



Let The Sunshine In



An In-Depth Look At
New Mexico's
Open Meetings Act

NMSA 1978,
§§ 10-15-1 to 10-15-4



Open Meetings Act

NMSA 1978, § 10-15-1(A)

Right to Open Meetings

- ★ Formation of public policy or the conduct of business by vote shall not be conducted in closed meetings
- ★ Generally, public bodies may not form public policy or conduct business in closed meetings
- ★ All persons desiring must be permitted to attend & listen to the proceedings
- ★ Audio & video recordings to be accommodated





Open Meetings Act

NMSA 1978, § 10-15-1(B)

All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency or political subdivision held for the purpose of:

- Formulating public policy
- Discussing public business, **or**
- Taking any action within the authority or delegated authority of the policymaking body

are declared to be public meetings at all times, except as otherwise provided in the New Mexico constitution or the Open Meetings Act.





Open Meetings Act

NMSA 1978, § 10-15-1(B)

QUORUM

- ★ OMA applies to all meetings of a quorum
- ★ Quorum = One more than half of the public body's members
- ★ Quorum may exist even if members are not present together at same time and place
- ★ **Rolling quorums**



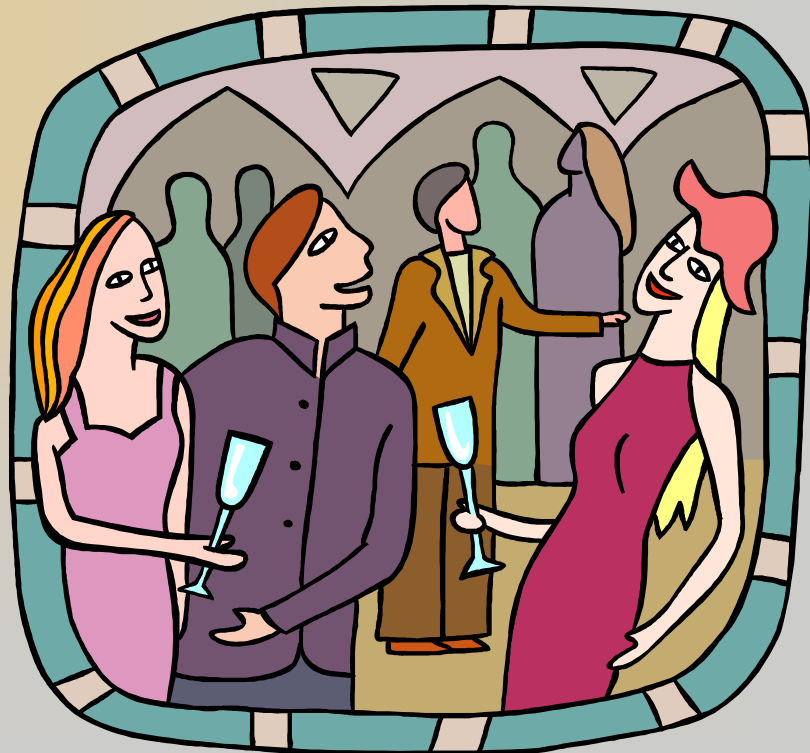


Open Meetings Act

NMSA 1978, § 10-15-1(B)

Meetings Not Covered By OMA

- ★ Social situations
- ★ Chance meetings
- ★ Don't discuss
public business!





Open Meetings Act

NMSA 1978, § 10-15-1(B)

Policymaking Bodies

- ★ Joint authority to act
- ★ Delegated authority
 - Hearing officer
 - Subcommittees
 - Policymaking
 - Advisory





Open Meetings Act

NMSA 1978, § 10-15-1(C)

Telephone Conferences

- ★ If otherwise allowed by law or rule of the public body, a member of the public body may participate in a meeting of the public body by means of a conference call or other similar communication equipment when it is otherwise difficult or impossible for the member to attend the meeting in person.
- ★ **The Act itself does not authorize attendance by telephone.**





Open Meetings Act

NMSA 1978, § 10-15-1(D)

Reasonable Notice

- ★ Reasonable advance notice of all meetings is required
- ★ Notice requirement applies to all meetings, open or closed, of a quorum of the public body
- ★ **No secret meetings**
- ★ Reasonable notice determined annually in an open meetings resolution





Open Meetings Act

NMSA 1978, § 10-15-1(E)

Recess & Reconvene

- ★ Before recessing, must specify date, time & place for continuation of meeting
- ★ Post notice at the door of original site & one other appropriate location
- ★ Topics discussed restricted to items that appeared on original agenda





Open Meetings Act

NMSA 1978, § 10-15-1(F)

Agenda

- ★ Meeting notice must include agenda or where public can obtain a copy
- ★ Must contain a list of specific items of business to be discussed or transacted at meeting
- ★ Must be made available to public 72 hours in advance of the meeting
- ★ **NO ACTION** may be taken at meeting unless item appears on agenda made available 72 hours in advance of the meeting
- ★ Exception for emergencies





