

**New Mexico Foundation for Open Government
Board of Directors Meeting Minutes**

Friday, April 22, 2016

3:00 p.m. – 5:00 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; Janice Arnold-Jones; Jeri Clausing; Dede Feldman; Charles Goodmacher; Emil Kiehne; Melanie Majors; Michael Melody; Karen Moses; Charles Peifer; Ray Rivera; Kyla Thompson; Bob Trapp; Sylvia Ulloa

Staff:

Susan Boe, Executive Director; Shannon Kunkel, Membership Director

Public:

No members of the public present

President Mr. Williams called the meeting to order at 3:00 p.m.

Approval of Agenda

Mr. Williams called for the approval of the agenda. Ms. Feldman moved, and Ms. Bearden seconded the motion. The motion to approve the agenda carried.

Approval of Minutes

A motion to approve the minutes was made by Mr. Kiehne and seconded by Mr. Purcell. The minutes were approved.

President’s Report

Mr. Williams began his report by praising the staff and board for a successful start to the 2016 year. He reflected on the 2016 legislative session and reported that both the Inspection of Public Records Act and the Open Meetings Act were untouched. He noted that FOG saw a few small victories and emerged from the session unscathed.

In preparation for the 2017 60-day legislative session, Mr. Williams called upon the board to form a legislative task force responsible for planning any proactive or defensive strategies the organization should employ. Volunteers were asked to contact Ms. Boe if they wish to participate on the task force.

Treasurer's Report

Mr. Williams asked that Ms. Boe and Ms. Kunkel leave the room while the board discussed a salary increase for Ms. Boe, maternity leave for Ms. Kunkel and office space at *The Santa Fe New Mexican* for Ms. Boe. Ms. Bearden moved to approve an annual salary of \$60,000 for Ms. Boe, made retroactive to the beginning of 2016. Mr. Goodmacher seconded, and the salary was approved. Mr. Melody moved to also provide Ms. Boe a \$5,000 bonus for the year, and Ms. Majors seconded. The motion carried.

The board also approved four weeks of paid maternity leave for Ms. Kunkel, and Ms. Boe's use of a small corner desk at *The New Mexican*. *The New Mexican* will receive an organizational benefactor membership in exchange for the space they provide.

Mr. Baldwin presented the financials, and Mr. Melody moved to approve them. Ms. Moses seconded, and the financials were approved.

Executive Director's Report

Ms. Boe informed the board that she had conducted an IPRA audit of state agencies and all 33 New Mexico counties. Using her husband's name to avoid skewing the responses, she submitted electronic requests for any IPRA logs maintained by the public body. At the time of the board meeting, Ms. Boe had gathered initial responses, but was waiting until after a final reminder was sent to non-respondents to release the findings.

Upon reviewing the IPRA logs she had received, Ms. Boe determined that law firms or attorneys made 50-75 percent of requests. Ms. Boe suggested that FOG more actively recruit law firms to become members or donate to FOG. Ms. Arnold-Jones agreed and suggested Sophie Martin of the Young Attorneys Association as a potential point of contact.

Ms. Boe also reported that FOG had been awarded \$30,000 from the Thornburg Foundation – \$25,000 as an annual grant and \$5,000 in support of the Dixon Lunch. Other recent grant opportunities included \$5,000 from the Doris Walbridge Foundation for general operating, and \$1,500 from the Los Alamos National Laboratory Foundation for online transparency training for high-school students. In 2016, we carried forward \$2,000 from Voqal for advocacy efforts.

Finally, Ms. Boe said that the FOG Hotline had been busier than usual and thanked the legal panel for its prompt, helpful responses and advice.

OMA and IPRA Legal Issues Discussion and Reports

1. *Department of Health Medical Marijuana Case Dismissal* – Mr. Purcell summarized the case as a PR victory, saying that after the first shot was fired, the DOH raised the white flag. After the confidentiality provision was challenged by FOG and Peter St. Cyr and filed in court in July 2015, Governor Martinez one week later recommended more transparency. Attorney

General Balderas also spoke out strongly in favor of making public all records except for patient-producer information. The lawsuit was quietly dismissed, but legal questions remain. Most importantly, what does “except as otherwise provided by law” mean in practice?

Mr. Williams thanked Mr. Purcell for his diligent work on this case. Ms. Boe added that a recent news story uncovered monetary donations by the medical marijuana industry to Rep. Nate Gentry. She noted that without FOG’s work to make public the producer applications, that story would have never been reported.

