

Attorney General of New Mexico

GARY K. KING
Attorney General

ALBERT J. LAMA
Chief Deputy Attorney General

April 26, 2012

VIA FACSIMILE AND U.S. MAIL

Isabel Santos
Mayor Pro-Tem, City Council
City of Sunland Park
1000 McNutt Road, Suite A
Sunland Park, NM 88063

Re: Open Meetings Act Complaint—
Sunland Park City Council Meeting of April 18, 2012

Dear Ms. Santos:

The Attorney General is charged with the enforcement of the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 through 10-15-4. The Las Cruces Sun-News has filed a complaint with our office (attached hereto) against the Sunland Park City Council (“Council”) alleging that the Council violated the OMA at its April 18, 2012 meeting. From the information provided in the complaint letter, it appears that the Council may have violated the OMA by failing to allow all interested persons to attend and listen to its April 18, 2012 meeting.

The OMA applies to all meetings of a quorum of members of any policymaking body of a municipality held to formulate public policy, discuss public business, or take action. See Section 10-15-1(B). The purpose of the OMA is to give the public the greatest possible information about the official acts of its public officers. In particular, “all persons desiring shall be permitted to attend and listen to the deliberations and proceedings” of a public body. Section 10-15-1(A).

We understand, and we do not believe there is any dispute, that there was an overflow crowd at the Council’s April 18, 2012 meeting. Numerous individuals were unable or were not allowed to enter the room in which the meeting occurred and thus were not permitted to attend. There was no mechanism for excluded individuals to listen to the proceedings. Despite these circumstances, the Council proceeded with the meeting which included a deliberation and vote on the appointment of a new mayor. We are aware that the Council had previously postponed the meeting and changed locations in an attempt to accommodate the large crowd. However, it

appears that the second location, while larger than the first, was still too small to permit attendance of all interested individuals.

It is our opinion that when a public body is faced with the situation that was before the Sunland Park City Council at its April 18, 2012 meeting, OMA requires the public body to make reasonable efforts to find a way to permit attendance of all interested individuals. Reasonable efforts include the postponement of the meeting to allow for relocation to a larger meeting room and the use of audio and video devices so that individuals excluded from the facility can listen to the meeting.

In this regard, the New Mexico Supreme Court's decision in Gutierrez v. City of Albuquerque, 96 N.M. 398 (1981), provides some guidance. In Gutierrez, the Albuquerque City Council faced the same situation at issue here—the number of individuals desiring to attend a meeting exceeded the meeting room's capacity. The Albuquerque City Council decided not to move the meeting to another room but, importantly, did arrange for the audio broadcast of the meeting so that it could be heard by the people excluded from the meeting room. Id. at 399. The Court in Gutierrez found that the Albuquerque City Council did not violate the OMA, concluding that “[w]hen the size of the crowd exceeded the capacity of the hall, every effort was made to allow those who could not gain entrance to listen to the proceedings.” Id. at 401. We believe the fact that the Albuquerque City Council had made “every effort” to ensure the meeting could be heard by individuals excluded from the room was an important factor to the Court's decision that OMA had not been violated. Here, because there apparently was no mechanism for individuals excluded from the April 18, 2012 meeting to listen to the proceedings, it appears that the Council did not meet the standard set by the Court in Gutierrez. An alternative option would have been to again postpone the meeting to find yet a larger meeting place.

In addition to the guidance provided by the Gutierrez opinion, we believe that, while there is no provision of OMA that specifically addresses overflow crowds, the question should be resolved in favor of providing for the greatest amount of public attendance possible. As stated in the Attorney General's Open Meetings Act Compliance Guide:

Where a situation is not specifically covered by the Act, doubt as to the proper course of action should be resolved in favor of openness whenever possible. Compliance with the Act is not just a matter of adhering to the Act's specific requirements, but contemplates a more flexible obligation of public bodies to open their deliberations to public scrutiny.

New Mexico Attorney General's Office Open Meetings Act Compliance Guide, p. 8 (7th ed. 2010).

When the facility used for a public meeting is too small to hold all individuals wanting to attend, the public body must take action to ensure that all desiring to attend and listen are able to do so. If the circumstances surrounding the Council's April 18, 2012 meeting are as we understand them, then it appears that the Council violated the OMA.

