

From: Patience O <patience_odowd@yahoo.com>

To:

Sent: Thursday, December 5, 2013 10:56 AM

Subject: Video/Audio Taping meetings

Dear Task Force members,

As you can see in the email string below between Mr. Pederson and myself, I have taken the time to get to the bottom of some of the legalities regarding audio and video taping for this Task Force and community. What I have found each step, has been thankfully confirmed by Mr. Pederson of the Attorney Generals office. Consider this, when we walk into most any gas station, Walmart, parking lot, or Placitas Acecia in the woods, we are all most likely being video taped.

Bottom Line: While video or audio taping is *not required* for our meeting under the Open Meetings Act, it is also *not prohibited* by any state or federal laws.

For my part: ***I deeply regret that private citizens have been taught, through time, here in Sandoval County in conjunction with the Signpost, that it is an act of distrust, defiance, and even hostility, to exercise one's rights and to record a meeting.***

As reported in the December Issue pg 1 Signpost

Task Force Takes on Placitas horse issues --Ty Belknap

excerpt paragraph 2

"Despite the friendly reception, Miles insisted on videotaping the meeting on his iPad,..."

This statement goes on in a derogatory, as well as speculative manner.

I felt it necessary to share this information in light of the note sent out by the Task Facilitators yesterday regarding video taping. Clearly, anyone present may video tape. I sincerely do not want a repeat of this unnecessary time sink in a meeting, or, any more of the associated theatrics to impune a private citizen's character for legal acts which are our basic rights in a democracy. Our legal rights cannot be voted away in a non legislative body such as this.

Please see string below.

Sincerely,

Patience O'Dowd
Wild Horse Observers Association
a public 501 c3 non-profit corp.
PO Box 932
Placitas, NM 87043

----- Forwarded Message -----

From: "Pederson, Dave" <dpederson@nmag.gov>
To: Patience O <patience_odowd@yahoo.com>
Sent: Wednesday, December 4, 2013 12:17 PM
Subject: Re: Legal audio taping

Patience, my opinion is that it is not prohibited or required. Dave

On Wed, Dec 4, 2013 at 11:46 AM, Patience O <patience_odowd@yahoo.com> wrote:

Mr. Pederson, Much Appreciated. So then, there is no state or federal law against our citizen audio/video taping, though it is not required by the OMA. Correct?

Thanks Much,
Patience O'Dowd for WHOA

From: "Pederson, Dave" <dpederson@nmag.gov>
To: Patience O <patience_odowd@yahoo.com>
Sent: Wednesday, December 4, 2013 11:34 AM
Subject: Re: Legal audio taping

Patience, you or anyone else may record subcommittee or Task Force meetings. We are not a "public body" under that statute. That's why OMA does not apply. OMA only applies when a decision-making governmental entity has a quorum present. Our group is merely advisory, as we cannot promulgate binding public policy on anyone. I have no objections to recording our meeting and wide open attendance. Following OMA is purely discretionary for our group. Dave

On Wed, Dec 4, 2013 at 10:55 AM, Patience O <patience_odowd@yahoo.com> wrote:

Mr. Pederson,

Thank you for your response that helps. However I do think it is very important to have a clear understanding of where this Task Force stands regarding the legality of audio or video taping.

Please allow me to understand what you think applies to this team. Please see below. Sincerely,
Patience O'Dowd for Wild Horse Observers Association (WHOA)

I. Legal one party consent recording of oral communications? Notification required? (I am sorry I tried an exhaustive search of our state constitution/Stats and Rules, could not find anything that denies recording. Perhaps it is there and I just failed to find it.) Did find this below online.

<http://www.articlesbase.com/national-state-local-articles/audio-recording-laws-in-the-us-431017.html>

The 37 states which **allow one party consent recording of oral communications** are: Alaska, Arkansas, Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, **New Mexico**, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin and Wyoming.

II. Does this Task Force fall under 10-15-1, A. Do you consider this Task Force to be categorized as "any public meeting"?

