

**MINUTES OF THE
STATE COMMISSION OF PUBLIC RECORDS
REGULAR MEETING
November 25, 2008**

The State Commission of Public Records convened at 9:04 a.m., on Tuesday, November 25, 2008, at 1209 Camino Carlos Rey, Santa Fe, New Mexico.

Members Present

Stanley Hordes, Ph.D.	Chair
Art Baca	Representing the Honorable Hector Balderas, State Auditor
Robert Mead	State Law Librarian
Deborah Moll	Designee for Arturo Jaramillo, Secretary, General Services Department
Betsy Glenn	Representing the Honorable Gary King, State Attorney General
Paula Templeton	Representing the Honorable Mary Herrera, Secretary of State
Frances Levine, Ph.D.	Director, Museum of New Mexico

Staff Present

Sandra Jaramillo	State Records Administrator
Judi Ross Hazlett	Deputy State Records Administrator
Antoinette L. Solano	Administrative Assistant
Estevan Rael-Galvez, Ph.D.	State Historian
John Martinez	Director, Administrative Law Division
Angela Lucero	Director, Records Management Division (RMD)
Jackie Garcia	Records Management Analyst, RMD
Jay Rodriguez	Records Management Analyst, RMD
Leo Lucero	Records Management Analyst, RMD
Melissa Salazar	Director, Archives and Historical Services Division
Mona Valicenti	Representing Stephen Vigil, Assistant Attorney General, Office of the Attorney General

Guests Present

Sandra Ortiz	Public Defender Department
Donovan Lieurance	Gaming Control Board
Karl Erich Martell	Public Defender Department
Rosemary McCourt	Department of Public Safety
Robert Gurule	Department of Public Safety
Ramona Gonzales	Department of Public Safety/Motor Transportation
Michelle Sandoval	Department of Public Safety/Motor Transportation
Joy Le Cuyer	Educational Foundation of Santa Fe
Phil Le Cuyer	Educational Foundation of Santa Fe
Barbara Ricci	State Land Office

(Guests Present - Continued)

Lucille Sisneros State Land Office
Stephen Hughes State Land Office

I. CALL TO ORDER:

Chairman Hordes called the meeting to order at 9:04 a.m. The Chair began the meeting by welcoming staff and guests in attendance.

II. APPROVAL OF AGENDA:

The Chair entertained a motion for the approval of the agenda. Ms. Moll so moved, and Ms. Levine seconded the motion. The motion passed, and the agenda was approved.

III. APPROVAL OF MINUTES:

The Chair entertained a motion for approval of the August 26, 2008 minutes. Mr. Mead so moved, and Ms. Moll seconded the motion. The motion passed, and the minutes were approved.

IV. ELECTION OF OFFICERS

Chairman Hordes opened the floor for nominations for Chair, Vice-Chair and Secretary. Mr. Mead nominated Dr. Hordes as Chair, and Ms. Levine seconded the motion. The motion passed. Mr. Mead nominated Ms. Moll for Vice Chair, and Dr. Levine seconded the motion. The motion passed. Ms. Moll nominated Mr. Mead for Secretary, Dr. Levine seconded the motion, and the motion passed.

V. ACTION ITEMS

A. Records and Retention and Disposition Schedules

Amendment to 1.18.465 NMAC, *Executive Records Retention and Disposition Schedule (ERRDS), Gaming Control Board*

Ms. Jaramillo stated that the first item for the Commission's consideration was an amendment to 1.18.465 NMAC, *ERRDS, Gaming Control Board*. She introduced Mr. Jay Rodriguez, who, in turn, introduced Mr. Donovan Lieurance of the Gaming Control Board. Mr. Rodriguez informed the Commission that the amendments to the Gaming and Control Board schedule were requested by the agency.

Mr. Rodriguez explained that the Commission was being asked to approve three changes to the current schedule. First was an amendment to 1.18.465.7 NMAC, *Definitions*, which would add two new definitions, one for *crucial security events data* and the other for *non-crucial security events data*. Next was the addition of two new sections - 1.18.465.61 NMAC, *Advanced Entertainment Gaming Information Systems*, and 1.18.465.62 NMAC, *Application to Transport Gaming Media Files*.

Ms. Jaramillo informed the Commission that, subsequent to distribution of Commission packets, the Gaming Control Board had requested that the retention for revenue data in Paragraph 1 of Subsection D of 1.18.465.61 NMAC be reduced from the originally proposed twenty five years to six years. Ms. Jaramillo stated that the SRCA staff supported the Board's request. Mr. Rodriguez added that the Gaming Control Board also wanted the retention for crucial security events data in Paragraph 2 of the same Subsection D to be reduced from the ten years reflected in the draft amendment to six years.