Open Meetings Act

NMSA 1978, § 10-15-1(G)

Minutes

- ★ Public body required to keep minutes of open meetings
- ★ At a minimum, minutes shall include:
 - 1) date, time & place of meeting
 - 2) names of members in attendance and those absent
 - 3) substance of proposals considered
 - 4) record of any decisions made & votes taken that show how each member voted
- ★ **No secret ballots**
- ★ Draft minutes must be prepared within 10 working days
- ★ Minutes (including draft minutes) are a public record
- ★ Action on minutes – next meeting of quorum. Official upon the approval of the public body





Open Meetings Act

NMSA 1978, § 10-15-1(H)

Exception

- (1) MEETINGS PERTAINING TO ISSUANCE, SUSPENSION, RENEWAL OR REVOCATION OF A LICENSE
 - ✓ hearing at which evidence is offered or rebutted must be open.
 - ✓ All final actions taken at an open meeting





Open Meetings Act

NMSA 1978, § 10-15-1(H)

Exception

(2) LIMITED PERSONNEL MATTERS: discussion of hiring, promotion, demotion, dismissal, assignment or resignation of, or the investigation or consideration of complaints or charges against, any individual public employee

- ✓ does not cover general personnel policy; limited to individual employees
- ✓ does not preclude an aggrieved public employee from demanding a public hearing
- ✓ final actions on personnel taken at open public meetings





Open Meetings Act

NMSA 1978, § 10-15-1(H)

Exception

**(3) DELIBERATIONS IN CONNECTION WITH
AN ADMINISTRATIVE ADJUDICATORY
PROCEEDING**

- ✓ Hearing and final action takes place in public meeting



Open Meetings Act

NMSA 1978, § 10-15-1(H)

Exception

(6) CERTAIN PURCHASES:

- sole source purchases in an amount exceeding \$2,500

- contents of competitive sealed proposals solicited pursuant to the Procurement Code

- ✓ Actual approval of purchase of the item or final action regarding the selection of a contractor is made in an open meeting





Open Meetings Act

NMSA 1978, § 10-15-1(H)

Exception

(7) LITIGATION

Meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant

- ✓ Only exception that expressly allows closed meeting to discuss attorney-client privileged matters





Open Meetings Act

NMSA 1978, § 10-15-1(H)

Exception

(8) REAL PROPERTY & WATER RIGHTS

Meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body





Open Meetings Act

NMSA 1978, § 10-15-1(I),(J)

Procedure for Closure

- 1) During open meeting
 - a) motion stating legal authority for closure **AND** topic to be discussed with reasonable specificity
 - b) approved by majority vote and vote of each individual member recorded in the minutes (roll call vote)





Open Meetings Act

NMSA 1978, § 10-15-1(I),(J)



2) In separate closed meeting

a) prior public notice

b) notice must state specific law authorizing closure AND topic to be discussed with reasonable specificity



★ Minutes must state that matters discussed in closed session were limited to those specified in the motion to close or notice of closed meeting





Open Meetings Act

NMSA 1978, § 10-15-2

Legislative Committee Meetings

- ★ OMA does not apply to legislature & courts
- ★ Standing legislative committee & conference committee meetings
 - Must be open to the public
 - Preceded by reasonable notice
- ★ Exceptions: personnel & adjudicatory matters, proceedings related to ethics/conduct, & political party caucus





Open Meetings Act

NMSA 1978, § 10-15-3

Consequences of Violating the Act

- ★ Presumption that public body acted in accordance with the Act
- ★ Actions taken in violation of the Act are deemed invalid



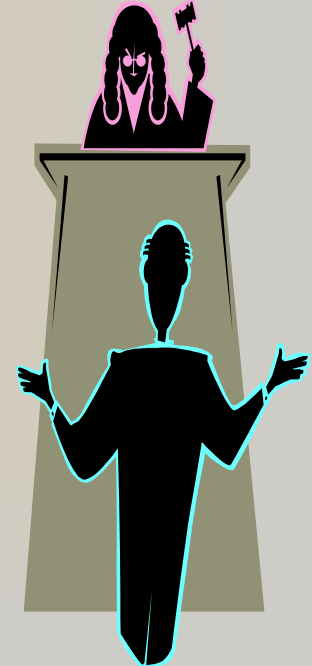


Open Meetings Act

NMSA 1978, § 10-15-3

Enforcement

- ★ Attorney General - statewide
- ★ District Attorneys –
in county of jurisdiction
- ★ Private individuals





Open Meetings Act

Section 10-15-3

Enforcement by Individuals

- 1) Written notice to public body required; public body has 15 days to act on claimed violation
- 2) Meetings to “cure” violations shall include summary of comments made at the meeting at which the claimed violation occurred
- 3) Individual can recover reasonable costs & attorney fees
- 4) Public body can recover costs. Attorney fees only if lawsuit was frivolous





Open Meetings Act

NMSA 1978, § 10-15-4

Criminal Penalties

Violations of the Act are a misdemeanor and punishable by a fine of up to \$500 for each offense

