

Central Arkansas Library System

Board of Directors Meeting

April 27, 2023, at noon

Hybrid Meeting: Roberts Library 124 & Zoom Video Call

Board members in attendance were Brandon Grice, Bob Brown, Luke Underwood, Alexis Sims, Audrey Evans, Andy Gill, Madhav Shroff, Jennifer Jamison, and Esperanza Massana-Crane. Stacey McAdoo, Ryan Davis, Dustin McDaniel, and Sybil Jordan Hampton were absent.

Staff in attendance were Nate Coulter, Lisa Donovan, Tameka Lee, Eliza Borné, Jo Spencer, Lance Ivy, April Smith, Carol Coffey, Chris Ketterman, Pamela Bandy, Joe Hudak, Katie Adams, Kate Matthews, Hannah Saulters, Dre Thornton, Leslie Blanchard, Rebecca Beadle, Ellen Samples, Candace White, Heather Zbinden, Amanda Orgel, Mark Christ, Glenn Whaley, Amy Miller, and Michael Chambers.

Also in attendance was Joe Flaherty with the Arkansas Democrat Gazette, John Adams with Fuqua Campbell, P.A., and John Williams.

McAdoo and Davis were unable to attend the meeting, so Underwood led the proceedings.

Action Items

1. Approval of Minutes

Underwood asked the Board to approve the March Minutes as presented.

Evans moved to approve the March Minutes as presented. Shroff seconded the motion, and it was approved unanimously.

2. Approval of March Financials

Grice reported that as of March 31, 2023, CALS assets totaled \$105,941,777.81 with a net loss of \$3,263,696.46. He said property taxes were up \$4.2M year-over-year due to the large collection in April.

Underwood filed the March Financials for audit.

3. Consideration of AMR Contract for Williams Library Remodel

During the March meeting of the CALS Board, Kate East with AMR Architects Inc. presented renderings for the Williams Library remodel project. Ivy said the remodel was projected to cost \$1.5M and the architects would be paid the industry-standard of nine percent for their work. He said Clark Contractors was selected to execute the project.

Ivy asked the board to approve the contract with AMR for the Williams Library remodel.

Brown moved to approve the AMR contract for the Williams Library remodel. Gill seconded the motion, and it was approved unanimously.

Information Items

1. Policy for Public Comments at Board Meeting

Underwood said that, at the request of the board chair, a group of board members were working with Katie Adams, CALS Administrative Assistant, to draft a board policy governing the procedure for public comments at future board meetings. He said the group had looked at similar policies from other libraries. Underwood said the policy draft had been distributed with the Director's Report, and he asked the board to review the draft over the next month and to let Adams know if any revisions needed to be suggested. After the board's review, Underwood said a motion for approval would be on the agenda for the next board meeting.

2. Director's Report

Coulter highlighted a few items from his written report:

Communications and Marketing Update

Coulter asked Lee to update the board on Communication and Marketing matters. Lee reported that, between January 1 and March 31, CALS received around 265 mentions in various media with a potential reach of 155 million and \$1.44 million advertising value equivalency (monetary value on media coverage). She added that a significant amount of mentions came from the Encyclopedia of Arkansas, along with the Media Day held in February and program write-ups.

Litigation Options for Act 372

Coulter introduced John Adams, a lawyer with Fuqua Campbell, P.A. and CALS's legal counsel, to talk to the board about litigation options for Arkansas Act 372. He said Adams was helping the library to understand the implications of the statute and to explore options for challenging the legislation on federal constitutional grounds. He asked Adams to give the board an overview of the law and its implications for CALS.

Adams thanked Coulter and the board for inviting him to speak. He said Act 372 would likely go into effect around the beginning of August, ninety days after the legislature adjourns. He explained that the act was comprised of six sections, and that sections one and five were of primary focus for CALS:

- 1) Creates a Class A misdemeanor for furnishing an item harmful to minors
- 2) Removes school and public libraries from an exemption to a preexisting obscenity statute
- 3) Adds library loans to a list of prohibited activities under the preexisting obscenity statute
- 4) Creates a procedure for challenging physical materials available in school libraries

- 5) Creates a procedure for challenging physical materials available in public libraries
- 6) Permits libraries to disclose confidential records to the parents or legal guardians of patrons who are minors

