

MINUTES OF TCOG BOARD MEETING

10 a.m.-1 p.m. Friday, May 13, 2016
Nashville Law Offices of Adams & Reese, LLP
Fifth Third Center, 424 Church Street, 27th floor

Attending in person: Whit Adamson, Braden Boucek, Dorothy Bowles, Maria DeVarenne, Deborah Fisher, TCOG executive director; Alison Gerber, Robb Harvey, Jack McElroy, Marian Ott, Lucian Pera, Doug Pierce, Helen Burns Sharp, John Stern, Hedy Weinberg, Dick Williams, John P. Williams, Adam Yeomans.

Attending via conference call: Elenora E. Edwards, Frank Gibson, Gregg Jones,

Absent: Victor Ashe, Anita Bugg, Ron Fryar, Louis Graham, Rick Hollow, Larry Wood,

1 – Welcome and introductions

Lucian Pera, TCOG board president, welcomed everyone and asked attendees to introduce themselves. Pera talked briefly about engaging the board more on public policy goals.

2 – Report by Executive Director

Deborah Fisher reported on recent TCOG activities and presented PowerPoint slides showing outcomes of some public policy issues that TCOG has been involved with over the past six months.

(a) The “fees to inspect” bill was eventually withdrawn. Three public hearings during the summer study period showed widespread public opposition to the idea.

(b) A bill sponsored by Rep. Bill Dunn creates an avenue for TCOG input on a model public records policy through the Advisory Committee on Open Government.

(c) A bill to keep confidential the footage from police body cameras until all legal actions, including appeals, were exhausted was rejected by lawmakers in favor of a summer study and recommendation by the Advisory Committee on Open Government. An education campaign has already begun but will need to be fleshed out as our position develops. This is a hot topic in Memphis, and the Commercial Appeal editorialized about the costs of cameras and need for transparency. Fisher noted that the City of Memphis mayor's attorney agreed with TCOG's position on access when law enforcement is accused of using undue force.

(d) New statutory language specifying the Advisory Committee on Open Government's role within the Office of Open Records Counsel was suggested too late in the process, but TCOG worked with the comptroller to lay groundwork for either administrative or legislative changes so ACOG can play a more meaningful and useful role. The comptroller's office is mostly concerned that ACOG not weigh in on proposed legislation unless a lawmaker requests it, which we have agreed with.

(e) Funding for additional personnel for the OORC within the Comptroller's Office was approved.

Fisher briefly outlined results of an informal TCOG survey about what open records and open meetings issues needed the most attention, as well as what TCOG programs were

most valued.

Concerning open meetings, survey respondents ranked as No. 1 the statement: "Governing bodies appear to deliberate or make decisions outside of open meetings."

The No. 1 statement concerning open records was "Government entities should respond more quickly to public records request. It is hard to understand why some requests take so long." Ranked almost equally was the statement "Government entities need to make it easier to request public records."

"Advocacy on improving public policy surrounding public records and open meetings" was ranked as the most important TCOG program.

For complete results see <https://www.surveymonkey.com/results/SM-MDGT7TQR/>

Fisher noted the continuing focus on membership growth. TCOG's renewal rate as of April 7 was 54% and donations are ahead 72% as compared with the same time last year (\$20,094 to \$11,687). She said this reflects a later cycle of fundraising in 2015.

The numbers for main TCOG programs year-to-date thus far exceed the same period last year, except for Help Line calls:

- 30 media interviews, 20 last year
- help line, 61 calls vs 100 last year
- emailed news updates email 17 vs 3,-- subscribers to the updates, 632
- 32% open rate
- training workshops (on track)

3 - Treasurer (Marian Ott)

Ott reported YTD figures showing we are almost \$9,000 ahead of last year in the public support category. A \$3,000 increase in that category is budgeted for this year. The organization now has \$40,738 in the bank compared with \$24,513 at the same time last year... Marian emailed budget figures to board members.

4 - Development / fund-raising (Adam Yeomans, Deborah Fisher)

(a) Membership development

Fisher said we need a definite push to gain new members. About a quarter of the board actively participated in the membership drive last summer and fall, making phone calls to individuals and organizations. We need to continue talking to media organizations to try to gain new members there. There are some notable exceptions of media organizations that are not members.

Yeomans, chair of the membership committee, asked each board member to write on a notecard the names of three people they pledged to contact about memberships within the next week. On a second card, he asked for names of potential members that someone who knows them should seek to recruit as members.

Current membership is made up of 42 percent individuals, 34 percent media, 13 percent law firms and attorneys, 9 percent nonprofits and associations, and 2 percent other businesses. We need to increase members in all categories. It was noted that not much attention has been paid thus far to seeking memberships from PR firms.

The membership committee is Adam Yeomans, Anita Bugg, Dorothy Bowles.

