

**New Mexico Foundation for Open Government
Board of Directors Meeting Minutes
Wednesday, November 30, 2016
12:00 p.m. – 2:00 p.m.
Albuquerque, NM**

AGENDA MINUTES

Members Present

Those present:

Greg Williams, President; Martin Salazar, President Elect; Kathi Bearden, Immediate Past President; Billie Blair, Secretary; Carl Baldwin, Treasurer; Charles “Kip” Purcell, Executive Committee Member; Daniel Yohalem, Executive Committee Member; Janice Arnold-Jones; Jeri Clausing; Dede Feldman; Viki Harrison; Emil Kiehne; Melanie Majors; Michael Melody; Karen Moses; Ray Rivera; Bob Trapp; Jeff Walter

Staff:

Susan Boe, Executive Director; Shannon Kunkel, Membership Director

Public:

One member of the public present.

President Mr. Williams called the meeting to order at 12:00 p.m.

Approval of Agenda

Mr. Williams called for the approval of the agenda. Ms. Arnold-Jones moved, and Mr. Salazar seconded the motion. The motion to approve the agenda carried.

Approval of Minutes

A motion to approve the minutes was made by Mr. Yohalem and seconded by Ms. Arnold-Jones. The minutes were approved.

President’s Report

As this was the final Board meeting of the year, Mr. Williams began the meeting by thanking the Board for its support during his tenure as president. With both Ms. Kunkel and Ms. Boe leaving their positions with FOG, Mr. Williams continued by thanking Ms. Kunkel for her work as the membership director and wished her well upon her leaving the organization. He expressed his immense gratitude to Ms. Boe for her three years of service as FOG’s executive director. Mr. Williams concluded by remarking that FOG had room to grow and expand, both in terms of fundraising and the services it provides the public. He said there was good reason to be optimistic about the future of the organization.

Executive Director's Report

Ms. Boe presented the hotline report and reiterated that the hotline serves an important function in our state. She explained that a State Senator had contacted the hotline earlier that day to ask questions about the Open Meetings Act.

Ms. Boe further informed the Board that, while the final numbers had not been reported, the Dixon Lunch was poised to net a profit of more than \$20,000 – a record profit for the event. Ms. Boe also told the Board that the recent municipal IPRA audit showed that most of the cities complied with the law.

Lastly, Ms. Boe thanked the Board and expressed her gratitude for the opportunity to lead such a worthy organization.

Treasurer's Report

Mr. Baldwin began his report by informing the Board that FOG had filed its Form 990 with the IRS, posted the document to the website and filed it with the Attorney General's office, as required. He reviewed the balance sheet, which shows that FOG has approximately \$81,000 in the checking account, representing about 62 percent of the organization's total assets. He suggested that the Finance Committee consider moving some of that money into investment accounts.

Mr. Baldwin presented the budget detail report, noting that FOG is currently \$4,300 over budget with two months remaining in the fiscal year. Ms. Blair asked that the Board receive a comparative statement showing revenue, expenses and profits over the last five years.

Ms. Boe presented a preliminary sketch outlining a possible budget for 2017 to help the Board determine the salary that should be offered to the incoming executive director. Mr. Williams asked the Board for input, suggesting that while the position was advertised with a salary of \$50,000-\$55,000, the organization could pay the right candidate up to \$65,000/year.

The Board at large discussed whether or not to budget for the hiring of a new membership director, or if the new executive director should absorb the job functions performed by the membership director. Mr. Trapp asked if the current grants were likely to be awarded to FOG again in 2017, and Ms. Harrison and Ms. Boe confirmed that the grants would probably be renewed for at least one more year.

OMA and IPRA Legal Issues Discussion and Reports

1. Corizon Settlement Case – Mr. Yohalem updated the Board about the lawsuit to release settlement documents from Corizon Health, which provided medical care to prison inmates. In applying the *Toomey* Factors to determine if a private contractor is subject to IPRA while performing a public function, Judge Ortiz found that Corizon must release the documents

under the law. Corizon has filed an appeal, which is now pending. FOG filed a petition for attorney fees, which will be considered as part of the appeal.