Mr. Mead asked if the reason for the changes to six years were related to storage space limits. Mr. Rodriguez said yes, and Mr. Lieurance confirmed that response. Ms. Moll indicated she had a question about the change in retention. The Chair asked for a motion and second to approve before debate continued. Ms. Moll so moved; Dr. Levine seconded the motion. Dr. Hordes then requested that Ms. Moll ask her question. She expressed concern that the six-year period, particularly on revenue data, was too short given possible tax implications. Mr. Lieurance stated that board rule only required that licensees retain five years of data. Ms. Moll stated that she still was not comfortable with the six-year retention. Ms. Jaramillo said that she felt that the tax-related information maintained by the Board was likely duplicative, but that she could not be sure. The Commission discussed the possibility of tabling the amendment. Ms. Angela Lucero was recognized and noted that the Taxation and Revenue Department could only go back ten years on tax information. After further discussion, the Commission concurred in ten-year retentions on both the revenue data (Paragraph 1) and the crucial security events data (Paragraph 2). The Chair stated he would entertain an amended motion to approve with the change to the ten-year retention as discussed. Ms. Moll so moved; Dr. Levine seconded the motion. The motion passed unanimously, with no abstentions.

Amendment to 1.18.790 NMAC, *ERRDS, Department of Public Safety*

Ms. Jaramillo advised the Commission that the next item for its consideration was an amendment to 1.18.790 NMAC, *ERRDS, Department of Public Safety*, and that the amendment would be presented by Ms. Jackie Garcia. Ms Garcia informed the Commission that the amendment to the existing schedule was requested by the Department of Public Safety and its legal counsel. The amendment would add a new section, 1.18.790.187 NMAC, *Motor Safety Compliance Review Files*, to the existing schedule. She noted that there were representatives in attendance from the Department of Public Safety. The Chair asked for a motion to approve. Ms. Glenn made a motion to approve; Mr. Mead seconded the motion. The motion passed unanimously, with no abstentions.

Repeal and Replacement of 1.18.355 NMAC, *ERRDS, Public Defender Department*

Ms. Jaramillo stated that the next item for the Commission's consideration was the repeal and replacement of 1.18.355 NMAC, *ERRDS, Public Defender Department*. She also pointed out that the Commission members had before them a handout with additional information and a new draft of the replacement schedule. The schedule was presented by Mr. Jay Rodriguez. Mr. Rodriguez informed the Commission that Mr. Eric Martell, Mr. Eric Gurule and Ms. Sandra Ortiz from the Public Defender Department were in attendance.

Mr. Rodriguez explained that the items before the Commission were a repeal of 1.18.355 NMAC, *ERRDS, Public Defender Department* and its replacement with a new schedule. The Chair asked for more information about the new draft that had been distributed.

Mr. Rodriguez reviewed the major changes in the new draft schedule, including, among others, the insertion of the word *permanent*, before *transfer to archives five years after exhaustion of appeals* in subparagraph a of paragraph 2 of subsection D of 1.18.355.102 NMAC. He also pointed out that in subparagraph b of the same paragraph 2 the language; *transfer to archives for review* was added after *25 years after case is closed*.

The Chair entertained a motion to approve the repeal and replacement of 1.18.355 NMAC, *ERRDS, Public Defender Department*. Ms Moll so moved, and Dr. Levine seconded the motion. Dr. Hordes then asked if there was any discussion. Mr. Mead asked about the adequacy of the retentions for special cases. In response, Mr. Martell from the Public Defender Department stated that the retentions were workable.

Following further discussion, Chairman Hordes called for a vote on the motion to approve. The motion passed unanimously, with no abstentions.

Repeal and Replacement of 1.18.539 NMAC, *ERRDS, State Land Office*

Ms. Jaramillo stated that Ms. Jackie Garcia would present the next schedule. Ms. Garcia explained that the Commission was being asked to approve a repeal and replacement for 1.18.539 NMAC, *the ERRDS for the State Land Office*. Ms. Garcia then introduced Ms. Lucille Sisneros, Ms. Barbara Ricci, and Mr. Stephen Hughes from the State Land Office. She expressed appreciation for the cooperation of State Land Office staff and advised the Commission that the new schedule had been reviewed by the State Land Office and the State Records Center and Archives internal review committee. The Chair entertained a motion to approve. Mr. Baca so moved and Ms. Moll seconded the motion. The motion passed unanimously, with no abstentions.

