

**New Mexico Foundation for Open Government
Board of Directors Meeting Minutes
Friday, January 15, 2016
3:00 p.m. – 5:00 p.m.
Albuquerque, NM**

AGENDA MINUTES

Members Present

Those present:

Martin Salazar, President Elect; Bob Trapp, Outgoing Treasurer; Carl Baldwin, Incoming Treasurer; Charles “Kip” Purcell, Executive Committee Member; Daniel Yohalem, Executive Committee Member; Janice Arnold-Jones; Carl Baldwin; Charles Goodmacher; Viki Harrison; Emil Kiehne; Phil Lucey; Melanie Majors; Michael Melody; Karen Moses; Fred Nathan; Kyla Thompson

Present Via Conference Line:

Greg Williams, President; Fred Nathan; Doug Turner

Staff:

Susan Boe, Executive Director; Shannon Kunkel, Membership Director

Public:

No members of the public present

President-Elect Mr. Salazar called the meeting to order at 3:00 p.m.

Approval of Agenda

Mr. Salazar called for the approval of the agenda. Ms. Thompson moved to approve the agenda for the meeting. Mr. Yohalem seconded the motion, and the motion carried.

Approval of Minutes

Being that all corrections to the minutes had been made, Mr. Trapp motioned to approve the minutes, and Mr. Melody seconded the motion. The minutes were approved.

President’s Report

Mr. Williams kept his report brief, as he was attending the meeting via the conference line. He indicated that this year’s legislative session should be less time consuming for FOG since it was only a 30-day budget session and there was no germane legislation pertaining to IPRA or OMA that had been pre-filed. He also noted that the organization was as strong as ever and thanked the Board for their involvement, particularly Mr. Trapp for serving as FOG’s treasurer.

Executive Director's Report

Ms. Boe announced that FOG had created and published an online database of county and state agency records custodians, which will be a good resource for anyone filing IPRA requests. Ms. Boe also said that FOG would launch a new online transparency course next week. The charge for the course will be \$25, and Board members will be provided free access.

Ms. Boe informed the Board that July of 2016 will mark the 50th anniversary of FOIA, when President Lyndon B. Johnson signed FOIA into law. She further told the Board that a proposed amendment to give the FOIA ombudsman more authority under FOIA had passed the U.S. House of Representatives and was now being heard in Senate committees. Ms. Boe had emailed the offices of Senator Martin Heinrich and Senator Tom Udall to express FOG's support for the proposed amendment. Ms. Moses explained that the Journal had also spoken to Senator Udall, encouraging him to vote in favor of the amendment.

Finally, Ms. Boe said that the Hotline had been slow in December, but had picked up considerably since the first of the year. She also told the Board that Karin Foster had once again agreed to lobby for FOG at the Roundhouse for a fee of only \$1,000.

Treasurer's Report

Mr. Trapp and Mr. Baldwin together gave the Board the financial report. Mr. Trapp presented the balance sheet and highlighted a few specific items, including the receipt of a \$45,000 grant earmarked for Facebook digital ads and the subsequent payment of \$39,000 made to the advertising agency. Ms. Boe and Ms. Kunkel agreed that the ad campaign had been successful, but also expressed interest in including print-media buys in future campaigns.

Ms. Kunkel explained that though the balance sheet showed that December donations were down from last year, the vast majority of contributions received were not deposited or recorded until January because the FOG office space was inaccessible from December 19 through January 3.

Ms. Boe presented the proposed 2016 budget. Ms. Boe said that the two most aggressive income item estimates were the \$5,000 in expected earnings from the online course and the \$7,000 in anticipated revenue from this year's Santa Fe event. The budget Ms. Boe compiled also includes an optional \$10,000 release of restricted assets to hire an hourly legal intern. Ms. Thompson moved to accept the 2016 budget, and Ms. Arnold-Jones seconded. The motion carried.

Mr. Trapp and Mr. Baldwin proposed moving funds from the U.S. Bank checking account into short-term CDs. The CDs would be staggered over 3, 6, 9 and 12-month increments in the amount of \$30,000 to \$40,000, at the discretion of Ms. Boe after a review of the

organization's cash-flow needs. Mr. Yohalem moved to purchase the CDs. Mr. Melody seconded, and the motion passed.