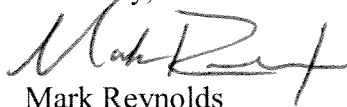
We invite your response in this regard. If the facts regarding the meeting are not as we understand them or if there are additional facts or circumstances we should know about, please set them forth. If you believe there was no violation of the OMA at the April 18, 2012 meeting, then please set forth your reasoning in support of that belief. Otherwise, the Council should immediately take action to correct the apparent OMA violation. The Council should (1) hold another public meeting in a suitable facility capable of accommodating the large public attendance that can be anticipated based on the April 18, 2012 meeting; (2) properly provide public notice of the date, time, location and agenda of the meeting; and (3) re-deliberate those matters discussed at the April 18, 2012 meeting, including a summary of the deliberations of the April 18, 2012 meeting, and re-vote on any items voted on at the April 18, 2012 meeting. See Section 10-15-3(B).

If the Council takes these actions and provides confirmation that it has done so, then no further action on this matter by this Office may be necessary.

Please be aware that, under OMA, “No ... ordinance or action of any ... policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of NMSA 1978, Section 10-15-1.” Section 10-15-3(A). We therefore caution against the Council taking steps to effectuate any of the Council’s decisions at the April 18, 2012 meeting until the Council has taken the corrective measures described above or until our office determines that the April 18, 2012 meeting was not in violation of OMA.

Please provide your response, or a confirmation that the Council intends to take the corrective measures, by May 4, 2012. Thank you for your attention to this matter.

Sincerely,



Mark Reynolds
Assistant Attorney General

cc: Jim Lawitz, Editor, Las Cruces Sun-News, (complainant)
Amy Orlando, Third Judicial District Attorney (via email)
Frank Coppler, City Attorney (via email)
Carmen Rodriguez, City Councilor (via fax only)
Sergio Reyes Carillo, City Councilor (via fax only)
Jessica Avila, City Councilor (via fax only)
Christian Lira, City Councilor (via fax only)
Annette Diaz, City Councilor (via fax only)

LAS CRUCES SUN-NEWS

Dear New Mexico Attorney General Gary King:

The Las Cruces Sun-News formally requests that you begin an investigation into a likely violation of the New Mexico Open Meetings Act that occurred in Sunland Park, N.M., on April 18, 2012.

A quorum of the Sunland Park City Council held a high-interest public meeting, during which a number of people who wanted to hear and participate in the proceedings were blocked from the meeting hall by city police officers. The city council did nothing to accommodate the overflow crowd, such as by postponing the meeting until a larger venue could be scheduled or arranging for a speaker system to be set up outdoors for people to hear the dialogue. As we understand it, the New Mexico Open Meetings Act requires that "all persons desiring shall be permitted to attend and listen to the deliberations and proceedings." (Section 10-15-1.A)

A Sun-News employee photographed some would-be attendees peeking through a window into the meeting hall, attempting to learn what was happening inside. They had no other recourse. Another Sun-News employee interviewed several Sunland Park residents who reported that they had no clue what transpired during the meeting because they'd been blocked from getting inside.

During the meeting, the city council appointed a new city mayor. Two men who were hoping to be considered for the mayor's seat were among the attendees who were blocked out of the session.

As you may be aware, the city of Sunland Park has been embroiled in turmoil in recent weeks, as local prosecutors have uncovered -- according to their allegations -- wide-ranging public corruption. City officials are accused of operating with what seems to be near-reckless disregard for the public's interests and well-being.

The Sun-News several times in recent years has reported about likely violations of state open meetings act laws by Sunland Park officials. And residents have long complained of other violations, including of the New Mexico Inspection of Public Records Act. We believe a strong part of what has cultivated an environment for public corruption to thrive in Sunland Park is the fact city officials have not been held legally liable for violating state open government laws. In the absence of transparency, government abuses will happen.

It's time for the situation to change. Sunland Park officials must learn that the state's sunshine laws indeed must be taken seriously.

We are formally notifying you, as the state's top prosecutor and top official charged with enforcing state government transparency laws, that the Sun-News is lodging a complaint in connection with the April 18 meeting. We ask that our concerns be handled with prompt attention and the utmost seriousness.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Lawitz", written over a horizontal line.

Jim Lawitz
Editor
Las Cruces Sun-News