

**Delaware Coalition for Open Government
Virtual Board Meeting by Zoom
April 6, 2022**

CALL TO ORDER: Nick Wasileski, called the board meeting to order at 6:36 p.m.

Pre-board reports:

1. Treasurer's Report of March 31, 2022.
2. Email from Nick Wasileski: Results of the NFOIC Survey
3. Email from John Kowalko III: Comparison of Delaware Inspector General bills

PRESENT: David Breen, Letty Diswood, John Flaherty, Al Jackson, John Kowalko III, John Morgan, Coralie Pryde, Anita Rush, Nick Wasileski,

Absent: Keith Steck- excused.

DelCOG members: Cynthia Smith, Katherine Ward.

Guest: Walt Palmer (WGMD) Alan Henney (WGMD)

REGULAR BUSINESS

1. **Introductions:** Wasileski called the meeting to order at 6:36 p.m., welcomed everyone and introduced Walt Palmer (WGMD) Alan Henney (WGMD) Radio hosts
2. **Meeting Minutes:** Draft #2 of the board meeting minutes of March 3, 2022, was approved unanimously.
3. **Treasurer Report:** Anita Rush gave Treasurer Report for March 31, 2022.
The current balance in the checking and savings accounts:
 WSFS checking account balance as of March 31, 2022, was \$3,991.55
 WSFS savings account balance as of March 31, 2022, was \$2,776.84
 Total account balance as of March 31, 2022, was \$6,688.39.
The treasurer's report was adopted as read.

Nick Wasileski has filed the Delaware Franchise Tax Return and paid the \$200 Franchise Tax. The board approved reimbursing him \$200.

COMMITTEE REPORTS:

1. **Inspector General Update:** Wasileski commented that he recently spoke to Senator Sokola and Rep. Kowalko about the inspector general bill, which is being reviewed by the legislative attorneys. The bill should be introduced soon - hopefully in the next week or so. John Kowalko, III reported that the bill will now be introduced in the House and that Sen. Sokola will introduce it in the Senate.
2. **Nepotism Committee:** John Flaherty reported that State Representative Eric Morrison chairs a committee to produce a bill to deal with nepotism in State Government. A draft bill is circulating awaiting general assembly introduction.
3. **Sunshine Week program update: A detailed report at end of minutes.** Katherine Ward reported that the committee for the 2022 DelCOG-DPA-Network Delaware Law-Enforcement Transparency virtual "Sunshine Week" Event, to be moderated by John Kowalko III, met twice since our last board meeting and made final decisions on the following:
Event title: "Increased Transparency: Benefits to Law Enforcement and Delaware's Diverse Communities"

Date and Time: Monday, April 11; 7 – 8:30 p.m.

Panelists:

- Public Defender Misty Seemans
- News Journal Reporter Amanda Fries
- Delaware State Senator Tizzy Lockman

Event Format: After a welcome and brief overview of the highlights of the sponsoring organizations, the panel discussion will take place followed by an audience Q & A. John Flaherty and Mark Fowser have volunteered to field questions from the audience.

4. **H.B. 293 Committee: John Flaherty** reported Rep. Baumbach's bill was introduced with a substitute, but no committee hearing. House Bill 293, if passed and signed into law, **requires that meetings of public bodies that are open to the public must provide an opportunity for public comment. State Rep Baumbach is the sponsor with 6 House members as co-sponsors along with 4 state senators.**

Bill is assigned to the House Administration and is awaiting committee review. Introduced on March

NEW BUSINESS (moved up on agenda)

