

Opinion No. 90-28

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OPINION OF: HAL STRATTON, Attorney General

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TO: The Honorable Don Silva, State Representative, 8328 Cherry Hills Dr.,
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QUESTIONS

May a public policy-making body retreat into an executive session to discuss personnel policies, procedures, budget items, and other issues not directly related to any individual public employee?

CONCLUSIONS

No.

ANALYSIS

Occasionally, government bodies meet in executive session to discuss budgetary matters which ultimately lead to the elimination of some positions on the public payroll. Likewise these government bodies sometimes close their meetings to discuss personnel policies and procedures which affect a class or the entire group of public employees. Apparently, there exists some confusion as to the status of current law relating to these discussions and whether public bodies may retreat into executive session to discuss these broader personnel matters.

There is an indication that some still believe that a public policy-making body may conduct a closed meeting to discuss broader personnel issues not related to any individual public employee under the New Mexico Supreme Court's ruling in *State v. Hernandez*, 89 N.M. 698, 556 P.2d 1174 (1976). In *Hernandez*, the Supreme Court held that the term "personnel matters" was not to be given a limited meaning. We disagree with those who assert that the *Hernandez* case is still good case law on that point and that these public policy-making bodies may close their meetings to discuss broad personnel issues not related to any individual public employee.

The *Hernandez* case was decided under the old open meetings law which did not define the term "personnel matter." Under the old statute a public body could close its meetings if it intended to discuss "personnel matters." NMSA 1953, § 5-6-23(E) (Supp. 1975). In *Hernandez* the appellees unsuccessfully argued that "personnel matters" meant "matters relating to the discipline or hiring or dismissal of an employee." 89 N.M. 698. The court broadly construed the statutory language and reached its conclusion

because "the term 'personnel matter' is given no particular or limited meaning by the legislature." Id. at 699. Thus, prior to the amendment of the Act, a public body could meet in private to discuss an array of topics regarding personnel matters, including those matters not directly related to individual public employees.

However, the New Mexico Open Meetings Act was substantially amended in 1989 and effectively limits Hernandez in that the personnel exception was given a limited definition and modified to read:

(2) **limited personnel matters** ; provided that for purposes of the Open Meeting Act, "limited personnel matters" means the discussion of **hiring, promotion, demotion, dismissal, assignment, or resignation of or consideration of complaints or charges against any individual public employee** ; provided further that this subsection is not to be construed as to exempt final actions on personnel to be taken at open public meetings; nor does it preclude an aggrieved public employee from demanding a public hearing.

NMSA 1978, § 10-15-1(E) (Supp. 1989) (emphasis added). The legislature imposed a narrow definition of personnel matters on policy-making bodies which does not permit closed meetings to discuss budgetary topics or general personnel matters which relate to staffing levels, procedures, policies, and similar issues. Nowhere in the Open Meetings Act is there an exception which authorizes governing bodies to close their meetings because of budgetary matters or other general personnel matters which do not affect any individual public employee. Therefore, if a public policy-making body desires to meet in executive session to discuss an individual employee's dismissal, promotion, resignation, complaint or shortcomings then such a meeting could properly be closed pursuant to the "limited personnel matters" exception set forth in NMSA 1978, § 10-15-1(E)(2) (Supp. 1989). Conversely, budgetary discussions and the like, while sometimes tangentially related to personnel matters, are not to be held behind closed doors.

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