SO YOU’VE BEEN ELECTED! NOW WHAT?

Basics of NM Municipal Government:
Information Essential for Your Civic Duty

PRESENTERS

AJ FORTE
REGINA ROMERO
RANDY VAN VLECK
ED ZENDEL

BASICS OF MUNICIPAL LAW
What Role Do State Laws Play In Municipal Government?

- State Legislature passes bills
- Laws = bills signed by the Governor
- State Statutes = laws codified by subject

What Role Do State Laws Play In Municipal Government?

State Statutes establish municipal:

- Powers
- Responsibilities
- Limitations
- Authority
What Role Do State Laws Play In Municipal Government?

If the State Statutes don’t give municipalities authorization:

- In express words;
- Implied or necessarily incident to the powers expressly granted; and
- Absolutely essential to the declared purposes of the municipality – not simply convenient, but indispensable…

YOU CAN’T DO IT!!

Except if your municipality is Home Rule…

What Role Do State Laws Play In Municipal Government?

WHAT IS A HOME RULE OR CHARTER MUNICIPALITY?

- Any incorporated municipality is given the authority to adopt a Charter establishing any system or form of government
- Charter municipalities may exercise all legislative powers and functions not expressly denied by the NM Constitution or Statutes
- Expensive process
- Only large municipalities in NM have done this
Powers Of Municipalities

The State grants municipalities the power to:

- Sue and be sued
- Enter into contracts or leases
- Acquire and hold property
- Have a common seal that may be altered at pleasure
Powers Of Municipalities

- Protect generally the property of the municipality and its inhabitants
- Preserve peace and order within the municipality
- Establish rates for services provided by municipal utilities and revenue-producing projects

MINIMUM RESPONSIBILITIES OF ALL MUNICIPALITIES
Minimum Responsibilities Of All Municipalities

The State requires all municipalities to:

- Hold regular, periodic meetings of the governing body
- Hold regular municipal elections to fill vacancies in elective offices
- Adopt and submit an annual budget to the Department of Finance and Administration (DFA) for approval
- Control and account for receipt, deposit and expenditure of public funds and submit quarterly reports to DFA
- Provide for the offices of municipal clerk, treasurer, and police officer
- Designate a central purchasing office
Separation of Powers

Just like the United States… Just like the State of New Mexico…
New Mexico municipalities have:

Three Separate but **EQUAL** branches of Government:
Separation of Powers

**Executive Branch**
Mayor and/or Manager or Administrator

**Legislative Branch**
Governing Body
Board of Trustees
Commission

**Judicial Branch**
Municipal Judge

Separation of Powers

Elected Officials may have different powers and duties

BUT

**NO** Elected Official is another Elected Official’s boss…

**NO** Elected Official can fire another Elected Official or

Anyone appointed to fill an Elected Office
MAYOR-COUNCIL FORM OF GOVERNMENT

Mayor-Council Form of Government

Consists of:

1. **Mayor – Executive Branch**
   - Chief Executive Officer
   - Presides over Council meetings

2. **Governing Body – Legislative Branch**
   - Enacts laws and policy

3. **Municipal Judge (if population is over 1,500) – Judicial Branch**
**Mayor-Council-Manager**

1. **Mayor– Executive Branch**
   - Chief Executive Officer
   - Presides over Council Meetings

   **Manager (appointed):**
   - Position usually created by Ordinance
   - Ordinance outlines duties and responsibilities

2. **Governing Body – Legislative Branch**
   - Enact laws and policy

3. **Municipal Judge – Judicial Branch**

---

**Commission-Manager Form of Government**

1. **Manager (appointed) – Executive Branch:**
   - Chief Administrative Officer

2. **Mayor – Legislative Branch:**
   - Member of the City Commission
   - Elected from among the City Commission to preside over Commission Meetings

   **Commissioners – Legislative Branch:**
   - Legislator elected from districts

3. **Municipal Judge – Judicial Branch**
POWERS OF THE MAYOR

Powers of the Mayor (All Forms)

- Presiding officer of the Governing Body.
- Ceremonial head of the municipality.
- Official head of the municipality for purposes of civil process and military purposes.
- Causes the ordinances of and regulations of the municipality to be obeyed.
Powers of Mayor (Mayor-Council)

- Appoints all people who are to be employed by the municipality, subject to the approval of a majority of all members of the Governing Body.

