

February 18, 2025

OPINION
OF
RAÚL TORREZ
Attorney General

Opinion No. 2025-06

To: The Honorable Susan Herrera, New Mexico State Representative

Re: Attorney General Opinion – The Open Meetings Act and Tribal and Nonprofit Libraries

Question

Are tribal libraries or nonprofit libraries subject to the Open Meetings Act?

Answer

No. Tribal libraries and nonprofit libraries are generally not subject to the Open Meetings Act.

Background

Our Office has been asked to opine on the discrete question of law posed above. *See* NMSA 1978, § 8-5-2(D) (1975) (providing that the Attorney General shall answer any “question of law” submitted by particular individuals or entities listed therein). Our analysis follows below.

Analysis

In interpreting the Open Meetings Act, we first must try and determine and give effect to the Legislature’s intent. *See Rayellen Res., Inc. v. N.M. Cultural Props. Rev. Comm.*, 2014-NMSC-006, ¶ 38 (“The first step in any statutory construction is to try to determine and give effect to the Legislature’s intent.” (internal quotation marks and citation omitted)).

Generally, New Mexico has expressed a strong favor for government transparency and accountability and so declared in implementing the Open Meetings Act 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.” NMSA 1978, § 10-15-1 (2013).

The Open Meetings Act applies to:

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.

Id. (emphasis added).

This office has previously analyzed what constitutes a “state agency” under the Open Meetings Act. Our analysis turns on whether the entity is under the control of the State, considering factors such as if the entity is operated and managed by officers appointed by the government and whether the entity was created by statute. N.M. Att’y Gen. Op. 06-02 (2006) (citing *Harrington v. Atterberry*, 1915-NMSC-058, 21 N.M. 50). This could also include an entity that performs functions beneficial to the public or receives some appropriations regulated by the government if there is no other government control of the entity. *Id.* In this case, the issue is whether tribal and nonprofit rural libraries are state agencies or a political subdivision of the State and, thus, would be subject to the Open Meetings Act.

With regard to tribal libraries, the U.S. Supreme Court has long recognized Indian tribes as “domestic dependent nations” that “exercise inherent sovereign authority that is subject to plenary control by Congress.” *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 782 (2014) (citing *Okla. Tax Comm’n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 (1991)). The New Mexico Supreme Court has similarly recognized tribal sovereignty in New Mexico, finding that “Indian tribes are domestic dependent nations that exercise inherent sovereign authority.” *Hamaatsa, Inc. v. Pueblo of San Felipe*, 2017-NMSC-007, ¶ 19 (citing *Michigan*, 572 U.S. at 782). Additionally, while the State and tribal governments may enter into agreements and compacts with one another, such compacts do not diminish tribal sovereignty and do not subject the tribal entity to state control. *See Doe v. Santa Clara Pueblo*, 2005-NMCA-110, 16, 138 N.M. 198 (finding that when a tribe and the State negotiate a compact, they do so “as equal sovereigns.”).

In this case, where tribal libraries are purely under the control and management of the tribal government, they are clearly not state agencies or political subdivisions of the State or of a county, municipality, or district, and thus, the Open Meetings Act would not apply. There has not been an act of Congress otherwise subjecting tribal governments and their libraries to state open meetings acts. *See Hamaatsa*, 2017-NMSC-007, ¶ 19 (“[U]nless and until Congress acts, the tribes retain their historic sovereign authority.” (internal quotation marks and citation omitted)). Additionally, beyond the long recognition of tribal sovereignty, while the State may provide some appropriation to tribal libraries, *see NMSA 1978, § 18-2-23* (2001) (establishing the Tribal Libraries Endowment Fund), there are no other indicia of state control over tribal libraries: they are not established by state statute, nor are they managed or directed by officers appointed by the State. *See* N.M. Att’y Gen. Op. 06-02.

Turning to nonprofit libraries, nonprofits are generally charitable organizations described under Section 501(c)(3) of the Internal Revenue Code and are exempt from federal income tax under Section 501(a). I.R.C. § 501(c)(3) (1986) (providing for federal income tax exemption for charitable organizations). Nonprofits and charitable organizations are subject to state law, which prescribes certain procedural requirements for those organizations in New Mexico. *See* NMSA 1978, § 57-22-6 (2024) (requiring charitable organizations operating in the State to register with the Attorney General). However, no other state law or the Open Meetings Act itself explicitly requires nonprofits to comply with the Open Meetings Act. *See* § 10-15-1 (requiring any state agency or any agency or authority of any county, municipality, district, or political subdivision to comply with the Open Meetings Act). In the absence of any clear authority mandating nonprofit library compliance with the Open Meetings Act, we decline to opine otherwise.

That said, our courts have recognized that the Open Meetings Act may apply to a non-statutory organization that “makes any decisions on behalf of, formulates recommendations that are binding in any legal or practical way on, or otherwise establishes policy for [a] public body.” *N.M. State Inv. Council v. Weinstein*, 2016-NMCA-069, ¶ 75. As such, where a nonprofit library is generally making any decisions or formulating any policy recommendations for a public body or is otherwise subject to state control, a nonprofit library could be considered a state agency and thus subject to the Open Meetings Act. *See State ex rel. Toomey v. City of Truth or Consequences*, 2012-NMCA-104, ¶¶ 21-22 (applying a similar analysis of factors on whether a nonprofit entity meets the definition of a political subdivision and would be subject to the Inspection of Public Records Act).

Conclusion

In conclusion, tribal libraries and nonprofit libraries generally are not state agencies or public bodies and, therefore, are not generally subject to the Open Meetings Act.

However, please note that this opinion does not provide any factual analysis of any particular tribal or nonprofit library. This opinion merely provides a framework of the controlling law and is not intended to resolve or comment upon any particular tribal or nonprofit library. Our analysis is limited to the question of law submitted by the state representative. *See* § 8-5-2(D).

Please note that this opinion is a public document and is not protected by the attorney-client privilege. It will be published on our website and made available to the general public.

RAÚL TORREZ
ATTORNEY GENERAL

/s/ Taylor V. Bui
Taylor V. Bui
Assistant Solicitor General
New Mexico Department of Justice