2. State Investment Council Court of Appeals Decision – Mr. Williams informed the board that the Appellate Court took up the issue of the secret subcommittee meetings and found in FOG’s favor. The Court said that the delegation of responsibility by the SIC to the subcommittee was not done properly, asserting that any actions by the SIC should have been done in accordance with OMA. The Court went a step further and also said that subcommittees cannot operate in secret or otherwise skirt their responsibilities under OMA.

Ms. Arnold-Jones asked Mr. Williams if this ruling might be expanded to apply to nonprofit arms of public agencies, such as fundraising foundations. Mr. Williams said this case might be an indicator that the courts would not look favorably on these nonprofit foundations acting in secret. Mr. Peifer added that when government dollars are diverted to a private foundation it raises questions. He said this has long been an unresolved public policy question and might be worth further exploration by FOG.

Mr. Goodmacher asked if this ruling might have any implications for the New Mexico State Legislature and its practice of using committees to meet in the interim and discuss the budget and other matters. Mr. Williams said that this ruling could be cited as a reason for opening up those committee meetings. Ms. Boe said that the issue of transparency and the state budget would be discussed in more detail toward the end of the board meeting.

Membership Director’s Report

Ms. Kunkel summarized FOG’s efforts during Sunshine Week, which included a haiku contest and two op-eds that ran in newspapers statewide. Ms. Kunkel noted that the haiku contest had been very successful in growing and engaging FOG’s following on social media, with numerous journalists, citizens and public officials submitting entries. She thanked the publishers and editors on the board for running editorials about transparency throughout the week.

Ms. Kunkel also reminded the board about the upcoming CLE, explaining that, to-date, 29 people had registered to attend the seminar, which was down slightly from the same time last year. She also explained that CLE materials would be distributed on flash drive with only a few handouts and the agenda available on hardcopy. Lastly, she encouraged the

board to recruit sponsors for the Dixon Lunch and indicated that sponsorship information had been included in the board packets.

Legislative Preview

Ms. Boe discussed the upcoming 2017 Legislative Session, which will be 60 days and allows for the introduction of new legislation. Ms. Boe emphasized that advanced planning was the key to success at the Roundhouse, and she opened the floor for board members to brainstorm ideas about concerns that should be addressed and legislation FOG might want to pursue.

Ms. Boe began the discussion by suggesting these topics:

- Ambiguity about OMA as it applies to subcommittees within the legislature
- Lack of enforcement and consequences for elected officials who violate IPRA or OMA
- Potentially establishing an open government panel or ombudsman to address concerns raised by citizens or officials
- The problem of defining databases within the Public Records Act and public bodies that deny access to Microsoft Excel spreadsheets

Ms. Arnold-Jones suggested the following:

- Tackling the problem of transparency with regard to nonprofits that work in connection with government agencies
- Clarifying rules on the use of private emails and devices for public business
- Addressing the problem that government bodies, wanting to conceal their actions, simply will not discuss some issues during public meetings. Is OMA stifling conversations or leading officials to discuss public business “offline” or in a rolling quorum?

Mr. Rivera added the following issues for consideration:

- Requiring settlement agreements for outside contractors be made public
- Designating formatting requirements or a preferred format for electronic records. Currently *The New Mexican* receives many files as PDFs or in Excel with locked cells that make it difficult to manipulate data.

Ms. Feldman offered these ideas:

- Enacting a rule change or legislation to simplify and open up the state budget process
- Requiring Legislative Council Services and the ethics committee to make records and findings public after they have reached the end of their investigations.

Mr. Peifer, in response to Ms. Feldman, noted that:

- Investigations could currently remain confidential if the ethics committee found no probable cause. He explained that records would remain secret in cases involving those who are accused but not charged.

Ms. Boe additionally suggested the following issues:

- Confidentiality of arrest records and mugshots of juveniles charged with a crime. This issue recently became pertinent when Bernalillo County changed, then reversed, a new policy concealing juvenile records.
- Private settlements with prisons and contractors acting on behalf of government by providing services to prisoners. *The New Mexican* recently reported a story involving Corizon Healthcare, which provides medical services to prisoners that would otherwise be the responsibility of the state.

The legislative task force will meet in the interim to discuss which issues FOG should pursue and make its recommendations at the next board meeting.

The meeting adjourned at 5:00 p.m.