- Supervises all employees of the Municipality.

- May take corrective action with respect to all employees of the municipality.

- May recommend the suspension or termination of employees, subject to approval of a majority of all members the Governing Body.

POWERS OF THE GOVERNING BODY
Powers of the Governing Body
(All Forms)

- Elect one of its members to act as mayor pro-tem in the absence of the mayor.
- Possess all powers granted by law and other municipal powers that are not given by law or ordinance to another officer of the municipality.

Powers of the Governing Body
(All Forms)

- Manage and control the finances and all property…belonging to the municipality.
- Determine the time and place of holding its meeting, **which shall be open to the public**.
- Determine the rules of its own proceedings.
Powers Of The Governing Body
(All Forms)

- Adopt rules and regulations necessary to carry out the powers granted municipalities.
- Establish the compensation and fees to be paid municipal officers and employees.
- Define the powers and duties of those officers not provided for in law and impose additional duties on those officers provided for by law.

Powers of the Governing Body
(All Forms)

- Compel the attendance of absent members in such manner and under such penalties it deems desirable.

- A majority of the members of the governing body may call a special meeting.
Additional Powers of Governing Body (Mayor-Council)

- The Governing Body of a mayor/council form may remit the fine of any person convicted of a violation of a municipal ordinance.
- Approve or reject Mayor’s recommendation to hire, suspend or terminate.
- A majority of the entire Governing Body may vote to terminate an employee.

Powers of the Manager (Commission Manager form of Government)

- The manager shall:
  - Enforce and carry out all ordinances, rules and regulations enacted by the commission.
  - Employ and discharge all persons engaged in the administrative service of the municipality.
  - Prepare and submit an annual budget.
  - Make recommendations to the commission on all matters concerning the welfare of the municipality.
Powers of the Manager (Commission Manager form of Government)

- The manager shall have a seat, but no vote, at every meeting of the commission. Except when clearly undesirable or unnecessary, the commission shall request the opinion of the manager on any proposed measure.
SOURCES OF MUNICIPAL REVENUE

State Shared & Local Option
Gross Receipts Tax

- Municipalities receive 1.225% of the State 5.125% GRT
- Municipal Gross Receipts Tax (MGRT) – authorized up to 1.50% (6 quarters)
- Municipal Environmental Services GRT – authorized 1/16th of 1%
- Municipal Infrastructure GRT – authorized up to 1/4 of 1%
State Shared and Local Option Gross Receipts Taxes

- Municipal Capital Outlay GRT – authorized up to $\frac{1}{4}$ of 1%.
- Hold Harmless GRT – authorized up to $\frac{3}{8}$ of 1%

Other State Shared Taxes

- Compensating Tax
- Gasoline Tax
- Small Cities Assistance
- Fire Fund Allocation
- Law Enforcement Protection Funds
Local Sources Of Municipal Revenue

- Franchise Fees
  - Gas, Electric, Cable, Telecommunications
  - Water, Sewer, Refuse Disposal
- Property Tax
  - 7.65 mils for operating purposes
  - Other mils for infrastructure by referendum
- Lodgers Tax
  - Authorized rate is up to 5%

Local Sources Of Municipal Revenue

Other income sources:
- Liquor License Fee ($250)
- Building Permits Fees
- Investment income
- Business License Fees
- Business Registration Fees
- Water, Sewer and Refuse charges
- Corrections Fee ($20)
- Municipal Court Fines and Fees
- Federal and State Grants
Tax Authority…Who Controls?

- The actions of the legislature and governor regarding taxes can and will affect your ability to raise revenue at the local level.
- The Governing Body is responsible for setting local tax rates within the limits authorized by State Statute.

How Reliant Are We On Gross Receipts Taxes?