Notes taken from John Kowalko III

1. Transparency of police communications (Walt & Alan)
 - Katherine: Introduction of Walt and Alan
 - Walt: WGMD and also now WUSX is the only live radio news operation in Southern Delaware on the weekends, even though they have a small staff
 - Local tuner used to allow you to listen to local police, ambulance, and other emergency services
 - Increasing use of encryption, including the Delaware State Police since about a year ago, and so have to rely on social media and less able to report on essential information
 - Radio reporters are in the dark unless they get a tip from a worker, usually they have to wait until press release hours or days later
 - Over 20 years ago, Delaware used to offer bonafide news operations by radio from the state to be able to monitor their communications, but State Police have rejected attempts to listen to Sussex dispatch channel
 - WGMD has offered to pay cost of radio, which would be about \$3,500 for one
 - Alan: Listening to police communications was a standard tool used by reporters, but was hardly even reported on when State Police made this change
 - Walt: Pushback from State Police for safety of officers, but they only want to hear dispatched channels, and not all encrypted communications
 - State Police also concerned about information getting to criminals
 - Alan: State Police made most other municipalities move to encrypted communication when they made their move, with exception of Dewey Beach
 - Nick: What is this changed based on?
 - Walt: MOU came out from State Police 22 years ago, and is not based on legislation
 - Alan: Police Superintendent made this change, and with basically no media attention
 - Could lead to further restrictions on access to information
 - Walt: has contacted Rep. Smyk and Sen. Pettyjohn almost every week, but they say they cannot get any footing as Republicans
 - John F: Ask Sen. Lopez to hold a committee hearing to discuss this and it would also be good educational start, and could ask for why this change was made
 - Walt: Have talked to Rep. Schwartzkopf but have gotten only lip service
 - Alan: Sen. Lopez seemed most supportive, but he has not held any committee hearings yet

- John F: Could hold committee meeting to get answers, and possibly submit resolution on it
- Walt: Would appreciate being able to have DelCOG's support on this issue
- Cynthia: This is an issue for the entire Delaware Press Association, and those members would benefit to hear about this as well
- Al Jackson: Is the use of encryptions legal for a public service operation?
- Alan: Nothing illegal about it
 - Not unsafe either as it was unencrypted for decades
 - This was done to reduce criticism at the height of BLM and other protests
 - Delaware has chance in next year or two when the police radio system is replaced
- Katherine: This is an issue that is not widely known about, but journalists may come together if more knew about it

Need to figure out how to get more people involved

UNFINISHED BUSINESS:

1. **Issues Up and Down Delaware:** No report
2. **DelCOG Paperwork:** Nick Wasileski reported that he has filed DelCOG 990 EZ Tax forms electronically a month ago. The IRS is now requiring that the 990EZ be filed electronically. Form UC-1 also was filed with the Delaware Department of Labor. This form indicates that DelCOG is a 501(c)3 nonprofit organization, and that DelCOG has no paid employees.
3. **Access to Public Information via Private Vendors:** John Flaherty reported that access to public information via private vendors - Companies who challenge Amtrak's procurement regulations are prevented from appealing to the General Accounting Office for review. Amtrak is one of the few federal agencies that review themselves when procurement complaints are made. Amtrak is judge and jury.
4. **UD Searches for Administrators-Conduct and Transparency:** John Morgan reported that it is the same story as last month. Candidates are being interviewed, no campus visits. Very disappointing.
5. **DE Judicial Proceedings During the Covid Pandemic:** John Flaherty noted that at a prior meeting DelCOG member, Jim Martin, spoke to the issue of how the courts minimize public input at certain judicial proceedings. Moved to next meeting.
6. **Timely Responses to FOIA Requests for information about Nominees to a City's Boards and Commission:** John Morgan reported that a majority of councilmembers were not in favor of the city secretary's proposal, and there seemed to be consensus that application forms should be posted with possible redaction of personal information. There is no consensus for requiring information on current employer and current plan is not to require a resume. Morgan will move forward on filing a FOIA compliant.

NEW BUSINESS

1. See section on **Transparency of police communications** (Walt & Alan) on page 2-3.
2. **NFOIC Realignment and Future:** Wasileski reported that NFOIC has experienced insufficient fundraising results. Because of the lack of funding the NFOIC is being restructured to a stand-alone organization. In the past, a few large donors have financed the NFOIC's paid staff, but these sources of funding have dried up. In the future the Virginia Coalition for Open Government will be managing the administrative tasks of the NFOIC: that is, communicating with the state affiliates, collecting dues, and organizing the NFOIC's annual summit.