2. *Britten Case* – Mr. Purcell provided information about the Marcy Britten case, which seeks damages for an IPRA violation by the Attorney General’s office. Per the *Faber* case, the courts have ruled that compensatory damages are to be awarded per diem in the amount of \$100/day for failing to respond to an IPRA request. However, in cases where the petitioner was denied documents under IPRA, only actual damages are awarded. There is arguably a gray area in Britten, Mr. Purcell explained, because the AG’s office did not disclose the existence of certain documents pertinent to the request. While the trial court ruled this constitutes a denial under IPRA, FOG is filing an amicus brief in the appeal asserting that the AG essentially ignored Britten’s request for records.

3. *Valley Meat Co. Case* – Mr. Kiehne informed the Board about a case before the New Mexico Supreme Court involving the denial of an IPRA request for Facebook Messenger documents sent by a Judge. Mr. Kiehne said the ruling will help to define the limits of protected communication under judicial privilege. Mr. Kiehne will follow the case and let the Board know the outcome and if there might be an opportunity to file an amicus brief on the matter in the future.

4. *Animal Village case in Dona Ana County* – Ms. Boe briefly told the Board about a case involving an animal shelter seeking record about dogs seized from a puppy mill in Dona Ana County. The county initially refused to release information about the dogs, citing the law enforcement exception of IPRA.

5. *Expungement Case* – Mr. Williams discussed a case involving a paramedic and police officer, in which the paramedic was wrongfully jailed for a conflict with the officer at the scene of an accident. Both parties have agreed to expunge the record of the arrest. The courts, however, have said that they do not have the authority to do so. In this case, FOG has taken the position that the records should not be expunged, as they document not only the arrest, but the incident as a whole, including evidence of police misconduct. FOG’s position is that records should be retained. Mr. Rivera and Ms. Feldman expressed some concern over FOG’s position, and Mr. Williams agreed that it is a complex issue deserving of more discussion.

Legislative Preview

Mr. Williams summarized a call earlier in the month by the Legislative Task Force. He said that FOG’s capacity heading into the legislative session was uncertain since a new executive director has not yet been hired and it is unclear how much lobbying experience the new ED will have. He told the Board that there have been indications that the Municipal League and the Association of Counties may work to introduce legislation that FOG will need to oppose.

Mr. Williams also noted that with turnover in the makeup of the legislature and the leadership of both houses, this session may be a good time to consider amending and clarifying IPRA. He and Ms. Boe are drafting language that might help to improve the law. He stressed that FOG will need to move forward carefully, as its position has always been to “first do no harm,” in preventing the weakening of sunshine laws. Mr. Williams suggested that recruiting Karin Foster to help lobby again this year would be advisable.

Mr. Rivera asked that any proposed changes to IPRA include language that would fix the electronic records law. He said that The New Mexican frequently has problems obtaining records in their native electronic formats.

Mr. Yohalem brought up a proposal by the Association of Counties to effectively gut the Whistle Blower Protection Act. This law, he said, is critical for government transparency, and he encouraged FOG to actively speak out against the proposed changes. Ms. Feldman agreed and suggested that it might be prudent to issue a statement soon before the Association secures a sponsor for this bill.

New Business

Mr. Williams announced that the Hiring Committee received 27 applications for the executive director position and has chosen six candidates to interview on Friday. He said they hope to make a decision the same day and will email the Board for approval to move forward with a job offer contingent on a successful background check.

Ballots were distributed for the re-election of six Board members to renewed three-year terms, election of new officers and election of one new Board member, Joseph Zebas of Hobbs. Ms. Bearden gave a brief description of Mr. Zebas and his qualifications.

Mr. Yohalem moved to re-elect the Board members to new terms. Ms. Blair seconded, and the six Board members were retained by unanimous decision. Secret ballots were cast to approve the proposed slate officers and election of Mr. Zebas. By unanimous decision, the new slate of officers was elected and Mr. Zebas was selected to join the Board.

The meeting adjourned at 2:00 p.m.