Municipal Revenue Sources

- Gross Receipts Taxes
- Property Taxes
- Franchise Fees
- Lodgers’ Taxes
- Fire Protection Fund
- Law Enforcement Protection Fund
- Small Cities Assistance
- Other Revenues

Source: Local Government Division, NM Department of Finance and Administration
The Municipal Board Of Finance

- Governing Body is statutory Board of Finance
- Responsible for all public funds of the municipality (including the Fire Fund)
- Municipal clerk is the secretary
- Members serve without compensation
- Must meet at least once each year

The Municipal Board Of Finance

- Meets at the call of the municipal clerk or upon the request of one of its members
- Designates banks eligible to receive deposits of money belonging to the municipality
- Usually delegates daily administration to the municipal finance officer
- Provides advice and consent to the finance officer regarding investment of municipal funds by adopting an investment policy
MUNICIPAL FUNDS

Funds

The five types of funds are:

- General Fund
- Special Revenue Funds
- Trust or Agency Funds
- Enterprise Funds
- Debt Service Funds
**General Fund**

Most municipal functions are funded through the General Fund.

General fund operation examples:
- Finance & Administration
- Police Department
- Fire Department
- Street Maintenance Department
- Parks Department
- Library & Museum
- Other general government operations

---

**Special Revenue Funds**

- Revenues that come from a specific source
- Uses of these dedicated funds are restricted by federal, state or local law
- Special Revenue Fund examples:
  - Fire Protection Fund
  - Law Enforcement Protection Fund
  - Lodgers Tax Fund
  - Corrections Fee Fund
Trust or Agency Funds

- Account for money received from another governmental entity when the municipality is the Trustee or Agent for the expenditure of the Funds
- Expenditures are restricted and the municipality may have little or no actual discretionary control over them
- Trust or Agency Fund examples:
  - Public Employee Retirement Funds
  - Community Development Block Grants
  - Federal or State Wastewater Treatment Plant Construction grants or loans

Enterprise Funds

- Used to account for activities that are intended to generate enough income to pay for the cost of operations
- Enterprise Fund examples:
  - Water Utilities
  - Sewer Utilities
  - Refuse Disposal Systems
  - Golf Courses
  - Internal Service Funds
Debt Service Funds

- Account for the current principal and interest payments due on outstanding municipal debt
- Municipal debt include examples:
  - General Obligation Debt
  - Revenue Bond Debt
  - Long term capital leases
The Municipal Budget

The municipal budget is the single most important policy statement a governing body adopts.

Establishes the level of services your municipality will provide, such as:
- The number of miles your police department will patrol
- How often municipal parks will be mowed, watered and otherwise maintained
- The number of times per week refuse will be collected
- The response time of emergency personnel
The Municipal Budget

- Defines the capital improvements that will be made within your municipality during the fiscal year
- Represents the collective priorities of the Governing Body regarding municipal services
- Plans for the future

By law, every municipality must prepare a proposed budget for the coming fiscal year and submit it to the Local Government Division (LGD) of the State Department of Finance & Administration (DFA) no later than June 1 of each year.
The Municipal Budget

State laws and regulations:

- Prohibit deficit spending
- Require a minimum cash balance in the General Fund
- A balanced budget means:
  
  \[(\text{Available cash balance}) + (\text{estimated revenues}) - (\text{estimated expenses}) = \$0 \text{ or greater}\]

The Last Word About The Budget

- Just because it’s in the budget, it doesn’t mean it can be spent
- The cash must be there to pay for the item
- Estimates are only as good as the estimator’s ability to predict the future
Audits

- All municipalities are required to have an annual audit performed by an independent accountant acceptable to the State Auditor.
- The State Auditor may perform the audit of a municipality and may perform special audits at his discretion.

PROCUREMENT
Procurement

New Mexico is the only state in the Union where every level of government follows the same procurement process for the purchase of goods and services.

The Basics Of Procurement

Each municipality must:

- Designate a Chief Procurement Officer (CPO) who must become certified by the State Purchasing Office
- Adopt local procurement regulations for “small purchases” – a purchase of under $60,000
- Purchases over $20,000 are governed by the procurement code
- Services, construction or tangible personal property of over $60,000 must be made by competitive sealed bid
- Professional Services over $60,000 shall be made by competitive sealed proposal – except for a few restrictions
The Basics Of Procurement

- Sole source procurement – when only one source exists for the product or service regardless of the price

- Emergency procurement - when a threat to the public health, safety, welfare or property exists

