defendant paid plaintiff the severance package; the attorney general determined that plaintiff's termination violated the Open Meetings Act and that the violation invalidated plaintiff's termination; and plaintiff sued defendant for violation of the Open Meeting Act and for breach of contract, plaintiff's demand and acceptance of the severance package from defendant constituted a waiver of plaintiff's right to pursue claims against defendant for violation of the Open Meetings Act and for breach of contract. *Palenick v. City of Rio Rancho*, [2013-NMSC-029](#), *rev'g* [2012-NMCA-018](#), [270 P.3d 1281](#).

Breach of employment agreement based on a violation of the act. — Where a municipality terminated plaintiff as city manager in violation of the Open Meeting Act, plaintiff's acceptance of severance benefits did not constitute a waiver of plaintiff's right to salary and benefits pursuant to plaintiff's employment agreement. *Palenick v. City of Rio Rancho*, [2012-NMCA-018](#), [270 P.3d 1281](#), cert. granted, 2012-NMCERT-002.

Attorney's fees. — Where a municipality terminated plaintiff as city manager in violation of the Open Meeting Act, plaintiff filed an action for enforcement of the act and for breach of contract to recover money due under plaintiff's employment agreement; and plaintiff's claim to enforce the act was dismissed for lack of jurisdiction, the court could not enforce the act in the breach of contract action by awarding attorney fees and costs under the act. *Palenick v. City of Rio Rancho*, [2012-NMCA-018](#), [270 P.3d 1281](#), cert. granted, 2012-NMCERT-002.

10-15-4. Penalty.

Any person violating any of the provisions of Section [10-15-1](#) or [10-15-2](#) NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) for each offense.

History: 1953 Comp., § 5-6-26, enacted by Laws 1974, ch. 91, § 4; 1989, ch. 299, § 4.