



March 20, 2026

VIA ELECTRONIC MAIL ONLY:

Otero County Commission
Vickie Marquardt, Chair
vmarquardt@co.otero.nm.us
1101 New York Ave.
Alamogordo, NM 88310-6935

Re: Invalid Convening of Emergency Meeting on March 13, 2026, in violation of the Open Meetings Act

Dear Ms. Marquardt:

The New Mexico Department of Justice (the “NMDOJ”) writes to inform the Otero County Commission (the “County”) of concerns regarding its March 13, 2026, emergency meeting, during which the County voted to renew its contract with the United States Department of Homeland Security (“DHS”) through U.S. Immigration and Customs Enforcement (“ICE”). Based on the information reviewed, the NMDOJ has determined that the action taken at that meeting did not comply with the New Mexico Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4.

The Government Counsel and Accountability Bureau (“GCA”) of the NMDOJ watched the emergency meeting held by the County on March 13, 2026, during which the County voted to renew its contract with ICE to provide detention services for noncitizen detainees. Upon information received by complainant and after review of materials, including watching the meeting, this office has determined the meeting failed to meet the criteria of “emergency” under the Open Meetings Act (the “OMA”), NMSA 1978, §§ 10-15-1 to -4 (1953, as amended through 2013) and immediate attention is required by the County to come into compliance with the law. OMA is one of New Mexico’s transparency laws, establishing the basic public policy that public business be conducted in full public view, that the actions of public bodies be taken openly, and that the deliberations of public bodies be open to the public. The Attorney General has statutory authority to enforce OMA, *see* NMSA 1978, § 10-15-3(b), and resolve issues of noncompliance.

New Mexico Department of Justice

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A. Emergency Meetings Require Unforeseen Circumstances Creating an Immediate Threat

Under the OMA, a public body may hold an emergency meeting only in response 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 harm to the public body.” The statute does not permit public bodies to use the emergency meeting mechanism for foreseeable business, routine administrative tasks, or to remedy internal scheduling or planning oversights.

B. The Contract Expiration Was Foreseeable and Not an Emergency Under the OMA

Based upon information reviewed and sent to us by the complainant and further investigation by the NMDOJ, the meeting held on March 13, 2026, was to execute the Intergovernmental Service Agreement (“IGSA”) between the County and the United States Department of Homeland Security (the “DHS”) to provide detention services for detained noncitizens at the Otero County Processing Center.

The term of the contract, spanning the course of several years, provided adequate time to plan for the approval of the renewal well in advance of its expiration. The approaching deadline was neither unexpected nor emergent under the OMA. Materials reviewed by the NMDOJ indicate that the County invoked emergency authority because the contract was set to expire on March 13 2026, the final business day of its term. A known contractual end date does not meet the definition of an “unforeseen circumstance.”

The County therefore lacked a basis to determine that the situation was sudden, unexpected, or beyond its control. Since the expiration was fully foreseeable, the County could have placed the contract’s renewal on a regular or specially noticed agenda within the statutory timeframe.

C. Bond Obligations Coming Due Were a Result of Planning Failure, Not an Emergency Condition

The NMDOJ further understands that the County cited the potential calling of bonds associated with the facility as the justification for urgent action. However, the existence of the bond structure, its payment schedule, and the contract’s expiration date were all well known to the County before March 13, 2026. These financial and administrative facts were predictable, recurring, and fully within the County’s control and ability to ensure a properly noticed meeting and agenda.

The Open Meetings Act does not permit a public body to convert a foreseeable administrative or financial deadline into an “unforeseen circumstance.” A public body’s internal delays, missed planning opportunities, or failure to schedule timely discussion do not create an emergency under the OMA. If foreseeable consequences of inaction or delayed planning could be treated as emergencies, the OMA’s notice requirements would be rendered meaningless, allowing public bodies to avoid transparency whenever contract deadlines approached.

The County created a time sensitive situation of its own making. The looming bond obligations were therefore a consequence of planning failure, not an external or sudden event that could transform a predictable administrative deadline into an OMA-qualifying emergency.

Accordingly, the NMDOJ concludes that the County's reliance on potential bond impacts as justification for an emergency meeting was improper and did not meet the statutory threshold for an emergency under the Open Meetings Act.

D. The Emergency Meeting Was Improperly Used to Renew the Contract

Since the circumstances prompting the March 13, 2026, emergency meeting were foreseeable, and because no immediate threat to public health, safety, property, or critical operations was demonstrated, the County lacked a lawful basis to call an emergency meeting for the purpose of renewing the ICE contract. As a result, the vote to approve the renewal at that meeting is invalid under the Open Meetings Act.

Conclusion

Please provide an explanation and response to the NMDOJ no later than 5:00PM MDT Monday March 23, 2026 with the subject line "Attention NMDOJ – Otero County Response to NMDOJ Letter Dated March 20, 2026 Regarding Violations of OMA" at the following: omacpracomplaint@nmdoj.gov.

Respectfully,



Blaine N. Moffatt

Director

Government Counsel & Accountability Bureau

cc: R.B. Nichols, County Attorney
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Pamela Heltner, County Manager
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