

MICHIE'S ANNOTATED STATUTES OF NEW MEXICO
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CHAPTER 10. PUBLIC OFFICERS AND EMPLOYEES

ARTICLE 15. OPEN MEETINGS

N.M. Stat. Ann. § 10-15-1 (2010)

§ 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, any agency or authority of any county, municipality, district or any political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of 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 [Chapter 10, Article 15 NMSA 1978]. 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, the agenda shall be available to the public at least twenty-four 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, an "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.

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 [Chapter 10, Article 15 NMSA 1978], "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 subsection 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, an "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, his 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 and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code [13-1-28 NMSA 1978] 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, the closure:

(1) 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; and

(2) if called for when the policymaking body is not in an open 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.

GENERALLY

Settlement agreements between a county agency and prison inmates were public record, so this section did not, through *14-2-1A(8) NMSA 1978*, protect the agreements from disclosure under New Mexico's Inspection of Public Records Act [*14-2-4 NMSA 1978*]. *Bd. of Comm'rs v. Las Cruces Sun-News, 2003-NMCA-102, 134 N.M. 283, 76 P.3d 36.*

Section 10-15-1A NMSA 1978 generally specifies that all meetings of any public body, except the legislature and the courts, are public meetings. *Board of County Comm'rs v. Ogden, 117 N.M. 181, 870 P.2d 143 (Ct. App. 1994)*, cert. denied, *117 N.M. 215, 870 P.2d 753 (1994)*.

Section 10-15-3 NMSA 1978 provides that no action of any commission or other policy-making body shall be valid unless it is taken or made at a meeting held in accordance with the *Open Meetings Act*. *Trujillo v. Gonzales, 106 N.M. 620, 747 P.2d 915 (1987)*.

ADMINISTRATIVE RULES, REGULATIONS

Deliberations on a teacher's discharge were held after a full and fair hearing comporting with due process, with the parties given a full and fair opportunity to present their claims and defenses, and to argue their respective positions, but following the local board's deliberative process, it erred by announcing its decision in private, without a public vote and without holding a public meeting to announce its final action; however, it was an acceptable remedy that the local board corrected its procedural error by holding a prompt public meeting, affording appellant an opportunity to be present, and publicly voting on and ratifying its decision to discharge the teacher. *Kleinberg v. Board of Educ., 107 N.M. 38, 751 P.2d 722 (Ct. App. 1988)*, cert. denied, *107 N.M. 16, 751 P.2d 700 (1988)*.

APPLICABILITY

Foundation and livestock owner, who alleged violations of New Mexico's open meeting laws, claimed that the trial court erred in granting summary judgment for the New Mexico livestock board because the trial court failed to wait until transcripts of the board's executive director's deposition were prepared; however, this argument was meritless because answers to interrogatories supported the finding that the executive director acted without the board's approval. *Paragon Found., Inc. v. State Livestock Bd.*, 2006-NMCA-004, 138 N.M. 761, 126 P.3d 577, cert. denied, 131 P.3d 659, 2006 N.M. LEXIS 11.

ATTORNEY FEES

COMPLIANCE

Decision that a city council meeting on a corporation's application to sell alcohol beverages complied with 10-15-1A NMSA 1978 of New Mexico's Open Meetings Act was upheld because it occurred in a large hall and sufficient efforts to enable an overflow crowd to listen had been made, including installation of loudspeakers; 10-15-3 NMSA 1978, which provides that every action taken by a governmental entity is presumed to have been taken in accordance with the requirements of the Open Meetings Act, and the exceptions to the open meetings requirement found in 10-15-1E NMSA 1978 made it clear that the legislature did not intent to unduly burden the appropriate exercise of governmental decisionmaking and ability to act. *Gutierrez v. Albuquerque*, 96 N.M. 398, 631 P.2d 304 (1981).

CONSTRUCTION

Open meetings act, 10-15-1 NMSA 1978, does not require county commissioners to allow the public to speak at its meetings, but instead, only requires them to allow the public to "attend and listen;" thus, the act is irrelevant to the question of what interest is served by restricting the public's right to speak on personnel and litigation matters at a meeting open to the public. *Mesa v. White*, 197 F.3d 1041 (10th Cir. 1999).

The words "personnel matters," as used in former 5-6-23(E), 1953 Comp. (10-15-1H(2) NMSA 1978), was not ambiguous, had a definite meaning under recognized dictionary definitions of the two words forming it, and referred to a body of persons, such as a body of employees, and not to "an employee"; the term did not mean "matters relating to the discipline or hiring or dismissal of an employee". *State v. Hernandez*, 89 N.M. 698, 556 P.2d 1174 (1976).

