

NMSU regents violated Open Meetings Act, sunshine group says

Heath Haussamen, NMPolitics.net 4:33 p.m. MDT August 30, 2016



(Photo: Robin Zielinski/Sun-News)

LAS CRUCES - Members of the New Mexico State University Board of Regents violated the state Open Meetings Act last month when they met privately with the school's chancellor to be briefed on plans to eliminate an academic program, the New Mexico Foundation for Open Government says.

The university denies a violation occurred.

The five regents didn't all gather together with Chancellor Garrey Carruthers to learn about [his plans](http://nmpolitics.net/index/2016/07/nmsu-cuts-on-campus-employee-health-services-equestrian-team-surveying-engineering-program/) (<http://nmpolitics.net/index/2016/07/nmsu-cuts-on-campus-employee-health-services-equestrian-team-surveying-engineering-program/>) to cut an estimated \$12.1 million from NMSU's budget, which included saving \$340,644 a year by [eliminating the Surveying Engineering program](http://nmpolitics.net/index/2016/07/decision-to-cut-nmsu-surveying-engineering-program-isnt-yet-final/) (<http://nmpolitics.net/index/2016/07/decision-to-cut-nmsu-surveying-engineering-program-isnt-yet-final/>). Instead, they met in small groups — two meetings in which two regents were present and a third with only student Regent Amanda López Askin present.

The New Mexico Open Meetings Act

(<http://www.nmag.gov/uploads/files/Publications/ComplianceGuides/Open%20Meetings%20Act%20Compliance%20Guide%202015.pdf>) requires that regent discussions “held for the purpose of formulating public policy” take place in public meetings and only after giving proper notice so people have an opportunity to attend. A so-called “rolling quorum” — conversations among fewer than a majority of regents that, together, add up to a quorum, or enough members to make a formal decision — are subject to that law and must also be public, a [2004 district court ruling](http://www.abqjournal.com/news/state/163839nm04-18-04.htm) (<http://www.abqjournal.com/news/state/163839nm04-18-04.htm>) in Las Cruces established.

Most of the cuts Carruthers briefed regents on during those meetings in early July — such as eliminating [the women's equestrian team](http://nmpolitics.net/index/2016/07/nmsu-changes-mind-gives-equestrian-team-one-more-year/) (<http://nmpolitics.net/index/2016/07/nmsu-changes-mind-gives-equestrian-team-one-more-year/>) and [on-campus health services for employees](http://nmpolitics.net/index/2016/07/nmsu-cuts-on-campus-employee-health-services-equestrian-team-surveying-engineering-program/) (<http://nmpolitics.net/index/2016/07/nmsu-cuts-on-campus-employee-health-services-equestrian-team-surveying-engineering-program/>) — don't require board approval, so there was no legal issue with Carruthers sharing those plans with regents in private, said Susan Boe, executive director of FOG.

But the proposal to cut the surveying program and eliminate its three faculty jobs [requires approval of the regents](http://nmpolitics.net/index/2016/07/decision-to-cut-nmsu-surveying-engineering-program-isnt-yet-final/) (<http://nmpolitics.net/index/2016/07/decision-to-cut-nmsu-surveying-engineering-program-isnt-yet-final/>). Eliminating the academic program is the sort of “public business” that the law requires be discussed in public, Boe said.

“The discussion around the programs that fall under the Board of Regents seems to have constituted a violation of the Open Meetings Act as a rolling quorum,” she said.

A ‘download’ of information

The university disputes the allegation that the regents violated the Open Meetings Act. NMSU spokesman Justin Bannister said Carruthers “has an obligation to keep members of the Board of Regents informed regarding important issues and administrative decisions relating to NMSU operations.”

“Based on our legal review, NMSU does not believe that informational presentations by the chancellor to the regents, whether conducted individually or in small groups which do not constitute a quorum, violate the New Mexico Open Meetings Act,” he said.

Bannister and Debra Hicks, the regents' chairwoman, described the meetings with Carruthers as presentations rather than discussions. Hicks called them a “download” of information.

Carruthers “has not and will not use such informational sessions to seek regents' approval for any decision or action by the NMSU administration, nor to inquire about how regents might vote on matters which require board approval,” Bannister said. And, he added, “generally, regents do not express their views at such meetings, but the reason for holding informational sessions in groups of less than a quorum is to ensure that there is no discussion

amongst a quorum of regents.”