MUNICIPAL COURT
Municipal Court

- **Judicial** branch of government

- Governing Body MUST provide an ADEQUATE BUDGET

- Budget must be approved by Governing Body

- Court Personnel issues are the responsibility of the Judge

Municipal Judge

- Conducts trials on alleged violations of municipal ordinances

- Penalties upon conviction may not exceed $500 fine and 90 days in jail, except for DWI ($999 + 179 days in jail)
Meetings Of The Governing Body

A governing body meeting is any meeting where at least a quorum of the governing body is present and:

- Municipal policy is discussed
- Municipal business is discussed
- Official action is taken
Meetings Of The Governing Body
Agendas

- Purpose of the Agenda
  - Give public notice of items the governing body intends to discuss or act on during the meeting
  - Provide a guide for the orderly conduct of the meeting

- Agenda must be finalized and available to the public not less than 72 hours prior to any meeting

Meetings Of The Governing Body
Agendas

WHO FORMULATES THE AGENDA?
- Depends on Local Rule, Custom or Practice
- Municipal Clerk
- Presiding Officer (Mayor)
- City Manager/Administrator
- Council Input?
- Citizen Input?
Meetings Of The Governing Body
Agendas

CONSENT AGENDA

- Portion of full agenda containing routine non-controversial items for action that do not normally need discussion
- Should be grouped together with sufficient information about each item for public notice
- Considered one item of business – one motion, one vote
- Roll call vote recommended

CAUTION! Contents will vary greatly from one municipality to another. What is non-controversial in one municipality may be very controversial in another

Meetings Of The Governing Body - Agendas

CONSENT AGENDA – Removal of an Item

- Item may be removed for discussion
- Items removed are discussed and voted on separately
- Procedure for removing Consent Agenda items varies by municipality
Meetings Of The Governing Body

Quorum

A Quorum is…

- REQUIRED in order to transact business
- A MAJORITY of ALL members of the Governing Body constitutes a quorum

Voting

Mayor- Council (with or without a manager or administrator)
- Mayor votes ONLY in case of a tie
- Mayor Pro-Tem votes even if s/he is presiding

Commission – Manager Form of Government
- Mayor votes on any issue at any time.
- S/he is a Commissioner first, Mayor second.
Meetings Of The Governing Body
Voting

Home Rule Form of Government:

- Charter says who can vote and when

Councilors, Trustees or Commissioners have a duty to vote and are expected to vote on municipal issues…that is what they were elected to do!

However…
Meetings Of The Governing Body

Abstention

- ABSTAINING FROM A VOTE
  - Abstention = declining to vote
  - Abstention is accepting the majority decision

Meetings Of The Governing Body

Voting Requirements

Actions which require approval by a majority of all members of the Governing Body:

- Hiring, suspending or firing employees
- Enacting Ordinances
- Enacting Resolutions
- Other actions if specified by statute, charter or local ordinance
MAJORITY OF ALL MEMBERS OF THE GOVERNING BODY

- One more than half the members (same number that constitutes a quorum)

ACTIONS REQUIRING A SIMPLE MAJORITY

- Unless a statute, charter or local ordinance says otherwise, motions are decided by a simple majority of those present and voting
Meetings Of The Governing Body

- CONDUCTING AN EFFECTIVE MEETING
  - Prepare an agenda of reasonable length
  - Start the meeting on time
  - Stick to the Agenda
  - Handle one matter at a time
  - Entertain all points of view on an issue
  - Limit debate when appropriate
  - Take a break when appropriate
  - End the meeting at a reasonable time

Meetings Of The Governing Body
Procedure

PARLIAMENTARY PROCEDURE
  - Your own rules of order
  - Roberts Rules Of Order

CONTENTS OF PROCEDURE MANUAL
  - Order of Business
  - Agenda Formulation
  - Rules of Debate
  - Rules for Public Participation
Meetings Of The Governing Body

A PUBLIC MEETING IS NOT A PUBLIC HEARING!

- PUBLIC PARTICIPATION IN YOUR MEETING
  - NOT guaranteed by state statute

EXCEPTION:
- Public Hearings mandated by law
  - Liquor license approvals
  - Zoning changes
Meetings Of The Governing Body

PUBLIC PARTICIPATION IN YOUR MEETING

- Governed largely by your rules of procedure
- Must be relevant to the agenda item being discussed
- May be limited in time
- Must be respectful and not argumentative

LIGHTS, CAMERA ACTION

Governing Body Actions
Ordinance or Resolution?