(b) Other fundraising

The board had a lengthy discussion about pros and cons of sponsoring some kind of event to raise money. Potential events mentioned were a law school for journalists, an awards event, and others. It was noted that facilitators for the strategic planning day last year cautioned that public events are labor-intensive and costs often leave little profit. It was agreed that fundraising should not limit time and efforts that the executive director and others spend on TCOG's primary mission, but an event might be planned later, particularly if one or more sponsors can be arranged.

The board decided that an annual report brochure or perhaps a single sheet should be published, highlighting TCOG accomplishments. It will go to members, potential members and policy makers before the next legislative session begins. Doug Pierce suggested that this publication include a report card on Tennessee transparency and indicate where Tennessee rates among other states.

5 - Model public records policy development

Legislation referred to as the "Dunn bill" instructs the Office of Open Records Counsel to develop a model public records policy and for every government body in the state to adopt a policy. [A copy of House Bill 2082 as amended, Pub. Ch. 722, Effective date 07/01/2016 is attached to these minutes.]

As amended, the deadline for government entities to adopt a policy is July 1, 2017. The Office of Open Records Counsel is charged to develop a model public records policy and submit it to ACOG for feedback before it is adopted. Fisher pointed out that this presents us with an opportunity to influence public policy and better practices. One way is through participating in the ACOG feedback through our TCOG representative on the Advisory Committee (Lucian Pera) and other board members on ACOG (Rick Hollow, Tennessee Press Association; Dick Williams, Common Cause; Robb Harvey, Tennessee Association of Broadcasters). The other point of influence could come when governing bodies adopt new policies.

Based on experience and TCOG's recent informal survey results, among the topics we hope a model public policy will address are fees, redaction, response time, electronic data, self-copying, and requests by email. Fisher suggested we look at language in the Best Practices Guidelines as potential language to suggest in a model policy.

A committee was appointed to develop TCOG strategy and action steps. Committee members for this task are Frank Gibson, Dorothy Bowles, Dick Williams, John Williams and Lucian Pera, and Victor Ashe.

6 - Law enforcement body cameras

The General Assembly did not adopt legislation regarding access to body cameras during this session but charged ACOG with studying the issue and presenting its findings in January 2017.

Fisher briefed the board on viewpoints expressed during the session. Supporters of excluding or delaying release of body camera footage primarily frame it as a balancing of privacy rights (for example, bystanders on camera or hospital patients) and a right of public access.

Another argument is that immediate release of footage may interfere with due

process rights of law enforcement officer. Legislation already passed in one state mandates court litigation to gain access where an officer is accused of misconduct. Time for litigation and appeals can keep footage secret for years.

Can a line be drawn short of waiting for the entire appeals process? Law enforcement sees video as evidence, whereas TCOG and other transparency advocates see it as an accountability issue. Public support may already exist for transparency concerning police body cameras.

A committee was appointed to develop a TCOG position and strategy on body cameras and to assess resources needed to support the position.

Committee members are Robb Harvey, Hedy Weinberg, Marian Ott, Braden Boucek, Frank Gibson.

7 - Legislative agenda

The board discussed the need to act proactively on some key transparency issues. While TCOG needs to track bills and be prepared to react, we also need to take opportunities where they exist to help shape public policy and better practices in support of government transparency.

The board discussed specific areas for attention. In no particular order, those areas were as follows:

- Sunset provision for exemptions to the TPRA
- Process by which exemptions are added
- A fiscal note for proposed exemptions
- Standardization of record keeping (digital content) among offices subject to the TPRA
- Fees that seem inflated and deter access
- Attorney fees for litigating an issue
- Promptness for complying with requests
- Tennessee anti-SLAPP law
- Persuade OORC to engage ACOG more
- More records available online
- Greater access to data in data format
- More efficient method for redaction (computer software, for example)
- Better notices for open meetings
- Involve OORC in open meetings questions
- Enforcement mechanism for open meetings law

Committee members assigned to work on a proactive legislative agenda are Adam Yeomans, John Williams, Dick Williams, Frank Gibson, Victor Ashe. The specific area they will tackle first are exemptions — the process for adopting, redaction costs associated that are not being tracked and possibility of sunset provisions.

Crime records

TCOG will discuss the potential of legislatively gaining a right of access for citizens to certain crime records, a right that has been eliminated through a series of court decisions built around the rules of criminal court procedures. Essentially, the only right of access to any law enforcement records — including incident reports — currently recognized by law

enforcement is after a case is finished and all potential appeals are exhausted. This committee will look at whether we can improve a right of access to police records in a way that allows a more free flow of information, and accountability.

Committee members to discuss development of an official TCOG position on crime records are Lucian Pera, Frank Gibson, Rick Hollow (others?)

8 - Other Business

There being no other business, the board meeting adjourned shortly after 1 p.m.

Respectfully submitted,
Dorothy Bowles
TCOG Secretary

.PDF ATTACHMENTS: (1) Slides presented during board meeting
(2) HB 2082 as amended (mandating public records model policy)
(3) 2016 May 8 Budget vs Actual
(4) 2016 May 8 YTD vs Last Year