Adams said that while section five only applied to public libraries, section one had no such limitation, potentially applying to bookstores and other entities along with libraries for “furnishing” an item “harmful to minors.” He said that while constitutionally obscene material was a fairly limited category, the ‘harmful to minors’ statute in section one was broader and more unclear, which could make determining compliance difficult. Underwood asked what would be considered harmful to minors. Adams said that the act incorporates parts of a definition of harmful to minors from a prior statute that was amended after a 2003 federal court case. He said that Act 372 states that a person commits furnishing an item harmful to minors when presenting, showing, or making available an item that violates the prior statute’s standard. He explained that a facial reading of the law, librarians could be prosecuted simply for having books on the shelf, even if they are not checked out. Massana-Crane asked if parents or legal guardians could sign consent forms for patrons who are minors. Adams said such a form would not prevent a librarian from being prosecuted under Act 372. Shroff asked about the phrase ‘knowingly’. Adams said he would not advise CALS staff to not know the contents of the library collection.

Adams said that though certain items transmitted electronically are exempt under the statute, there was some interpretive scrutiny regarding services such as Overdrive and Libby since those items are not posted to the internet but checked out directly from a third-party platform. Sims asked if students with Tech Cards had access to Overdrive and Libby. Coffey replied that they did. Adams said the risk would need to be assessed for that process.

Adams said that section five of Act 372 gives specific guidelines for the relocation policies of public libraries. Brown asked if such relocation would be considered censorship. Adams said that some federal case law indicated that it was, though librarians and lawyers were still working through the procedural implications. He said that, under the statute, the person affected by the material could challenge the appropriateness of the material, after which a committee of library employees would determine if the material meets the criteria for selection under the board-adopted collection policy. The committee would then hold a public meeting to vote to determine if relocation was necessary. Adams said it was not clear what relocation would entail. He said that if the committee of librarians decided not to relocate the material, the person challenging the material could appeal the decision to the city board or quorum court, which must decide to affirm or reverse the committee decision within thirty days. He said appeals at CALS would be heard by the Little Rock City Board since the majority of funding for the system comes from the city of Little Rock.

Sims asked about the cost of potential litigation. Adams said he estimated the cost of federal court litigations to determine the constitutionality of Act 372 to be around \$30K. He said some strategies for keeping the cost down were pro bono lawyer work and a discounted rate from his firm. He said there was also a possibility that legal fees could be won back from the state if the court ultimately sided with CALS. He specified that a court case could become more expensive should an employee be charged under the statute in the process of litigation, as opposed to the strategy of challenging the law as unconstitutional on its face. Spencer added that for 2023,

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CALS budgeted \$50K for legal expenses, which was the usual amount used in the normal course of business. As of the April board meeting, CALS had \$35K budgeted for legal expenses remaining. She said CALS had reserves available, as well as non-property tax sources of revenue, and staff could ask the board for an amended budget if necessary. Evans asked if the CALS Foundation could assist with any legal fees incurred. Borné replied that private donors were a possibility.

Sims asked if Coulter had a sense that CALS patrons were interested in moving forward with litigations. Coulter said that the patrons he had heard from would say yes and that his more immediately compelling concern was the wellbeing of CALS staff, adding that library staff were committed to conscientious library work in good faith and with adherence to CALS's values. He reiterated that CALS would comply with the law, adding that the system had an obligation as the largest public library in the state to ask for judicial help to determine the law's practical implications. Brown asked about other potential plaintiffs for a lawsuit. Coulter said that a number of other libraries and organizations could possibly be involved, including some national non-profits.

Coulter asked for permission from the board to continue seeking legal advice on the constitutionality of Act 372 and exploring potential litigation options should the law need to be judicially reviewed.

Evans moved to approve further analysis of the impact of Act 372 on CALS and, if negative impacts or unconstitutionality were found likely, to move forward with exploring litigation options. Brown seconded the motion, and it was approved with board members Underwood, Evans, Brown, Shroff, and Grice in favor, and board member Sims opposed. Gill and Massana-Crane abstained, citing their employment by the state of Arkansas. Board member Jamison was participating virtually and was called away from her computer and did not vote.

3. Other

Coulter asked Christ to speak briefly about upcoming CALS programs. Christ said preparations were well under way for the 2023 Six Bridges Book Festival. He announced that David Grann, the New York Times best-selling author of *Killers of the Flower Moon* and *The Wager*, would be a headlining speaker.

4. Move to Adjourn

Underwood adjourned the meeting at 1:08 p.m.



President



Secretary