In most cases the state statute authorizing a particular municipal action specifies whether an ordinance or resolution is required.

Ordinances

- Local law that establishes regulations of a general and permanent nature
- Highest in authority of all actions a governing body may take.
- Must be published or posted for 14 days BEFORE being voted on
- Enacting requires the positive vote of a MAJORITY OF ALL members of the Governing Body
- May carry a penalty for violation including fines and jail (Up to $500 and 90 days) and be tried in Municipal Court except for DWI ($999 and 179 days)
Resolutions

- Usually an expression of opinion or a statement of policy which is binding on elected officials and employees
- May also be required for adoption of a budget, scheduling an election or setting meeting policy and procedure
- Requires a positive vote of a MAJORITY OF ALL members of the Governing Body.

Simple Majority Votes

- Action in which the Governing Body makes the final decision (advice and consent)
- May come at the recommendation of the mayor, city manager/administrator, a department director or others
- The general vehicle through which most action is taken
- Usually takes the form of motions that are recorded in the minutes
An Ethical Guide to Governing

- As a Mayor or Governing Body Member you will be a pivotal partner in determining the future of your community.

- How you govern will affect how you are perceived in the community; the conduct of your meetings; your decision making; the municipal budget and the people that work for your municipality.
An Ethical Guide to Governing

- Do nothing to violate the trust of those who elected you or those you serve. Represent the interests of all people served by your municipality.

- Approach all governing body issues with an open mind, prepared to make the best decision for the whole municipality.

An Ethical Guide to Governing

- Focus your efforts on the mission of the municipality and not on your personal goals.

- Represent the interests of all people served by your municipality.
An Ethical Guide to Governing

- A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust.

- Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

---

An Ethical Guide to Governing

- No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act.

- It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position.
An Ethical Guide to Governing

- Don’t use your position for personal advantage or for the advantage of your friends or supporters.

- Never exercise authority as a governing body member except when acting in a meeting of the governing body.
  - Unless you are delegated by the governing body.

An Ethical Guide to Governing

Keep Confidential Information Confidential!
THE OPEN MEETINGS ACT

Let The Sunshine In

The Open Meetings Act

The New Mexico Open Meetings Act:

- Is a state law
- Defines the public policy of open government as it applies to all public bodies, including municipal governing bodies and most boards & commissions
- Addresses the effect that violating the law may have
- Defines penalties for violation of the Act
The Open Meetings Act:

Meetings

The New Mexico Open Meetings Act provides that meetings of a quorum of a governing body where policy or official action is taken or discussed must:

Be **OPEN TO THE GENERAL PUBLIC** unless the meeting may be closed under one of the seven **SPECIFIC EXCEPTIONS RELATING TO MUNICIPALITIES** listed in the statute.

Open Meetings Act Compliance:

Meetings

- You may not close or dissolve a meeting into smaller groups for the purpose of closing an otherwise public meeting.

- Reasonable efforts must be made to accommodate the use of audio & video recorders.

- If your local policy allows, a member of the governing body may participate in a meeting by means of a conference telephone.
The New Mexico OPEN MEETINGS ACT requires that EVERY public body:

Pass a resolution ANNUALLY stating how much public notice will be required for regular, special and emergency meetings.

The Open Meetings Act: Notice – Regular and Special Meetings

Non-emergency meeting notices must:

- Give reasonable advance notice to the public
- Comply with the deadlines and procedures in the municipality’s Open Meetings Resolution
- Include the date, time and place of the meeting
- Be posted or published in a place and manner accessible to the public
- Include an agenda or information on how to obtain one
Open Meetings Act Compliance:
Notice - Emergency Meetings

Under limited circumstances, an emergency meeting may be held with little advance notice:

If the public body did not expect the circumstances giving rise to the meeting;

AND

If the public body does not act immediately, injury or damage to persons, property or substantial financial loss to the public body is likely.

