



# The Open Meetings Act and Rolling Quorums

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New Mexico  
School Boards Association  
2011 School Law Conference



# The Open Meetings Act and Rolling Quorums

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Presented By:

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and

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# Public Bodies Subject to OMA

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The Open Meetings Act (OMA) applies to all boards, commissions and other policy-making bodies of state agencies, counties, municipalities, districts and other political subdivisions of the state.



# What Meetings Must be Open?

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Any meeting of a body covered by the OMA must be open to the public:

1. When a quorum of the body is present; and
2. When the body is meeting to formulate public policy, including development of personnel policies, discuss public business or take any action which the body has authority to take; unless the body is meeting to discuss business which falls within one of the ten exceptions to the open meetings requirement.



# What Meetings Must be Open?

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The statute requires meetings to be open to the public when a quorum is present and discussing public business, even if no official action is anticipated or taken. Board “**training**” sessions are not subject to the Act if no Board policy or business is discussed.



# What Meetings Must be Open?

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However, a Board “**work session**” is a meeting subject to the Act if business matters or policy review and development are on the agenda.



# What Meetings Must be Open?

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A gathering of a quorum at a social event or gathering does not constitute a meeting unless the members actually use the gathering as an opportunity to discuss public business or matters pending before the Board.



# Rolling Quorums

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## Definition:

A rolling quorum of a public body subject to the OMA occurs when the body takes action or discusses public business through sequential communications among the members outside of a public meeting.



# Rolling Quorums

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Role of Technology in the creation of this problem:

- Telephone
- E-Mail
- Fax
- Other [Texting/Facebook/Twitter???)



# Rolling Quorums

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A “rolling quorum” violates OMA.



# Rolling Quorums

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## ISSUE NO. 1

Is there a quorum involved?

[An individual cannot violate the OMA.]



# Rolling Quorums

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ISSUE NO. 2

Was action taken?

[Polling the Board]



# Rolling Quorums

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ISSUE NO. 3

Pre-determining later Board action.

[How will you vote?]



# Rolling Quorums

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## ISSUE NO. 4

Was there a discussion of public  
business?

[Most common ... Biggest problem]



# Rolling Quorum – Demonstration

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## The Cuddy & McCarthy Cast:

C. Emery Cuddy, Jr.

Presenter

Ramon Vigil, Jr.

Superintendent

John F. Kennedy

Board President

Andrew M. Sanchez

Board Vice President

Evelyn Peyton

Board Member

# Demonstration

## OMA “Rolling Quorum” Demonstration

- Purpose: To demonstrate when and how “rolling quorums” violations of OMA occur and how such violations may be avoided.
- Assumptions:
  - Five Member Board; and
  - All Board Members have access to telephone, e-mail, fax and text messaging.

# Demonstration

## OMA “Rolling Quorum” Demonstration

- The Issue (to be the subject of all “rolling quorum” scenarios):
  - The construction of a new district high school is nearly complete; and
  - The Board is in the process of deciding what to name the new school.



# SCENARIO I

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Setting the agenda or  
scheduling a special  
Board meeting



# SCENARIO II

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Polling Board Members  
seeking a commitment on how they will  
vote on an issue



# SCENARIO III

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Face-to-face meeting /  
chat at the coffee shop



# SCENARIO IV

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Discussion of public business  
in series of e-mails  
and text messages



# Discussion of public business in series of e-mails and text messages

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## **E-mail:**

**From: Superintendent Vigil**

**Sent: Thursday, June 09, 2010, 2:05 p.m.**

**To: Board Vice President Sanchez**

**Cc: All Board Members**

“Andy – I just received a text message from my wife which states that board president Kennedy is going to propose naming the new high school for his father, John F. Kennedy, Sr., at Tuesday night’s Board meeting!! Have you heard anything about that???”



# Discussion of public business in series of e-mails and text messages

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## **E-mail Response:**

**From: Board Vice President Sanchez**

**Sent: Thursday, June 09, 2010, 2:08 p.m.**

**To: Superintendent Vigil**

**Cc: All Board Members**

“OMG – NO!! Ramon: I haven’t heard this, but I’ll check into it. Anyone else hear anything about it?”

John: Is this happening? If so, I think that this is a worse suggestion than naming it after Bill Richardson!!!”



# Discussion of public business in series of e-mails and text messages

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**E-mail "Reply to All":**

**From: Board Member Peyton**

**Sent: Thursday, June 09, 2010, 2:45 p.m.**

**To: All Board Members**

"Andy, I got a text about this from Board member Aragon and he thinks this is just another political power play by those Kennedys!!! I can guarantee you now I won't be voting at the Board meeting to name the new high school after any living human!! And besides, we're NOT supposed to be discussing this before the meeting, REMEMBER? I can just imagine what the Rio Grande Sun will report about this when they ask for copies of our emails and texts. Aragon told me he's deleting his text messages 'cuz they're on this personal cell."



# Discussion of public business in series of e-mails and text messages

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**E-mail "Reply to All":**

**From: Board President Kennedy**

**Sent: Thursday, June 09, 2010, 2:45 p.m.**

**To: All Board Members**

"Andy, this is outrageous! Ramon's simply trying to undercut me because he knows I don't support naming the school for Father Bill. My mind is made up on this, and nothing said at the meeting's going to change it."



# Open Meetings Act Compliance Guide

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Internet access to the Attorney General's  
Open Meetings Act  
Compliance Guide:

[www.ago.state.nm.us/divs/civil/OMASixthEdition.pdf](http://www.ago.state.nm.us/divs/civil/OMASixthEdition.pdf)

# Contact Information



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