

Opinion No. 90-26

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OPINION OF: HAL STRATTON, Attorney General

BY: Elizabeth A. Glenn, Assistant Attorney General

TO: Honorable Mary L. Thompson, State Representative, 1915 La Jolla, Las Cruces, New Mexico 88005

QUESTIONS

Does a local school board president have the authority to deny citizens the right to address the local school board during a meeting of that board?

CONCLUSIONS

Yes, the president may deny public participation at board meetings if he is authorized to do so by rules promulgated by the school board and he does not exercise that authority arbitrarily or capriciously.

ANALYSIS

Local school boards must hold at least one regular meeting each month. NMSA 1978, § 10-3-2(A) (Repl. Pamp. 1990). A "regular meeting" is one at which at least a quorum of the members of the school board is present, about which notice has been published and at which normal school district business is transacted. *Id.* § 10-3-2(E). Local school board meetings are subject to the Open Meetings Act, NMSA 1978, §§ 10-15-1 to -4 (Repl. Pamp. 1990), which provides that "[a]ll 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." *Id.* § 10-15-1(A).

School districts are required by statute to hold public hearings on certain issues, e.g., NMSA 1978, § 22-5-4.3 (Repl. Pamp. 1989) (local school board shall involve parents, school personnel and students in, and hold public hearings on, formulation of school discipline policies). In general, however, the statutes addressing school board meetings do not require public participation. Cf. *Gutierrez v. City of Albuquerque*, 96 N.M. 398, 401, 631 P.2d 304, 307 (1981) (city council went beyond Open Meetings Act requirements when it allowed members of public to address the council and present their views for over two hours). See also *Dobrovolny v. Reinhardt*, 173 N.W.2d 837, 840-41 (Iowa 1970) (state open meetings statute did not require a public body to allow any individual or group to be heard on the subject being considered); *City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070, 1078 (1980) (state sunshine law did not afford the public any right to participate in open meetings held by public bodies). We

also did not find any case law in New Mexico requiring school boards to allow members of the public to air their views at board meetings.

In the absence of any specific legal requirements, a local school board may prohibit, permit or regulate public participation at its meetings under NMSA 1978, § 22-5-4(O) (Supp. 1990), which authorizes a board to "adopt regulations pertaining to the administration of all powers or duties" of the board. In general, "where a duty is entrusted to a board composed of different individuals, the board can act officially only as such, in convened session, with the members, or a quorum thereof present." *State v. Kelly*, 27 N.M. 412, 434, 202 P. 524, 532-33 (1921); *Landers v. Board of Educ.*, 45 N.M. 446, 449, 116 P.2d 690, 691 (1941) (for a school board to make a binding employment contract, the members must act formally as a board). An official act done with less than a quorum present is invalid. *In re Kinscheff*, 89 N.M. 669, 671, 556 P.2d 355, 357 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976). Accordingly, the president of a school board has no independent authority to make rules regarding the administration of board meetings, and any limits he places on public participation must be authorized by a rule of the board.

If a school board adopts rules governing public participation at meetings, the rules and how they are exercised must not be unreasonable, arbitrary or capricious. See *Board of Educ. v. Sullivan*, 106 N.M. 125, 126, 740 P.2d 119, 120 (1987) (Court of Appeals must affirm State Board of Education decision unless it is arbitrary, capricious or unreasonable, not supported by substantial evidence, or otherwise not in accordance with law); AG Op. No. 67-117 (1967) (concluding that local school board rules prohibiting married high school students from participating in extra curricular activities and requiring pregnant students to withdraw were void). For example, the local school board president could not apply rules restricting public participation sporadically to keep specific individuals from addressing the board. Cf. *Gutierrez v. City of Albuquerque*, 96 N.M. at 400, 631 P.2d at 306 (Open Meetings Act requirement that public be permitted to attend and listen at meetings can be interpreted to mean "no one will be systematically excluded or arbitrarily refused admittance").

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