---

The Open Meetings Act:
Agendas

The meeting agenda should:

- Include a list of specific items of business the governing body intends to discuss or transact
- Clearly describe the listed agenda items in order to give adequate public notice
- Except for an emergency meeting, the agenda must be available to the public at least 72 hours before the meeting
- Except for emergency matters, the public body takes action only on those items specifically listed on the agenda 72 hours before the meeting
The Open Meetings Act: Minutes

If the meeting is open, written minutes are required. Minutes must contain at least:

- Date, time and place of meeting; and
- Names of all members of the governing body attending and those who are absent; and
- A description of the substance of all proposals considered during the meeting; and
- A record of any decisions made and votes taken that shows how each member voted (voting by secret ballot is not permitted)

The following also apply to meeting minutes:

- A draft copy of the minutes is prepared within 10 working days of the meeting.
- The minutes are approved, amended or disapproved at the next meeting where a quorum of the public body is present.
- All minutes are available for public inspection.
The Open Meetings Act: Exceptions

The New Mexico OPEN MEETINGS ACT provides that meetings of a quorum of a governing body where POLICY or OFFICIAL ACTION is taken or discussed may:

Be **CLOSED TO THE PUBLIC** under certain circumstances

Open Meetings Act: Closed Meetings

*(Exceptions that apply to municipalities)*

A public meeting may be closed for deliberations pertaining to:

1. **LICENSE** issuance, suspension, renewal or revocation.
Open Meetings Act:  
Closed Meetings  
(*Exceptions that apply to municipalities*)

A public meeting may be closed for deliberations pertaining to:

2. **LIMITED PERSONNEL MATTERS** concerning an individual employee (final action must be taken in an open meeting)
   - Hiring, promotion, demotion, dismissal, assignment, resignation or consideration of complaints concerning an individual public employee

3. **ADMINISTRATIVE ADJUDICATORY HEARING**, but the hearing itself must be in public
Open Meetings Act:
Closed Meetings
(Exceptions that apply to municipalities)

A public meeting may be closed for discussions pertaining to:

4. Determine **BARGAINING STRATEGY** for collective bargaining

---

Open Meetings Act:
Closed Meetings
(Exceptions that apply to municipalities)

A public meeting may be closed for discussions pertaining to:

5. **A SOLE SOURCE PURCHASE** exceeding $2,500, but action to purchase must be taken in an open meeting
Open Meetings Act:
Closed Meetings
(Exceptions that apply to municipalities)

A public meeting may be closed for meetings with legal counsel regarding:

6. PENDING OR THREATENED LITIGATION

Open Meetings Act:
Closed Meetings
(Exceptions that apply to municipalities)

A public meeting may be closed for deliberations pertaining to:

7. Discussion of purchase or disposal of REAL PROPERTY or WATER RIGHTS
Open Meetings Act:

Closing A Portion of an Open Meeting

MOTION TO CLOSE MEETING FROM AN OPEN MEETING must:

• State the specific exception to the Open Meetings Act
• Be approved by a majority of those present
• Roll call vote required

Open Meetings Act:

Reconvening the Open Meeting After a Closed Session

• Generally, action on an item discussed in a closed session must be taken in an open meeting

• After a closed meeting is completed, a statement affirming that the matters discussed in the meeting were limited to those stated in the motion to close shall be approved by the governing body

• The statement must be recorded in the minutes and may be approved by unanimous consent of the governing body.
Open Meetings Act:

Closed Meetings Held Separate from an Open Meeting

- Instead of a motion to close, appropriate public notice that includes the specific exception authorizing a closed meeting
- Following completion of a closed meeting a statement is entered into the next open meeting specifying that the matters discussed in the closed meeting were limited to those stated in the notice of a closed meeting

Open Meetings Act:

Closed Meetings

Only the matters stated in the motion or notice to close the meeting may be discussed in the closed session!
Liabilities Faced By New Mexico Municipalities

- Health benefits for employees and their families
- Injuries to employees while acting within the course and scope of their employment
- Exposure to Tort Claims from members of the public injured as a result of the negligence of the municipality or its employees or contractors
  - Torts are negligent or intentional acts not arising out of a contract that injure someone in some way
Liabilities Faced By New Mexico Municipalities

