

**November 16, 2006 Board of Directors for the Valley Community Library in
Anthony**

Honorable Mary Kay Papen
New Mexico State Senate
904 Conway Ave
Las Cruces NM 88005

Re: Opinion Request: Valley Community Library

Dear Senator Papen:

You requested our opinion regarding whether the Board of Directors for the Valley Community Library in Anthony (“Board”) may permit a member to participate in its meetings by telephone. In order to respond, we have researched whether the Board is a public body subject to the state’s Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 through 10-15-4 (1999). As discussed below, we conclude that the Board is a public body for purposes of the OMA and its bylaws specifically require its members to attend and participate in Board meetings in person.

The Valley Community Library was not created or established by any state or local political subdivision, but was instead organized by interested local citizens pursuant to the state’s Nonprofit Corporation Act, NMSA 1978, §§ 53-8-1 through 53-8-99 (2003). See Articles of Incorporation of Valley Community Library, Inc. (April 13, 1998); see also April 12, 2006 letter from Paul Williams, President, Valley Community Library to the Office of the Attorney General, copied to yourself. The Valley Community Library states its primary purpose is to serve as a library for persons residing in central and southern Doña Ana County. See Articles of Incorporation, Art. III, Sec. A; Valley Community Library, Inc. Amended Bylaws, Art. I, Sec. 1.3 (September 12, 2005).

As part of our research, we contacted Mr. Armando Cordero, Facilities Manager for the Doña Ana County Public Works Department, regarding the County’s funding and oversight of the Valley Community Library. The County does not own the building in which the Valley Community Library is housed; the Anthony Water and Sanitation District owns the building and leases it to the Valley Community Library. The County exercises no oversight of the Valley Community Library’s operation.

Mr. Cordero explained that the County does not itself fund the Valley Community Library. However, pursuant to its Joint Powers Agreement with the State Library, Doña Ana County serves as the fiscal agent for the Valley Community Library and administers the grants awarded to it by the State Librarian. For fiscal year 2006, the County received a \$175,000 State Library grant for equipment and payroll and, as fiscal agent, distributed this money to the Valley Community Library. In order to receive the State Library grants, the Valley Community Library must comply with the County’s procurement policies and any conditions of these grants.

The New Mexico State Librarian awards the Valley Community Library grants pursuant to his statutory authority to “administer grants-in-aid and encourage local library service.” NMSA 1978, § 18-2-4(B) (1978). The rules governing this Grants-in-Aid to Public Libraries program set forth specific criteria that local public libraries must meet in order to be eligible for these grants. See 4.5.2 NMAC. For fiscal year 2006, the Valley Community Library received several grants from the State Librarian, including a \$1,636.00 Basic Collections Grant, an \$870.00 Matching Collections Grant, and an \$870.00 Continuing Education Grant. See State Library’s New Mexico State Aid Allocation for 2005/2006, August 15, 2005 [located on the State Library website, www.stlib.state.nm.us].

The Valley Community Library may receive State Grants-in-Aid only if it meets certain criteria, and must:

have a library board that is an entity separate from the political subdivision of state government or other type of entity that established it. Regularly scheduled public board meetings with the librarian in attendance should be held in a place, time and manner that is convenient to the board, librarian, and the community. The meetings will be held in accordance with the state open meetings law.

4.5.2.8(C)(7) NMAC (emphasis added). Consequently, the Valley Community Library Board must comply with all provisions of the OMA in order to be eligible for State Library grants.

We also contacted Ms. Sandy White, the State Library’s Development Consultant, regarding why they required grantees to comply with the OMA. Ms. White explained that the State Library considers all local public libraries, including those established as nonprofit corporations, to be “public” libraries that should be responsive to and able to serve their constituencies with as much openness as possible.

Your first question asked whether a board member could participate in a board meeting by telephone so as to constitute a quorum and, if so, whether that member can vote by telephone. The answer is “no.” The OMA does not itself authorize conference telephone participation, but permits a board member to participate in a meeting by means of a conference telephone only if authorized by a statute or rule. See NMSA 1978, § 10-15-1(C). A Valley Community Library Board member “must be present in order to participate in board meetings.” Amended Bylaws, Art. IV, Sec. 4.8. Board members may not vote “by proxy or electronic communication.” Id. Therefore, no Valley Community Library Board member may either attend a meeting so as to constitute a quorum or vote by telephone.

Your second question asked whether a board member could participate in a board meeting by telephone even if the members physically present at a meeting constituted a quorum. The answer is “no.” Again, the Amended Bylaws specifically prohibit Valley Community Library Board members from participating in Board meetings or voting by telephone. Id.

In reviewing the materials and documents governing the Valley Community Library Board's operation, we noted a conflict between the OMA and the Amended Bylaws regarding notice of Board meetings. As previously discussed, the Board must comply with all provisions of the OMA. See 4.5.2.8(C)(7) NMAC. The OMA requires that notice of any Board meeting at which a quorum is present "shall be held only after reasonable notice to the public." NMSA 1978, § 10-15-1(D). The Board's meetings should be convenient to the community. See 4.5.2.8(C)(7) NMAC. The Amended Bylaws provide that notice of "special Directors' meetings shall be given to Directors no less than three (3) days before the meeting." Amended Bylaws, Art. III, Sec. 3.6. There is, however, no provision stating what notice will be given to the community and the general public.

The Valley Community Library Board, at least annually in a public meeting, must determine "what notice for a public meeting is reasonable when applied to that body." NMSA 1978, § 10-15-1(D). In response to our office's request for information describing how the Board conducts its meetings, Board President Paul Williams produced no such notice resolution or statement and therefore it does not appear that the Board has adopted an annual open meetings resolution. In order to help educate the Board as to its OMA obligations, which include providing reasonable notice of its meetings to the community and the general public, we have enclosed a copy of the Attorney General's Open Meetings Act Compliance Guide (5th ed. 2004) with Mr. Williams' copy of this letter. Our expectation is that the Valley Community Library Board will adopt the open meetings resolution required by the OMA at its next meeting. See id. at 11-14.

Mr. Williams also sent this Office a number of "Complaints to Attorney General on a Nonprofit Corporation" dated between May and July 2005, all of which expressed concern about the previous Valley Community Library Board's conduct of its meetings. While these complaints are not directly relevant to the specific questions you raised, we hope that the current and future Boards will fully comply with their OMA obligations. We encourage you, the Valley Community Library members and its Board, and anyone else interested in the Open Meetings Act and the Inspection of Public Records Act to attend one of our statewide training sessions on these laws. The next seminar will be held on December 4, 2006 in Lordsburg, from 2:00 p.m. to 5:00 p.m., at the James H. Baxter Civic Center, 313 E. 4th Street.

We trust that this letter addresses the questions raised in your request. If we may be of further assistance, please let us know. Your request was for an 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 this letter instead of a formal 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.

Very truly yours,

Mary H. Smith
Assistant Attorney General

cc: Stuart M. Bluestone, Chief Deputy Attorney General Paul Williams, President, Valley Community Library Board of Directors (w/ Attorney General's Open Meetings Act Compliance Guide) Christine Turner, Registrar of Charities, New Mexico Attorney General's Office Richard Akeroyd, State Librarian, New Mexico State Library

Enclosure