3. **The NFOIC's survey on FOI-tech issues:** John Flaherty completed this survey. The results of the survey were emailed to all board members. The NFOIC communicated that most of the forty state affiliates completed the survey. The top three concerns, according to the survey are: access to police body cameras; access to government emails; and access to metadata embedded into electronic records.
4. **Noon-Disclosure Agreements Event:** Nick recently attended a non-disclosure agreement (NDA) symposium sponsored by Widener University Delaware Law School. The title of the symposium was "Silence for Sale: The Uses and Abuses of Non-Disclosure Agreements, Non-Disparagement Clauses, and Secret Settlements. Law school professors from Stanford, University of Pennsylvania, Pepperdine, and others spoke about the misuses of non-disclosure agreements. A theme throughout the symposium was that NDA's are often not in the public interest.
5. **501©3 Meets Robert's Rules of Order:** Wasileski: Full report at the end of these minutes. Nick gave a presentation titled, "501(C)3 Meets *Robert's Rules of Order*," which consisted of questions, which are listed below, to emphasize the responsibilities and limitations of a 501(c)3 organization, as well as a review of the parliamentary procedures described in *Robert's Rules of Order*, which apply to small group meetings like DelCOG.
6. **The next DelCOG Board meeting will be Thursday, May 4 at 6:30 p.m. by Zoom.**

OPEN FORUM

1. Cynthia Smith recommended that DelCOG's bylaws may need a thorough review.
2. John Flaherty thanked Walt Palmer (WGMD) and Alan Henney (WGMD) for bringing their issues to the attention of DelCOG. He also thanked Katherine Ward and those who helped organize Sunshine Week, and thanked John Kowalko III for agreeing to moderate. Thanks to David Breen for sending out zoom notices and agendas for tonight's meeting. Green does a fantastic job in helping DelCOG have a seamless meeting experience.
3. John Flaherty shared the following: I met with a state employee (DelDOT) who was denied his pension even though he has documents showing that he is vested in the system and should be collecting a pension. The state employee has gone to the Governor, Attorney General and State Auditor for help. Their response was do not bother me, go away. This case, among others points to the need for an inspector general. I plan to file a FOIA request with DelDOT for documents regarding his case.
4. **It was moved and seconded to form a FOIA Committee that would follow and report on current legislation. John Kowalko III was nominated to chair this committee. The motion passed unanimously.**
5. John Morgan shared his screen to show election years do's and don'ts. Discussion followed.
6. Katherine Ward suggested that anyone with questions for Monday's event should forward them to her.

Adjourned: 8:22 p.m.
Submitted by
Letty Diswood
Secretary

REPORTS:

I - Katherine Ward: DelCOG Board Meeting Report Sunshine Week Committee

The committee has met twice in this past week, Feb 25 and yesterday 3/2, and we will be in contact for about 5 min at the end of this meeting., to do the following:

5. Focus on the topic for our Sunshine Week Event. Because of a number of incidents of problems with vulnerable populations and abuse of those who have little or no recourse to address these ills we chose to take a look at the Law Enforcement Officer Bill of Rights and think about how greater transparency could be beneficial both to law enforcement officials and to the citizens of Delaware.
6. Choose a title that will convey the substance of the topic.

We are considering: **Will Increased Transparency Benefit Both Law Enforcement and Delaware's Diverse Communities?**

7. Determine those who will make presentations.
 - o Because I am a member of both DelCOG (on the DC advisory board) and also am the executive director of Delaware Press Association, I have been asked to welcome our audience and to make a brief presentation of highlights of DelCOG and DPA accomplishments. Nick and John F and I are going to prepare a brief PowerPoint.
 - o Because we will have a moderated panel discussion, we asked John Kowalko III to serve as moderator He accepted.
 - o We will have three panelists, each one to represent the voice of the court, the press, and law enforcement.
We have invited Public Defender Misty Seemans, to be the voice of the court, Investigative reporter Xerxes Wilson to be the voice of the press, and State Rep. Franklin D Cooke, who has been an officer with the Wilmington police force, and a former investigator for the Office of Defense Services to be the voice of law enforcement.
 - o Misty Seemans has accepted. We are waiting to hear from the other two

II – Nick Wasileski

Hello Board Members,

The April 6th DelCOG Zoom board meeting agenda is attached. Also, see the results of the NFOIC's survey results below. John F. submitted the survey for DelCOG.

