

## **May 20, 2013 Advisory Letter -- Attorney General Opinion Request--House Bill 21**

The Honorable James Smith  
New Mexico State Representative  
Box 1783  
Sandia Park NM 87047

**Re:** Attorney General Opinion Request--House Bill 21

Dear Representative Smith:

You have requested our advice regarding the implementation of House Bill 21, 2013 N.M. Laws, ch. 42, to be codified at NMSA 1978, Section 10-15-1(F).<sup>1</sup> This bill, which was passed during the 2013 legislative session, amends the Open Meetings Act, NMSA 1978, ch. 10, art. 15 (2009), to require a public body that meets less frequently than once per week to post its meeting agenda at least seventy-two hours prior to the meeting. You ask: "Does the 72 hours include Saturday and Sundays?" Based on our examination of the relevant constitutional, statutory and case law authorities, and the information available to us at this time, we conclude that the seventy-two hours does include Saturdays and Sundays.

There are three rules of statutory construction that are applicable to this matter. First, statutory language should be given its plain meaning. See Cooper v. Chevron, 2002-NMSC-020, ¶ 16, 132 N.M. 382, 49 P.3d 61. Second, the legislature is presumed to be aware of existing law when it enacts a new law. See Narney v. Daniels, 115 N.M. 41, 48, 846 P.2d 347 (Ct. App. 1992). Third, when the legislature expressly authorizes a certain thing to be done in a prescribed manner, the legislature has chosen that manner and other modes should be viewed as excluded. See Bettini v. City of Las Cruces, 82 N.M. 633, 635, 485 P.2d 967 (1971).

The 2013 legislature adopted House Bill 21 and Governor Susana Martinez has signed it into law. See Office of the Governor Susana Martinez's website, www.governor.state.nm.us/2013\_Governor's\_Action\_on\_Bills. House Bill 21 states, in relevant part: "Except in the case of an emergency or in the case of a public body that ordinarily meets more frequently than once per week, at least seventy-two hours prior the meeting, the agenda shall be available to the public and posted on the public body's web site." Currently, the Open Meetings Act requires a public body to make the agenda available twenty-four hours before a meeting. See NMSA 1978, § 10-15-1(F) (1999).

House Bill 21's language can be interpreted according to its plain meaning. Time is the "nonspatial continuum that is measured in terms of events which succeed one another from past through present to future." See Merriam Webster website, www.merriam-webster.com/dictionary/time. This means that "seventy-two hours" is seventy-two consecutive hours. A public body that is subject to House Bill 21 that wants to hold a meeting on Monday at 9:00 a.m. must count backward in time seventy-two consecutive hours. Therefore, it must post its agenda no later than Friday at 9:00 a.m.

You ask whether, notwithstanding the plain meaning of House Bill 21, the New Mexico Uniform Statute and Rule Construction Act is applicable to this matter. This Act states, in relevant part: “if the period is less than eleven days, a Saturday, Sunday or legal holiday is excluded from the computation.” NMSA 1978, § 12-2A-7(D) (1997). If the Act was applicable to House Bill 21, Saturdays and Sundays would be not counted in the calculation since seventy-two hours is less than eleven days.

The Act has several statutory interpretation tools for measuring time in “days,” “weeks,” “months” and “years.” The statute provides instruction as to when a day, week, month and year begins and ends, but is silent on interpreting the use of “hours.” When the legislature expressly authorizes a certain thing to be done with certain language, it has chosen that language and other modes are excluded. The legislature chose to use “hours” in House Bill 21. It did not choose to use “days” or convert the seventy-two hours into “three days.” We therefore believe the statutory interpretation tools for other time periods found in Section 12-2A-7(D) are not applicable to House Bill 21.

The legislature is presumed to be aware of existing law and therefore it could have used other language if it had wanted to mandate a different result. Current laws specifying time periods provide several illustrations of this principle. First, the legislature has expressly excluded Sundays. See NMSA 1978, § 57-13-17 (1973) (“No such person shall be incarcerated for failure to post said ne exeat bond for longer than **seventy-two hours**, Sundays excepted, without the benefit of a hearing before the court setting said bond.”). Second, the legislature has provided multiple dates with a contingency that the “latest” time period controls the calculation. See NMSA 1978, § 40-13-3.2(E) (2008) (“An emergency order of protection expires **seventy-two hours** after issuance or at the end of the next judicial day, whichever time is latest.”). Finally, the legislature has used the modifying term “business” to indicate that only business workdays were applicable. See NMSA 1978, § 14-2-8(D) (2009) (“If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request.”).

The issue regarding time calculations in statutes governing public meetings is not unique to New Mexico. Those state legislatures that have wanted to exclude certain time periods in their acts have expressly done so. See Mo. Rev. Stat. § 610.020(2) (2004) (“at least twenty-four hours, exclusive of weekends...”); 25 Okl. St. § 311(A)(9) (2012) (“twenty-four (24) hours prior public posting shall exclude Saturdays and Sundays.”).

In contrast to the laws specifying time periods discussed above, House Bill 21 does not condition, qualify or further define the seventy-two hour period for making meeting agendas available to the public. Accordingly, under the applicable rules of statutory construction, the plain meaning of House Bill 21 leads us to conclude that, depending on when it schedules a meeting, a public body that is subject to the Open Meetings Act, as amended by House Bill 21, may include Saturdays and Sundays in its time calculations for determining when to post the meeting agenda.

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,

ZACHARY SHANDLER  
Assistant Attorney General

[1] The effective date of House Bill 21 is June 14, 2013, which is the minimum effective date for all laws enacted during the 2013 legislative session that are not general appropriation bills or bills with an emergency clause. See N.M. Const. art. IV, § 23.