OMA and IPRA Legal Issues Discussion and Reports

1. Department of Health Medical Marijuana Case – Mr. Purcell explained the lawsuit remains on hold until the hearing officer makes the final decision about the DOH policy. He further told the Board that the producers' primary objection to making the records public was related to safety and security issues since the growers cannot reliably use banks and typically have cash and marijuana on the premises.

Mr. Purcell said while FOG will continue to argue that these records should be public, any changes to exempt the producer applications from IPRA should be brought before the New Mexico State Legislature, not decided by DOH policy. Mr. Salazar agreed, asserting that state agencies do not have the authority to unilaterally enact secrecy provisions.

Ms. Thompson suggested that FOG research the policy regarding marijuana growers in Colorado to possibly cite as a best-practice example. Mr. Turner concluded that insider dealing and potentially unfair licensing practices underscore the need for transparency with regard to all government contracts, particularly in the rapidly expanding medical marijuana industry.

2. Foy Case – Mr. Yohalem explained that FOG submitted an Amicus Brief in this case asserting that the State Investment Council (SIC) had unlawfully delegated its responsibilities to a settlement committee, and that even presuming the delegation was legal, the committee would still be subject to OMA.

Mr. Yohalem stated that the case illustrated the lack of good remedies available under OMA when a public body is found to be in violation and that the law should perhaps be amended to include specific retroactive cures.

Mr. Yohalem further discussed the implications of the media being removed from the courtroom during a recent district court case related to the Foy appeal. He said that there were very limited cases authorizing a closed court and that this case should have been heard in public.

Membership Director's Report

In the interest of time and noting that year-over-year membership gains and losses were already discussed during the financial report, Ms. Kunkel referred the Board to her written report and asked that any questions or concerns be addressed via email.

Legislative Preview

Ms. Boe discussed the upcoming 2016 Legislative Session, explaining that since it would be a 30-day budget session, FOG was choosing not to pursue or introduce any proactive legislation. Ms. Boe said that next year the Board should consider bills that would tackle the issue of databases being treated differently from other public records which could interfere with the trend toward open data.

1. Campaign Finance – Ms. Boe said that unless there were any objections from the Board, FOG would continue to support the campaign finance disclosure bill recently introduced by Rep. Jim Smith, which is essentially unchanged from last session’s version. The Board consented to supporting the bill.

2. Capital Outlay – Ms. Boe further asked for the Board’s input about whether to support the capital outlay reform bill that was to be introduced in the coming weeks. Mr. Nathan’s organization, Think New Mexico, is a strong proponent of the measure, which would overhaul the capital outlay process and require transparency of both funding requests and infrastructure spending. After some discussion, the Board determined that while FOG could reasonably support the transparency provision within the bill, advocating for sweeping changes to the capital outlay process was beyond the scope of FOG’s mission.

3. Ethics Commission – The Board also discussed two proposals to create a state ethics commission. The bill introduced by Rep. Brian Egolf dictates that complaints and findings by the commission would be kept confidential. The constitutional amendment introduced by Rep. Jim Dines provides that all complaints and findings would be made public after the answer or response to the complaint had been filed. Because of the increased transparency, the Board determined that Rep. Dines’ constitutional amendment was preferable to Rep. Egolf’s bill.

It was agreed the Executive Committee should work via email to draft a statement expressing FOG’s preference for the Rep. Dines’ constitutional amendment over other proposals, but which also strongly advocates for a fully transparent process.

New Business

The Board reviewed recommendations from the Nominating Committee for 2016 Officers and Directors. The Nominating Committee agreed not to name any new Directors and recommended the re-election of Mr. Williams, Mr. Lucey, Mr. Yohalem, Ms. Clausing and Mr. Salazar for three-year terms. Ms. Majors moved for the re-election of said Directors. Ms. Arnold-Jones seconded, and the motion carried.

The Nominating Committee also recommended the following Officers for 2016: Mr. Williams, President; Mr. Salazar, President-elect; Ms. Bearden, Immediate Past President; Ms. Blair, Secretary; Mr. Baldwin, treasurer. Ms. Moses motioned to elect the said Officers, Ms. Arnold-Jones seconded, and the motion passed.

The meeting adjourned at 5:00 p.m.