DISMISSAL

City employee's claim that the city violated the New Mexico Open Meetings Act, 10-15-1 to 10-15-4 NMSA 1978, in terminating him after he tested positive for marijuana involved novel issues for which little or no New Mexico caselaw on count VI existed to provide guidance to the federal court; therefore count VI is dismissed from his civil rights action under 42 U.S.C.S. § 1983 against the city. *Saavedra v. City of Albuquerque*, 917 F. Supp. 760 (D.N.M. 1994).

DUE PROCESS

City employee's claim that the city violated the New Mexico Open Meetings Act, 10-15-1 to 10-15-4 NMSA 1978, due to board's failure to issue its decision to terminate him in an open and public meeting is not actionable under 42 U.S.C.S. § 1983 because violations of state law, standing alone, are not actionable under § 1983; even if true, the allegation is without merit because it involves mere violations of state or municipal rules, which had little or no bearing on the adequacy or fairness of the proceedings. *Saavedra v. City of Albuquerque*, 917 F. Supp. 760 (D.N.M. 1994).

EMPLOYEES

When a former employee challenged his dismissal through a grievance to the personnel board and under the Open Meetings Act, *10-15-1 to 10-15-4 NMSA* 1978, the court held that the employee could split his claims between a grievance proceeding and a court action because the personnel board did not have jurisdiction over certain claims. *Chavez v. City of Albuquerque*, 1998-NMCA-004, 124 N.M. 479, 952 P.2d 474.

HEARING

Merit system ordinance contingencies are irrelevant to the Open Meetings Act, *10-15-1 to 10-15-4 NMSA* 1978. *Chavez v. City of Albuquerque*, 1998-NMCA-004, 124 N.M. 479, 952 P.2d 474.

JURISDICTION

In an employee's action against a city under the Open Meetings Act, *10-15-1 NMSA* 1978 et seq., arising from the employee's termination, summary judgment in favor of the city based on the preclusive effect of the employee's administrative grievance proceeding was improper; *10-15-3B NMSA* 1978 vested exclusive jurisdiction in the district court over OMA enforcement actions, and the city's personnel board did not have jurisdiction to grant affirmative relief over the employee's OMA claim. *Chavez v. City of Albuquerque*, 1998-NMCA-004, 124 N.M. 479, 952 P.2d 474.

PRACTICE AND PROCEDURE

Under *10-15-1E(5) NMSA* 1978, it was proper for officials to decide whether to file an action for ejectment against landowners in a closed session as the attorney-client privilege exception to public meetings is not limited to pending litigation. *Board of County Comm'rs v. Ogden*, 117 N.M. 181, 870 P.2d 143 (Ct. App. 1994), cert. denied, 117 N.M. 215, 870 P.2d 753 (1994).

Included among the types of meetings excepted from the requirements of *10-15-1A NMSA* 1978 under *10-15-1E(5) NMSA* 1978 are meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant. *Board of County Comm'rs v. Ogden*, 117 N.M. 181, 870 P.2d 143 (Ct. App. 1994), cert. denied, 117 N.M. 215, 870 P.2d 753 (1994).

Under *10-15-1E(5) NMSA* 1978, the county commissioners could properly discuss and decide in a closed session whether to file a legal action against the owners of the real property. *Board of County Comm'rs v. Ogden*, 117 N.M. 181, 870 P.2d 143 (Ct. App. 1994), cert. denied, 117 N.M. 215, 870 P.2d 753 (1994).

In an action for ejectment, quiet title, and slander of title brought by county officials against landowners, summary judgment in favor of the officials was appropriate where it was proper for the officials to decide whether to file an action for ejectment against the landowners in a closed session; exceptions to public meetings were not limited to pending litigation and under *10-15-1E(5) NMSA* 1978, the officials could properly discuss and decide to file a legal action in a closed session. *Bd. of County Comm'rs v. Ogden*, 117 N.M. 181, 870 P.2d 143 (Ct. App. 1994), cert. denied, 117 N.M. 215, 870 P.2d 753 (1994).

OPINIONS OF ATTORNEY GENERAL

APPLICABILITY

An intercommunity water supply association composed solely of two incorporated villages for purposes of securing an adequate and economic supply of water for the residents of the villages is a public body subject to the Open Meetings Act, *10-15-1 NMSA* 1978 et seq. 1991 Op. Att'y Gen. No. 91-07, *1991 N.M. AG LEXIS 13*.

Meetings of the juvenile parole board are subject to the provisions of the Open Meetings Act. Thus, per diem and mileage reimbursement is governed by department of finance and administration rules. 1985 Attorney General Advisory Letter No. 85-02, *1985 N.M. AG LEXIS 11*.