Thanks, Nick

NFOIC Survey:

The National Freedom of Information Coalition this year is examining freedom of information through the lens of technology.

The state coalitions identified these eight FOI-tech issues as the most critical.

(Mean average on a 1-4 scale, with 1 indicating no problem and 4 an extreme problem.)

1. Access to police bodycam and dash-cam video. (3.08)
2. Access to government emails. (2.79)
3. Access to metadata embedded in electronic records. (2.77)
4. Access to relational databases for citizens to analyze. (2.73)
5. Affordable fees for accessing government data. (2.71)
6. Proactive posting of government records online by agencies. (2.69)
7. Destruction by agencies of electronic records/data, even though storage is not an issue. (2.63)
8. Efficient online platforms for requesters to submit/track requests. (2.56)

“Advances in technology have the potential to enhance government transparency and allow greater access to the records that we, the public, own,” said NFOIC Executive Director Todd Fetting. “But governments need to catch up. Outdated technology and practices, in addition to sometimes outright secrecy, make public records harder to obtain, which erodes the public trust, leaves people in the dark and undermines our democracy. The intersection of FOI and technology gives us an opportunity to turn a corner, from a culture of secrecy to a culture of transparency.”

III - Nick Wasileski gave a presentation titled, "501(C)3 Meets *Robert's Rules of Order*," which consisted of questions, which are listed below, to emphasis the responsibilities and limitations of a 501(c)3 organization, as well as a review of the parliamentary procedures described in *Robert's Rules of Order*, which apply to small group meetings like DelCOG. (The full report is at the end of these minutes)

Questions:

1. DelCOG is classified by the IRS as a:

- a. 501(c)3
- b. 501(c)4

Investopedia 501(c)3 Definition:

“Section 501(c)(3) is a portion of the U.S. [Internal Revenue Code \(IRC\)](#) and a specific tax category for [nonprofit organizations](#). Organizations that meet Section 501(c)(3) requirements are exempt from federal income tax. While the [Internal Revenue Service \(IRS\)](#) recognizes more than 30 types of nonprofit organizations, only those that qualify for 501(c)(3) status can say that donations to them are tax deductible.”

2. Which organizations are permitted tax deductible donations?

- a. 501(c)3
- b. 501(c)4
- c. Both

IRS: Contributions to civic leagues or other section 501(c)(4) organizations generally are not deductible as charitable contributions for federal income tax purposes. They may be deductible as trade or business expenses, if ordinary and necessary in the conduct of the taxpayer’s business.

3. Which of the following describe a 501(c)3 organization?

- a. Religious
- b. Educational
- c. Charitable
- d. All the above

4. Is it permissible for a 501(c)3 organization to endorse a political candidate or a political party? Y or N

5. Is it permissible for a 501(c)3 organization to contribute to a political candidate or a political party? Y or N

6. Is it permissible for a board member of a 501(c)3 to contribute to a political candidate or a political party in his/her own name? Y or N

7. Does DelCOG pay federal or state income taxes? Y or N

8. Does DelCOG need to file a federal tax return form 990 EZ? Y or N

9. As a 501(c)3 organization is DelCOG required to write a charter and by-laws, as well as require a letter from an attorney identifying its tax-exempt status? Y or N

10. The Internal Revenue Code 501(h) exclusion stipulates that a 501(c)3 organization will have their lobbying activities measured by expenditure tests? Y or N

11. What activities would place DelCOG's 501(c)3 status in danger?
 - a. Not filing its federal tax form 990 for 3 consecutive years
 - b. Contributing to and/or endorsing a political candidate
 - c. Deviating from its mission of government transparency and accountability
 - d. Overspending in lobbying activities that do not meet the IRS expenditure tests
 - e. All the above

12. Even though DelCOG has no paid employees, does DelCOG have to file a "notice of employees" form (UC-1) with the Delaware Department of Labor? Y or N

13. What parliamentary procedure does DelCOG follow?
 - a. NFOIC Rules of Procedure
 - b. *Robert's Rules of Order*
 - c. Westminster Rules of Procedure