B. Acceptance of Deed of Gift

Ms. Jaramillo informed the Commission that the next item for its consideration was a deed of gift for the Education Foundation of Santa Fe collection donated by Michael D. Swain. The item would be presented by Ms. Melissa Salazar. Ms. Salazar explained that Michael D. Swain had been the President of the Education Foundation of Santa Fe, which was formerly known as the Santa Fe Community College Foundation. She also informed the Commission that there were several former board members of the Foundation in attendance. She stated that the Santa Fe Community College Foundation was established in 1984, with its mission being to seek out private donations to support activities at the college.

In 2004, the Community College terminated its relationship with the Foundation and requested that the assets be transferred to GROW Santa Fe Community College Foundation. Following litigation, the now-named Education Foundation of Santa Fe took temporary custody of the assets while GROW established its board and finance committees and met other requirements. In June of 2008, the financial and certain other assets were transferred to GROW and the Education Foundation of Santa Fe was dissolved.

Ms. Salazar noted that the collection of approximately one linear foot of material, consisted of minutes, bylaws, financial statements, and legal documents. The records, Ms. Salazar reported, would complement other collections, including those of the Higher Education Department, Northern New Mexico Community College, Western University and Eastern University. The Chair entertained a motion to accept the deed of gift. Ms. Moll so moved, and Dr. Levine seconded the motion.

Dr. Levine asked what had happened to the correspondence. Ms. Salazar referred the question to Ms Le Cuyer, representing the Foundation. She stated that the correspondence was in the original papers; however, the records, including the correspondence, that were considered confidential were not included in the donation. These records were transferred to the GROW Foundation at the Community College to be used in fundraising efforts and activities for the Community College.

Chairman Hordes asked if there would be any difficulty with the correspondence being included in the gift. He informed her that the agency would designate the records as confidential. Ms. Le Cuyer stated that she would not have any problems with that arrangement, but, at the time the deed was drawn, it was decided, with Ms. Salazar's and the donor's approval, that the correspondence would not be included.

The Chair called for a vote on the motion to approve the deed of gift. The motion passed unanimously, with no abstentions.

VI. NEW BUSINESS

Regulatory Reform in New Mexico

Ms. Jaramillo introduced Mr. John Martinez to give an update on regulatory reform in New Mexico and the related 2009 legislative agenda. Mr. Martinez reviewed the history of rule making in New Mexico. He noted that the *New Mexico Register*, published by the SRCA, was the only official publication for notices of rule making and adopted rules. Further, the State Rules Act required that all rules be filed with the SRCA and be published in the *New Mexico Register* before they could take effect.

He addressed the nature of administrative procedures acts and the inapplicability of the current New Mexico Administrative Procedures Act. He then discussed his participation in the task force to draft a model Administrative Procedures Act.

Mr. Martinez reviewed the efforts of the Association of Commerce and Industry to revise rule making in New Mexico and the legislation that could be introduced in the 2009 session. Among those possible items was a constitutional amendment providing for legislative veto of certain rules.

VII. OLD BUSINESS

Building Issues

Ms. Jaramillo reported that the heating and cooling systems continue to be of concern and that the problems with the systems had been reported to the Property Control Division (PCD). The PCD had engaged a consultant to evaluate the system and determine how to proceed. She informed the Commission that the PCD had repaired the drainage on the west side of the building and would be laying gravel on the areas where water drained into retaining areas.

Ms. Jaramillo discussed continuing concerns with building security. She stated that the exit doors on the upper level were still not functioning properly. Another security issue under review by the PCD was the possibility of installing more exterior cameras. She also noted that the uneven flooring in the archives vault that was inhibiting movement of some of the shelving had been leveled.

2009 Legislative Agenda

Ms. Jaramillo reported that the agency submitted a \$175,000 special appropriation request to purchase an archive writer to convert digital images to an analog format and produce computer output microfilm (COM) for low-cost, long-term storage and access. This would offer a long-term solution for the preservation of digital records with extended or permanent retention requirements. The agency also asked for a \$127,000 special appropriation for a legislative oral history project and submitted a supplemental request of \$60,000 to compensate for an anticipated shortfall in personal services and benefits resulting from initial under-funding in that category..

The largest special appropriation request submitted was an information technology request for \$1,370,000 to implement the Central Electronic Records Repository (CERR). The first phase of that project began earlier in FY 2009 and, when completed, would provide an assessment of the agency's IT environment and what would be needed to support the CERR.