- Claims made by those allegedly injured or damaged by the acts, omissions or negligence of municipal officials or employees
- Claims related to Law Enforcement Activities
- Federal or state claims regarding employment related matters
- Costs associated with damage to the property of the municipality or of others

Limiting Your Risk

- The risks posed by your liabilities are most often covered by the purchase of insurance
- The type of coverage your municipality purchases determines the level of risk it assumes or transfers
- Larger municipalities assume larger amounts of risk through higher deductibles or self insurance
Limiting Your Risk

- The State Tort Claims Act (TCA) limits the liability of municipalities for non federal claims by:
  - Limiting the reasons an injured party may sue to recover damages allegedly caused by a municipality or its agent
  - Limiting the amount of damages an injured party may recover from the municipality

The State Tort Claims Limits

An injured party is limited to recovering:
- $400,000 per person for injuries or damages
- $750,000 per occurrence if more than one person is involved
- $300,000 for past and expected future medical expenses
- $200,000 per legally described real property up to $750,000 per occurrence
Liability For Damages Not Covered By The TCA

- Generally, recovery of damages for alleged violations of federal law are not limited
- In addition to the liability for damages awarded for violations of federal law the municipality may be liable for the attorney fees and costs incurred by the plaintiff

Liability for damages not covered by the TCA

- Under certain circumstances, an award of as little as $1 will result in liability for tens or even hundreds of thousands of dollars of attorney fees and costs
- If an official or employee causes injury or damage while traveling outside the state the liability for the act or omission is covered by the laws of that state
Factors Involved in Assessment

Once a claim is filed and investigated the claims examiner must consider a variety of issues in assessing the risks involved with the case. Among those are:

- The facts of the case.
- The evidence (documentation) that either supports or contradicts the allegations.
- The credibility of witnesses on each side of the dispute.
- Whether the potential trial is scheduled before a judge or a jury.
- The location of the potential trial.
- The judge assigned to the case.
- The past experience with and capabilities of the Plaintiff’s Attorney prosecuting the case.
- The potential for a verdict for the Plaintiff or Defense.
- How witnesses present to a jury.
The Certainty of Settlement

- By compromising their positions both the plaintiff and the defendants get closure on terms they have agreed on not based on a decision by a judge or jurors who must decide based on the information presented at trial.
- The ultimate outcome of a trial is that either you win or you lose.
- Losing is not fun.
WHAT?

- The Inspection of Public Records Act is a state statute.
- NMSA 1978
  - Sections 14-2-1 through 14-2-12.

OVERRIDING PRINCIPLE

- Every person has a right to inspect any public records of this state.
- Exceptions:
  - As otherwise provided by law:
    - Statutory laws
    - Case law
    - Judicial Order?
IMPORTANT DEFINITIONS

- **Person** means any individual, corporation, partnership, firm, association or entity; 14-2-6.C

- **Public Body** means the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities. . . .14-2-6.D

IMPORTANT DEFINITIONS TOO

- **Public Records** means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, **regardless of physical form or characteristics**, that are used, created, received, maintained or held by or on behalf of any public body **and relate to public business**, whether or not the records are required by law to be created or maintained. 14-2-6.E
NEW DEFINITIONS SINCE 2010

- “Protected personal identifier information” means:
  - all but the last four digits of a:
    - taxpayer identification number;
    - financial account number; or
    - driver's license number.
  - all but the year of a person's date of birth; and
  - a social security number.

PUBLIC RECORDS

- The definition of public records covers virtually all documents which are generated or maintained by a public entity which relate to public business (Unless covered by a specific and express exemption).
EXAMPLES OF PUBLIC RECORDS

- Paper Documents--This is obvious
- Electronic Documents/Databases
- Tape Recordings:
  - Tape recordings of meetings used to assist in drafting minutes are public records;
  - Such tapes may be destroyed after the minutes are prepared.
  - Recommend a policy regarding such destruction.

MORE EXAMPLES

- Photographs
- Computer disks
- Contents of Computer Hard Drives
- E-mail
- Computer Databases
- GIS Maps?
- Information held by private companies providing services to the Public Entity.
EXAMPLES CONTINUED

- Government Vouchers
- Records of public expenditures
- Contracts
- License applications
- Accident reports and records of traffic citations
- Employment applications (resumes)
- Salary information
- Personal information concerning public employees (with certain exceptions)

PUBLIC RECORDS

- NOTE: the two major limitations contained within the definition itself:
  - the record must be HELD BY OR ON BEHALF of the Public Body.
  - the record must RELATE TO THE PUBLIC BUSINESS.
PROMISE OF CONFIDENTIALITY

- Do not make promises of confidentiality.