Boe called that logic faulty, pointing to Bannister's implicit admission that a discussion among regents might occur if there's a quorum present.

“If there is concern about an OMA violation with a quorum, that concern does not go away when the quorum is rolling,” she said.

There appears to have been some discussion in the meeting where Hicks was present. Hicks said she asked questions and gave Carruthers at least one piece of feedback. “I told him, ‘you need to go back and get more data with regard to employability of the surveying students,’” Hicks told NMPolitics.net (<http://NMPolitics.net>).

Being able to see Hicks ask questions and tell Carruthers he needs to gather more data is arguably the sort of insight into the regents' decision-making process that OMA aims to give the public.

“The Open Meetings Act is not about technical compliance, but is a legal framework for ensuring that the public has access to how important decisions such as cutting certain academic programs are determined,” Boe said.

Carruthers has used small meetings to privately brief the regents before, though Hicks said the July meetings were the first since she joined the board in January 2015. Bannister declined to talk about other instances.

“NMSU is not obligated to share the specific topics of those informational sessions with the media,” he said.

‘Not trying to push the limit on the gray area’

Because of falling enrollment and state budget cuts, Carruthers and the regents have been working for months to reduce university spending. They've also been working longer-term to reorganize NMSU's structure to make it more efficient. Carruthers has held public meetings to discuss many of the cuts that have been considered and implemented, and the regents have discussed some cuts publicly.

Days after the private meetings with regents, Carruthers presented his plans to address the budget shortfall at a regents meeting [on July 13](http://nmpolitics.net/index/2016/07/nmsu-cuts-on-campus-employee-health-services-equestrian-team-surveying-engineering-program/) (<http://nmpolitics.net/index/2016/07/nmsu-cuts-on-campus-employee-health-services-equestrian-team-surveying-engineering-program/>). Hicks, who has previous experience with OMA from serving on the New Mexico Transportation Commission and New Mexico Tech Board of Regents, said she insisted on the public meeting.

“We need to have that rigorous dialogue between ourselves and with the public about those spending levels,” she said, adding that NMSU's administration would not hold “open budget meetings ... if I didn't push, if the regents didn't push.”

The regents are allowed to create subcommittees of two members or less to work on specific issues that may eventually come to the board for a vote in a public meeting. Subcommittee meetings don't have to be open to the public. That's how Hicks justified the briefings on cutting the surveying program.

But Boe said there's a difference. Two regents can serve on a subcommittee that doesn't hold public meetings, but they can't legally discuss the subcommittee's work with other regents until they're together in a public meeting. In this instance, all five regents had an opportunity to ask questions and provide feedback and direction in private, which Hicks apparently did.

Hicks said she believes there's a gray area in the law, and that's why she insisted Carruthers hold a public meeting after privately briefing the regents.

“I told him that I really felt like we needed to have the public meeting. He felt it was important to have the discussion with us in advance,” Hicks said. “... I'm not trying to push the limit on the gray area.”

Askin, the student regent, said she couldn't speak to Carruthers' intentions with the private meetings, but speculated “that he was trying to be aware and respectful of the OMA based on him limiting the number of regents present.” Since she became student regent in March 2015, Askin said, “there seems to be an awareness and respect for the OMA and FOG and all efforts made to meet or exceed the requirements.”

Askin deferred other questions to Hicks, who she said was “well versed” in OMA. “I look to her for guidance,” she said. The other three regents didn't respond to an emailed request for comment sent to the board's chief of staff, Janet Green.

This isn't the NMSU Regents' first run-in with the Open Meetings Act in recent months. The act allows private discussions around some issues, including litigation, real estate and personnel. Regents have to notify the public in advance about what they'll be discussing behind closed doors. Any votes must be taken in public.

In June, the regents admitted they had not been sufficiently explaining the legal justification for their closed-door meetings for years — and they promised better compliance (<http://nmpolitics.net/index/2016/06/nmsu-regents-promise-better-open-meetings-act-compliance/>). Since then, the regents have stated in greater detail why they're meeting (<https://regents.nmsu.edu/files/2013/07/Meeting-Notice-August-3-2016.pdf>) in closed session (<https://regents.nmsu.edu/files/2013/07/Meeting-Notice-July-20-2016.pdf>), as OMA requires.

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