She further reported that the agency submitted a capital improvement request for \$60,000 to conduct a feasibility study to determine how to address space needs for the Albuquerque Records Center, which was at full capacity and no longer able to accept records from agencies. She also stated that additional capital money was requested for the remodeling of space for the agency's Information Technology Management Division.

Ms. Jaramillo explained that when the agency had submitted its FY 2010 appropriation request in late August of 2008 and its special requests in October, the State's financial picture was much better. Absent a reversal of the downward trend of State revenue, the likelihood of gaining approval of the requests as submitted was not good. Pursuant to an executive order and directives from the Department of Finance and Administration, the agency had already submitted plans to reduce both its FY 2009 operating budget and its FY 2010 appropriation request by five percent. It also had had to identify balances remaining in certain special appropriations.

Ms. Jaramillo then discussed the FY 2009 budget and the implications of the five percent reduction. She stated that the money in contractual services and other operating costs would be reduced and some of the remainder reallocated to Personal Services and Benefits, if

necessary. The reductions also entailed leaving two vacant positions open through the end of FY 2009. She noted that division directors met and together developed the reduction plan. However, with the five-percent reduction, the agency was still faced with a \$37,000 deficit in Personal Services and Benefits. If the full five-percent reduction were required, the agency would likely need to implement a furlough, closing the agency for some thirty seven hours before the end of the fiscal year.

Mr. Mead asked how and when a furlough would be implemented. Ms. Judi Hazlett explained that there was a process set in State Personnel rule governing both reductions in force and furloughs. Furloughs required identifying an affected organizational unit, which in the case of a small agency like the SRCA would be the whole agency, and then applying the terms of the furlough uniformly to all employees in the unit. When the furlough, if it should be required, would be implemented was unknown; however, the later it was put in place, the greater the impact in each remaining pay period. However, whether anything would be done until the legislature met and acted was debatable. Ms. Hazlett assured the Commission that, whatever the circumstances, every effort would be made to minimize the adverse impact on employees.

Ms. Jaramillo concluded her legislative report by directing the Commission members to a draft of a proposed joint memorial. The memorial was the result of a presentation about the CERR project the agency had made before the legislative Information Technology Oversight Committee. She stated that questions had been raised by the Committee about to how much paper was being generated by State agencies. The memorial, suggested by Representative Varela, would recommend that a task force be organized to look at how and what paper records were being created and maintained.

VIII. EXECUTIVE SESSION

Chairman Hordes entertained a motion to go into executive session to discuss limited personnel matters pursuant to Paragraph 2 of Subsection H of Section 10-15-1 NMSA 1978. Mr. Mead so moved, and Dr. Levine seconded the motion. Ms. Antoinette Solano conducted a roll call vote. Mr. Hordes voted yes. Dr. Levine voted yes. Mr. Mead voted yes. Ms. Moll voted yes. Ms. Glenn voted yes. Mr. Baca voted yes. Ms Templeton voted yes. The Commission went into executive session at 10:26 a.m., and came out of executive session at 10:35 a.m. Chairman Hordes entertained a motion to go out of executive session. Mr. Mead so moved, Dr. Levine seconded his motion, and the motion passed unanimously, with no abstentions.

Chairman Hordes stated that only limited personal matters and no other business were discussed during the closed session. He then asked for a motion to award a raise to Ms. Jaramillo, the State Records Administrator, based on the maximum percentage given to an exempt employee. Mr. Mead so moved, Ms. Moll seconded his motion, and the motion passed unanimously, with no abstentions.

IX. DIRECTOR'S REPORT

Ms. Jaramillo informed the Commission that her report, included in the members' packets, provided information on the destruction of records boxes that occurred between July 1 and

October 31, 2008, at the State Record Center and Archives. Also included in the packet was information on participants in the Office of the State Historian scholars and service learning programs as well as on the 2009 New Mexico Historical Records Advisory Board (NMHRAB) awards. Ms. Jaramillo noted that the NMHRAB received a record number of grant applications and awarded a record number of grants. She also recognized the Office of the State Historian for receiving the Autry Award from the Western Historical Association for the digital history project.

She concluded by informing the Commission that the FY 2008 audit exit interview was scheduled for December 2, 2008.

X. SCHEDULING OF NEXT MEETING

Chairman Hordes inquired about a date for next Commission meeting. Ms. Jaramillo stated that the meeting should be scheduled sometime after the legislature, which would end on March 21, 2009. Chairman Hordes scheduled the next Commission meeting for March 31, 2009.

XI. ADJOURNMENT

Chairman Hordes entertained a motion for adjournment. Ms. Moll so moved, Mr. Mead seconded, and the motion passed. The meeting adjourned at 10.47 am.