- Promises of confidentiality are not recognized by the Act unless supported by a specific exception in the Act or as otherwise provided by law.

REQUESTING RECORDS

- Any person may make a written or oral request to the custodian to inspect records.

- The provisions of the Inspection of Public Records Act apply only to written requests for public records.

- E-mail requests, and FAX requests are treated as if they were written requests.

- What about IM or text messages?
WRITTEN REQUESTS

- Written Requests must contain:
  - Name of person requesting records;
  - Address of person requesting records;
  - Telephone number of person requesting records;
  - Description (with reasonable particularity), the records sought.

RESPONDING TO REQUESTS

- 14-2-8
  - RECORDS MUST BE PRODUCED NO LATER THAN 15 DAYS AFTER THE REQUEST.
COSTS OF PRODUCTION

- May charge “a reasonable fee” for copying public records.
- Fee shall not exceed $1.00 per page for documents 11”x17” or smaller.
- May require advance payment of fees.
- Shall provide a receipt upon request.
- May charge the actual costs associated with downloading copies of public records to a computer disk or storage device, including the actual cost of the computer disk or storage device.

EXCEPTIONS

- Records pertaining to the physical or mental examinations and medical treatment of persons confined to any institution. 14-2-1.A (1)
  - Expanded by the Supreme Court to protect employee records pertaining to illness, injury, disability, inability to perform a job task and sick leave.
EXCEPTIONS

- Letters of reference concerning:
  - Employment
  - Licensing
  - Other permits
- 14-2-1.A (2)

---

EXCEPTIONS

- Letters or memorandums which are matters of opinion in personnel files or students’ cumulative files. 14-2-1.A (3)
  - Includes:
    - Infractions and disciplinary actions
    - Performance evaluations
    - Opinions concerning rehire
    - Opinion on why applicant was not hired
Exceptions

- Law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. 14-2-1.A.(4)
- Intended to protect certain criminal investigative materials and procedures
- This protection continues even after the suspect is arrested and charged or the investigation is closed.

EXCEPTIONS

- Tactical response plans or procedures prepared for or by the state or a political subdivision of the state.
- Intended to protect against disclosure of:
  - specific vulnerabilities,
  - risk assessments;
  - tactical emergency security procedures.
EXCEPTIONS

- As otherwise provided by law.
  - Otherwise public materials may be protected in other statutes or through other sources of legal authority.
  - See: Attorney General’s Compliance Guide.

PENALTIES FOR NON-COMPLIANCE

- Failure to provide written explanation of denial of inspection may result in:
  - Damages of up to $100 per day
  - Accruing from the day the entity is in noncompliance
  - Payable from funds of the public body.
  - 14-2-11.C

- Damages also available for unreasonable denial of inspection
  - 14-2-12.D
Coverage Available To Limit Your Risk

- Health and life benefits for employees and dependents
- Worker’s compensation coverage
- General liability coverage
- Auto liability and physical damage coverage
- Law enforcement liability coverage

Coverage Available To Limit Your Risk

- Errors & omissions coverage (civil rights coverage)
- Emergency medical services coverage
- Property coverage
- Foreign jurisdiction coverage
Where Do We Go For Coverage?

- You can obtain coverage from a traditional commercial insurer;
- or
- As many of our municipalities already have, you can join with other municipalities in the state and be a part of the New Mexico Self Insurers’ Fund

The New Mexico Self Insurers’ Fund

- Joint powers agency founded in 1983 by the New Mexico Municipal League
- Its mission is to assist members with managing risk through pooling of resources and by providing services designed to limit exposures and risk
- The Fund is owned and controlled by its members
The New Mexico Self Insurers’ Fund

- Governed by a Board of Trustees elected by the membership
- Administered by the New Mexico Municipal League
- Staff of the Fund are experts in managing municipal risk and work for you
- Offers all lines of coverage you need

QUESTIONS