

**September 28, 2005 Application of Open Meetings Act to School Board Members
Attending School Functions**

The Honorable Debbie A. Rodella
New Mexico House of Representatives
P.O. Box 1074 *Sent Via U.S. Mails*
San Juan Pueblo, NM 87566

**RE: Opinion Request – Application of Open Meetings Act to School Board
Members Attending School Functions**

Dear Representative Rodella:

You have requested our advice concerning the propriety of local school board members attending school functions, social or other non-formal meetings because of concerns regarding the New Mexico Open Meetings Act (“OMA” or the “Act”), NMSA 1978, §§10-15-1 through 10-15-4. You note that the local media has expressed concern about this general issue. Without a specific set of facts to analyze, a discussion on whether such conduct violates provisions of the OMA is speculative at best; therefore this letter is intended to explain general precepts of the Act in response to your question. Based on our examination of the Act, and on the information available to us, we conclude that the OMA contains no specific prohibitions against school board members attending school functions, although we believe that the Act does control their conduct while attending these social functions. We also believe there are constraints within the Act that guide public officials attending such functions that, if adhered to, help to minimize the appearance of impropriety.

The OMA requires that all meetings of a quorum of any public body, including municipal governing bodies, "held for the purpose of formulating public policy,. . . discussing public business or for the purpose of taking any action" be conducted in public. NMSA 1978, §10-15-1(B) (1999). Accordingly, to constitute a violation of OMA, a quorum of a public body must be present outside of an open meeting and such quorum must be formulating public policy, discussing public business, or taking action on public business. Complaints such as those reportedly being raised by the local media, are usually based on an appearance that the public officials are conducting public business while attending these private and/or social functions.

We have observed on several occasions that it may appear suspicious when members of a public body attend events outside of a public meeting (such as school events), particularly where a quorum of the members is seen together. For this reason, we caution members of public bodies to avoid talking about public business outside of meetings, particularly if a quorum is present. See *Ex. 5, OPEN MEETINGS ACT COMPLIANCE GUIDE*, 7 (5th ed. 2004). However, the OMA does not prohibit members of a public body from meeting together socially or for reasons other than public business. Thus, the mere fact that school board members may be seen together in one place is not enough to establish that it has failed to comply with OMA’s provisions

unless additional facts evidence that the members discuss public business among themselves.

In short, we believe that the application of the OMA does not turn solely on whether a quorum of a public body's members is physically present in the same place at the same time. Depending on the particular circumstances, therefore, school board members simply attending a school function is not likely to violate the OMA. Again, we emphasize that whether a violation occurs will depend on the particular facts, and we are not stating that all discussions between less than a quorum of a public body outside of an open meeting are permissible. Members of public bodies should be aware that questions may be raised about the propriety of their actions when personal observations or known facts suggests that an attempt is being made to conduct a private discussion of public business among a quorum of the public body.

We hope that this response is helpful. Your request was for a formal Attorney General's Opinion on the matter discussed above. Please note that such an opinion would be a public document available to the public. Although we are providing you our legal advice in the form of a letter instead of an opinion, we believe this letter is also a public document, not subject to attorney-client privilege. Therefore, we may provide copies of this letter to the public. If we may be of further assistance, or if you have any questions regarding this letter, please let us know.

Sincerely,

STEFFANI A. COCHRAN
Assistant Attorney General

cc: Stuart Bluestone, Chief Deputy Attorney General
Donald C. Trigg, Director, Civil Division
Sam Thompson, Public Information Officer
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