

New Mexico Foundation for Open Government

Nov. 17, 2009

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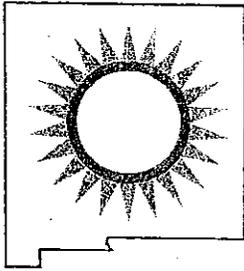
William Perkins
Lopez & Associates
P.O. Box 1289
Silver City, NM 88062

Cc: Clerk Kathy Harris, Village of Reserve; Mayor Greg Baca, Village of Reserve

Dear Mr. Perkins,

I have been forwarded a copy of a letter you sent to Ms. Kathy Harris, the clerk for the Village of Reserve, regarding allegations of an Open Meetings Act violation on Oct. 8, 2009. I appreciate your careful attention to this matter, but I wish to clarify some of the points made in your letter.

1. **Failure to give timely notice.** With regard to an alleged failure to give timely notice, you state that public bodies must give public notice when they intend to take action. This is true, but it is not the only time bodies must give notice. The Open Meetings Act applies to all meetings of a quorum of a public body – whether or not they intend to take action. Second, you are correct that no notice timeframe is mandated by law. However, the law does mandate “reasonable notice” and the Attorney General’s office has opined that three days’ notice for a special meeting will suffice. The goal is to give the public as much advance notice as possible, and it would seem from Ms. Harris’ letter that the meeting had been scheduled by Oct. 5. Perhaps the agenda was not complete, but notice of the meeting could have been posted at that time or early the next day. I join you in commending Ms. Harris for her diligence in reposting the agenda after it was removed; however, posting agendas outside closed businesses carries an inherent risk of tampering and it also decreases the likelihood that citizens will have occasion to see the notice. I urge the Village to consider these points when it adopts a new Open Meetings resolution for 2010.
2. **Agenda Did Not Specifically Describe Items of Business.** Neither the agenda nor the motion recorded in the minutes of the Oct. 8 meeting contain “the authority for the closure *and* the subject to be discussed ... with reasonable specificity.” (emphasis added.) Contrary to your statement that the motion and agenda contained adequate specificity, the Attorney General’s office has opined repeatedly that the authority and the



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subject are two separate items. (See attached.)

3. **Alleged Violations of Closed Session - Motion.** With regard to the Village Council's executive session, I believe it is important not to downplay the requirements of the Open Meetings Act, which are more than just "technical procedures." The fact that the legislature mandated such specific procedures, in statute, speaks to the importance of insuring maximum transparency when closing an otherwise public meeting. To wit, the law requires that when a motion is made to go into executive session, "the vote of each individual member shall be recorded in the minutes." The minutes in question do not record the vote of each individual member.
4. **Alleged Violations of Closed Session - Minutes.** You are correct in directing Ms. Harris to amend the Council's minutes to reflect that the discussion held behind closed doors was limited to only those matters specified in the motion for closure. I would add that in the future, it is also advisable for the governing body to make such a statement after ending a closed session. I believe that making such a statement publicly, rather than simply approving it in the minutes, provides a small additional check on the power granted to public officials who meet behind closed doors. A public statement also provides some assurance to the assembled audience that the Open Meetings Act is in fact being adhered to.

Again, thank you for your attention to this matter. Although open-meetings requirements can appear burdensome to newly elected officials and newly hired staff, those requirements provide citizens and taxpayers with an important avenue for monitoring and influencing the actions of their government. Therefore, they are no small matter. The Foundation is committed to assisting both citizens and government officials in understanding their rights and responsibilities under the law. If I can be of any assistance, please do not hesitate to contact me.

Sincerely,

Sarah Welsh
Executive Director