

January 27, 2004: Effect of Subcommittee's Open Meetings Act Violation

The Honorable Mary Lynne Newell

District Attorney

Sixth Judicial District

P.O. Box 1025

Silver City, New Mexico 88062-1025

Re: Opinion Request – Effect of Subcommittee's Open Meetings Act Violation

Dear District Attorney Newell:

You requested our advice regarding whether a violation of the Open Meetings Act (NMSA 1978, §§ 10-15-1 to -4) by a subcommittee of a county commission invalidated the commission's actions. As discussed below, the Act invalidates action that a policymaking subcommittee takes in violation of the Act's requirements. The subcommittee's violation would not necessarily affect action of the county commission that is taken at a commission meeting that complies with the Act.

We understand that your question involves a county commission and subcommittee that held meetings on the same day. For purposes of this letter, we assume that the subcommittee, which may have included some or all of the county commissioners, held its meeting separately from the commission meeting at some point before, after, or during a recess of, the commission meeting.

The Open Meetings Act applies to all meetings of policymaking bodies of a county. See NMSA 1978, § 10-15-1(B). The Act's coverage includes a county commission, as well as any subcommittees of the commission that have or have been delegated any policymaking or decisionmaking responsibilities. See Attorney General's Open Meetings Act Compliance Guide, pp. 7-8 (4th ed. Aug. 1999). Section 10-15-3(A) of the Act provides that "[n]o ... action of any board, commission, committee or other policymaking body shall be valid unless taken ... at a meeting held in accordance with the [Act's] requirements...."

Section 10-15-3(A) invalidates action by a county policymaking body at a meeting that violates the Open Meetings Act. This consequence applies to the specific policymaking body that violated the Act. Accordingly, if a subcommittee covered by the Act acts in violation of the Act, its action will be invalid. If the subcommittee convenes and conducts its business separately from the county commission, the subcommittee's violation of the Open Meetings Act will not affect the commission's actions, assuming the commission conducts its business in accordance with the Act.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

Elizabeth A. Glenn

Assistant Attorney General