AUTHORITY OF LOCAL SCHOOL BOARD PRESIDENT

A local school board president has the authority to deny citizens the right to address the local school board during a meeting of that board, if he is authorized to do so by rules promulgated by the school board and he does not exercise that authority arbitrarily or capriciously. 1990 Op. Att'y Gen. No. 90-26, *1990 N.M. AG LEXIS 23*.

AUTHORITY TO PURCHASE BY TELEPHONE

County commissioners may not telephonically authorize county purchases without violating the Open Meetings Act, *10-15-1 NMSA* 1978 et seq. 1991 Op. Att'y Gen. No. 91-12, *1991 N.M. AG LEXIS 8*.

COMPLIANCE

The New Mexico highlands university board of regents was not allowed revoke its offer to extend its president's employment contract by deleting the section of the minutes which recorded the board's vote in favor of extending his contract, since the board could not validly delete a correct reporting of its vote, and, therefore, the board could not revoke an offer made by it by means of an invalid deletion. 1984 Attorney General Advisory Letter No. 84-28, *1984 N.M. AG LEXIS 30*.

CONSTRUCTION WITH OTHER LAW

The Open Meetings Act, *10-15-1 NMSA* 1978 et seq., is applicable to the dental hygiene committee. 1987 Op. Atty. Gen. No. 87-82, *1987 N.M. AG LEXIS 3*.

NOTICE

A notice of proposed rulemaking in the New Mexico Register probably would not constitute reasonable notice under the Open Meetings Act *10-15-1 NMSA* 1978 et seq., because the Register is not widely circulated and is not readily available to the general public. 1993 Op. Att'y Gen. No. 93-2, *1993 N.M. AG LEXIS 1*.

PERSONNEL POLICY

A public policy-making body may not retreat into an executive session to discuss personnel policies, procedures, budget items, and other issues not directly related to any individual public employee. 1990 Op. Att'y Gen. No. 90-28, *1990 N.M. AG LEXIS 25*.

POLICYMAKING BODY

The Las Cruces selection advisory committee is a policymaking body for purposes of the New Mexico Open Meetings Act. 1990 Op. Att'y Gen. No. 90-27, *1990 N.M. AG LEXIS 24*.

REASONABLE NOTICE

Reasonable notice contains two fundamental elements, one which relates to the notice's substance, the other to procedure. Such notice must adequately and accurately inform the public of the proposed meeting's time, place and date. Procedurally, it is acceptable to post notice in a prominent location like city hall or in the county courthouse, in a way that the public has access to the notice. It is recommended that public policy-making bodies in New Mexico post notice at least 10 days prior to regular meetings, three days prior to special meetings and as practicable for emergency meetings. 1990 Op. Att'y Gen. No. 90-29, *1990 N.M. AG LEXIS 26*.

REQUIREMENTS

The New Mexico highlands university board of regents may not validly pass a motion deleting from its minutes an accurate reporting of actions taken by the board during a previous meeting, since the New Mexico Open Meetings Act, *10-15-1 NMSA 1978 et seq.*, requires public bodies to keep an accurate record of actions taken by it during an open meeting. Minutes may be amended for the limited purpose of correcting errors contained therein. A board may not excise from its minutes an accurate reporting of actions taken by the board. 1984 Attorney General Advisory Letter No. 84-28, *1984 N.M. AG LEXIS 30*.

NEW MEXICO LAW REVIEW

Judicial Selection In New Mexico: A Hybrid Of Commission Nomination And Partisan Election, Leo M. Romero, *30 N.M.L. Rev. 177 (2000)*.

CHAPTER 10. PUBLIC OFFICERS AND EMPLOYEES

ARTICLE 15. OPEN MEETINGS

N.M. Stat. Ann. § 10-15-1.1 (2010)

§ 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.

CHAPTER 10. PUBLIC OFFICERS AND EMPLOYEES**ARTICLE 15. OPEN MEETINGS**

N.M. Stat. Ann. § 10-15-3 (2010)

§ 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 [Chapter 10, Article 15 NMSA 1978] 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.

GENERALLY

Foundation and livestock owner, who alleged violations of New Mexico's open meeting laws, claimed that the trial court erred in granting summary judgment for the New Mexico livestock board because the trial court failed to wait until transcripts of the board's executive director's deposition were prepared; however,

this argument was meritless because answers to interrogatories supported the finding that the executive director acted without the board's approval. *Paragon Found., Inc. v. State Livestock Bd.*, 2006-NMCA-004, 138 N.M. 761, 126 P.3d 577, cert. denied, 131 P.3d 659, 2006 N.M. LEXIS 11.

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