

New Mexico Foundation for Open Government (NMFOG)
Board of Directors Meeting Minutes
Thursday, August 16, 2018
12 p.m.
Albuquerque, NM

Members Present:

Karen Moses, President; Carl Baldwin, Treasurer; Mike Melody, Secretary; members Jeri Clausing, Dede Feldman, Viki Harrison, Tom Johnson, Henry Lopez, Sammy Lopez (via telephone), Paula Maes, Rory McClannahan, Steve McKee, Fred Nathan (via telephone), Charles “Kip” Purcell, Mary Lynn Roper, Hal Stratton, Bob Trapp, Greg Williams, Dan Yohalem. A quorum was present.

Staff:

Melanie Majors, Executive Director

Call to Order:

Ms. Moses called the meeting to order at 12:10 p.m.

Approval of Agenda:

Ms. Moses called for a motion to approve the agenda. Mr. McClannahan moved, Mr. Trapp seconded. Motion carried.

Approval of Minutes:

Ms. Moses called for a motion to approve the minutes of the May, 16, 2018 minutes. Mr. Baldwin moved, Ms. Feldman seconded. Motion carried.

President’s Report:

Ms. Moses discussed committee work, and thanked the members of the Dixon Lunch, Legal, and Marketing committees. She also thanked Mr. Purcell, Ms. Roper and Ms. Boe for their efforts with the legislative Body Camera Study Group. That group has now divided into three sub-groups, with one NMFOG board member to participate in each sub-group. Ms. Moses also emphasized the importance of the recently developed three-year plan.

General discussion ensued operational issues, including the plan to mail to all donors and prior donors an organizational progress report, coupled with a donor request. The importance of developing an online information database, to ease the answering of requests regarding IPRA and OMA, was highlighted.

Ms. Moses advised the board she is drafting a letter to be sent to the NMFOG membership. The first purpose of the letter is to let members know of the FOG’s good works and recent court decisions. The second purpose is to remind members to renew their dues and if they are a donor, to consider making their annual donation now.

Finance Committee Report:

Mr. Baldwin began his report by thanking Ms. Majors for her considerable efforts, particularly with respect to obtaining new passwords and access to files and accounts. Mr. Baldwin also reported on the decision by NMFOG's bookkeeper to resign the NMFOG account due to family demands, and the successful recruiting of a successor.

The principal portion of Mr. Baldwin's report dealt with year to date financial results, with donor income falling well below budget, due to the lack of fundraising activity in the first six months, related to the transition of Executive Directors. Expenditures were also substantially below budget. Net operating revenue over/under expenditures were as a result materially better than budgeted, but also substantially below prior year. Mr. Baldwin's report was followed by an extensive discussion among board members regarding the lack of donor contact in the first two quarters, and suggestions for fundraising in the balance of the year.

He also indicated he and the secretary would review budget categories, line items and data.

Mr. Williams moved, and Ms. Roper seconded, a motion to approve the financials as submitted. The motion carried.

Executive Director's Report:

Ms. Majors began her report by thanking the New Mexico Broadcasters' Association for their cooperation in providing office space, and for their assistance in moving NMFOG files and other materials to the NMBA offices.

Ms. Majors also confirmed that Kate Snow, an NBC reporter who once worked at KOAT in Albuquerque, would be the guest speaker at the Dixon Lunch; she further reported on the Dixon Lunch preparations. Her written report is incorporated by reference.

Legal Committee:

Mr. Williams reported on the Jones vs. City of Albuquerque case, on which The New Mexico Supreme Court is reviewing the decision of the appellate court. Mr. Yohalem reported in detail on the status and strategy of the case, which NMFOG has joined as *amicus curiae*.

This case involves an IPRA request to DPS for records in its possession pertaining to the shooting of James Boyd in Albuquerque. DPS declined to turn them over because the FBI was involved in an ongoing investigation, and Jones filed an IPRA lawsuit. The district court ruled that because of the ongoing federal investigation, the law enforcement exception to IPRA protected the records from disclosure. The court further held that if the FBI hadn't finished its investigation by a certain date, the plaintiff could renew its request to the court. Eventually, after the FBI finished its investigation, DPS disclosed the records. Plaintiff then requested its attorneys' fees, which the district court denied. On appeal, the Court of Appeals did not address the substantive issue, which is whether the law enforcement exception covered these records. It decided the case on

procedural grounds, holding that the plaintiff hadn't properly preserved its objection to the district court's ruling. The Court of Appeals also upheld the denial of attorneys' fees, finding that the plaintiff was not the "prevailing party" even though it had to sue to get the records.

Mr. Williams also reported on several University of New Mexico cases of interest to NMFOG, as well as the CYFD case dealing with the employee discipline exemption to provisions of IPRA.