Statutes, Rules and Const. > NMSA (Unannotated) > CHAPTER 10 Public Officers and Employees > ARTICLE 15 Open Meetings > 10-15-1. Formation of public policy; procedures for open meetings; exceptions and procedures for closed meetings. (2013)

10-15-1. Formation of public policy; procedures for open meetings; exceptions and procedures for closed meetings.

A. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

B. All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency or any agency or authority of any county, municipality, district or political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act. No public meeting once convened that is otherwise required to be open pursuant to the Open Meetings Act shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting.

C. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

D. Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. That notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

E. A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the public body specifies the date, time and place for continuation of the meeting and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near

the door of the place where the original meeting was held and in at least one other location appropriate to provide public notice of the continuation of the meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.

F. Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. 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 to the meeting, the agenda shall be available to the public and posted on the public body's web site, if one is maintained. A public body that ordinarily meets more frequently than once per week shall post a draft agenda at least seventy-two hours prior to the meeting and a final agenda at least thirty-six hours prior to the meeting. Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this subsection, "emergency" refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body. Within ten days of taking action on an emergency matter, the public body shall report to the attorney general's office the action taken and the circumstances creating the emergency; provided that the requirement to report to the attorney general is waived upon the declaration of a state or national emergency.

G. The board, commission or other policymaking body shall keep written minutes of all its meetings. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. All minutes are open to public inspection. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Minutes shall not become official until approved by the policymaking body.

H. The provisions of Subsections A, B and G of this section do not apply to:

(1) meetings pertaining to issuance, suspension, renewal or revocation of a license, except that a hearing at which evidence is offered or rebutted shall be open. All final actions on the issuance, suspension, renewal or revocation of a license shall be taken at an open meeting;

(2) limited personnel matters; provided that for purposes of the Open Meetings Act, "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided further that this paragraph is not to be construed as to exempt final actions on personnel from being taken at open public meetings, nor does it preclude an aggrieved public employee from demanding a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview;

(3) deliberations by a public body in connection with an administrative adjudicatory proceeding. For purposes of this paragraph, "administrative adjudicatory proceeding" means a proceeding brought by or against a person before a public body in

which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. Except as otherwise provided in this section, the actual administrative adjudicatory proceeding at which evidence is offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;

(4) the discussion of personally identifiable information about any individual student, unless the student or the student's parent or guardian requests otherwise;

(5) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policymaking body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are present;

(6) that portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars (\$2,500) that can be made only from one source is discussed and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code are discussed during the contract negotiation process. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting;

(7) meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant;

(8) meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body;

(9) those portions of meetings of committees or boards of public hospitals where strategic and long-range business plans or trade secrets are discussed; and

(10) that portion of a meeting of the gaming control board dealing with information made confidential pursuant to the provisions of the Gaming Control Act [Chapter [60](#), Article 2E NMSA 1978].

I. If any meeting is closed pursuant to the exclusions contained in Subsection H of this section:

(1) the closure, if made in an open meeting, shall be approved by a majority vote of a quorum of the policymaking body; the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting; the vote shall be taken in an open meeting; and the vote of each individual member shall be recorded in the minutes. Only those subjects announced or voted upon prior to closure by the policymaking body may be discussed in a closed meeting; or

(2) if a closure is called for when the policymaking body is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law authorizing the closed meeting and stating with reasonable specificity the subject to be discussed is given to the members and to the general public.

J. Following completion of any closed meeting, the minutes of the open meeting that was closed or the minutes of the next open meeting if the closed meeting was separately scheduled shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the public body under Subsection G of this section as part of the minutes.

History: 1953 Comp., § 5-6-23, enacted by Laws 1974, ch. 91, § 1; 1979, ch. 366, § 1; 1989, ch. 299, § 1; 1993, ch. 262, § 1; 1997, ch. 190, § 65; 1999, ch. 157, § 1; 2013, ch. 42, § 1.