



## Board of Regents

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January 12, 2009

Mr. Richard L. Epstein  
96 Johnson Hill Road  
P.O. Box 635  
Socorro, New Mexico 87801

Dear Mr. Epstein:

This letter responds to your December 17, 2008 letter to Tech's Board of Regents raising issues under the New Mexico Open Meetings Act. The Regents and the Tech community generally appreciate your concerns about these issues and agree that compliance with the Act is essential. We have carefully reviewed the issues raised in your letter and have concluded that Tech in each case complied with the Open Meetings Act.

The first issue raised in your letter relates to Regents' meetings in 2008 in which Regents participated by conference telephone. Section 10-15-1(C) of the Open Meetings Act authorizes such meetings if permitted by a rule of the Regents and attendance in person would be "otherwise difficult or impossible." The Regents' annual Open Meetings Act resolution has for many years, including 2008, provided for meetings by conference telephone if attendance in person would be "otherwise difficult or impossible."

The second issue raised in your letter relates to the minutes of the August 2, 2008 meeting of Tech's Regents. Subsection H of Sections 10-15-1 of the Act provides that the provisions of Subsections A, B and G of Section 10-15-1 do not apply to discussions of "limited personnel matters," as defined in Subsection H (2) or, pursuant to Subsection H (7), to "meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the" Board of Regents "is or may become a participant." Subsections H(2) and (7) permit the Regents to meet in executive session to discuss matters concerning individual Tech employees and discuss with legal counsel pending or threatened litigation in which the Board of Regents is or may become a participant. I am sure that you appreciate the important public policy reasons for both of these rules. Subsection H (2) requires that following discussion in an executive session, any final Board action involving a Tech employee must be taken at an open meeting. As indicated in the minutes of the August 2 Regents' meeting, no Board action was taken at that meeting relating to personnel matters. Subsection J of Section 10-15-1 provides that the minutes of Regents' meetings including an executive session should state that the matters discussed in the executive session "were limited only to those specified in the motion for closure."

The motion for an executive session referred to in the minutes of the August 2 meeting specified that the session would be "for consideration of legal and personnel matters." The minutes of the meeting state that "the Board had considered legal and personnel matters." This statement satisfies the requirements of Subsection J.

The third issue raised in your letter is that the minutes of the May 16, 2008 Regents' meeting were not considered for approval at the June 9 or July 3, 2008 conference telephone meetings but instead were considered at the August 2, 2008 meeting which all of the Regents attended in person. The June 9 and July 3 meetings were emergency meetings at which only emergency matters could be considered. Consideration of the minutes of the May 16 meeting was not an emergency. The next non-emergency Regents' meeting following the May 16 meeting was on August 2, when the minutes of the June 9, July 3 emergency meetings and the May 16 regular meeting were considered and approved.

Sincerely,

TECH BOARD OF REGENTS

A handwritten signature in black ink, appearing to read "Jerry A. Armijo". The signature is written in a cursive, flowing style.

By Jerry A. Armijo  
President of the Board