One case involves Daniel Libit, a freelance journalist, sent an IPRA request to UNM and its Foundation, seeking records regarding UNM's agreement to sell naming rights to the Pit to WisePies. The Foundation denied the request on the grounds that it was a private entity and not subject to IPRA. Libit filed suit, and FOG, in partnership with the Florida-based Brechner Center for Freedom of Information, filed an amicus brief in support of Libit's position. The district court ruled in Libit's favor. The Foundation has now filed a notice of appeal, and we will likely re-file our amicus brief in the Court of Appeals. We have been approached by Pat Allen, general counsel for the Foundation, who said he would like to seek a legislative resolution to the issue and wants to sit down with us to discuss it. Williams is waiting for a call from Allen as to when he would like to talk.

The other case involves CYFD. CYFD recently disciplined 11 employees following an internal investigation into how employees handled the case of a 7-year-old girl who was allegedly being prostituted by relatives. The *Albuquerque Journal* made a request for records of this discipline, which was denied, and FOG followed up with a mirror request, which was also denied. FOG submitted an IRPA request asking for the records. FOG has decided to file an IPRA lawsuit, probably in conjunction with the Journal. The case is important in part because governmental entities in New Mexico now routinely deny requests for records of employee discipline based on what we believe to be an overly-expansive reading of one IPRA exception, the "limited personnel exception," which exempts matters of opinion in personnel files. No lawsuit has yet been filed.

Marketing, Fundraising, Membership Committee(s):

Mr. McKee reported that the committee's first task, on which it is working, is to prioritize the many possible goals before it in light of available resources. The group will hold a series of meeting this fall and have a plan by the November meeting.

Dixon Lunch Committee:

Ms. Maes reported on the status of the Dixon Lunch preparations, giving all credit for the progress thus far to Ms. Majors.

Dixon Awards Committee:

Ms. Roper reported, on behalf of Ms. Bearden. The committee plans to establish more formal criteria for future nominations, clarifying whether nominees are required to be current residents of New Mexico. Ms. Roper also reported that Ms. Bearden prefers that committee membership not change annually, for the sake of continuity and prior

knowledge. There was also a request to remove the education category. The committee was asked to come up with specific recommendations.

Three-Year Plan Committee:

Mr. McClannahan reported on development of action plans to implement the current three-year plan, as drafted in May, 2018. Motion was made that the plan be approved. Ms. Roper moved, Mr. Melody seconded.

Extensive discussion then ensued, with Mr. Yohalem suggesting that the plan be revised in its opening section to emphasize that it focuses on organization improvement. Further, it was suggested that a plan dealing with IPRA/OMA education specifically, needed to be developed. It was pointed out the plan needs to address advocacy and litigation and an outline for implementing the FOG mission.

Mr. Yohalem then made a motion, seconded by Ms. Clausing, that the existing plan be tabled pending the suggested revisions. Motion carried.

New Business:

Mr. Johnson reported on the desirability of collaboration tools to assist committee members, and board members more generally, in the development of documents and intra-committee communications. He outlined the capabilities of four such applications, and suggested that one or more committee chairs commit to a 30-day trial of various programs. Discussion revealed that committee chairs would prefer to be presented with a single program. Mr. Williams volunteered to use the Legal Affairs Committee test one such program; Mr. Johnson suggested HiBox, with which Mr. Williams agreed.

Ms. Moses reminded the board that officers' terms and those of certain board members were to conclude at the end of the calendar year. She plans to appoint a nominating committee in the near term.

Ms. Roper reported on the Body Worn Camera Working Group meeting which she, Mr. Purcell, and Ms. Boe had attended. She reported that she found the initial meeting to be quite positive in tenor, with most participants focused on "how to" properly implement law enforcement personnel's use of the cameras. The principal negative considerations mentioned were the cost of such systems, and the lack of criteria standardized across myriad agencies. Mr. Purcell detailed four major areas of interest by the group:

- When should cameras be turned on?
- Should there be a policy governing any behavioral health exception?
- What should be done with images capturing crime victims, in light of New Mexico constitutional protections?
- How long camera-captured images should be retained, another issue currently differing widely among agencies?

It was pointed out the State of New Mexico has 800 plus categories for retention of records. Discussion also centered on FOG adopting a position on how long records should be kept.

Mr. Williams announced the CLE seminar will be held Friday, Nov. 9 at the Albuquerque Journal offices.

Mr. Melody moved, and Mr. Baldwin seconded, a motion to adjourn. Motion passed, and meeting adjourned at 2:30 p.m.

Attachment: Ms. Majors' Executive Director's Report.