# ECOS Minutes, October 4, 2018 3:00 p.m. UH 221

Members present: A. Delaney, N. Hinman, A. Johnstone, M. Pershouse, T. Manuel, M. Semanoff, G. Quintero  
Guests: Ross Best and Matt Neuman (Kaimin Editor)

## Public Comment (not to exceed 10 Minutes)

* The minutes from 9/27/18 were approved

## Communication

* Welcome guest Professor Lee Banville, Journalism (3:45 p.m.)
* Chair Semanoff provided information regarding the morning pre-Cabinet meeting. ASUM has established an ad Hoc UM Core Communication Committee, Chaired by Eli Brown. President Bodnar suggested it reach out to Alumni about their experience as well. Other items discussed included retention and affordability, especially regarding student health insurance. Students can be covered under Medicaid if not insured otherwise, but have to decline insurance. However, they are still billed and then credited. Amy Capolupo and Rosi Keller are working it out.   
    
  There is a lot of focus on improving freshman engagement in order to lower the 10-12% loss of students. Thus, we are not entering the re-recruitment stage.   
    
  Cabinet meetings are being reorganized according to the following:
* The first Cabinet meeting of the month will focus on Priorities for Action 1 & 2. Jon Harbor and Scott Whittenburg are the sector heads overseeing these priorities.
* The second Cabinet meeting of the month will focus on Priorities for Action 3, 4, & 5. Rosi Keller, Scott Whittenburg, and Cathy Cole are the sector heads overseeing these priorities.
* The sector heads overseeing the Priorities for Action will, each in turn, lead these Cabinet meetings. They may invite others who are leading efforts around the priorities to present at Cabinet.
* ECOS is meeting with the Cabinet at 8:15 on Wednesday and will need to consider what to discuss. The chair of the General Education Committee was invited to give an update on the General Education UM Core pilot.
* Professor Delaney had 15 students in her Ethics class that had major issues with financial aid. The students were given the money, then it was taken away. VP Cole was made aware of the issue. [At the Faculty Senate meeting she mentioned that it will not happen again. Students will know by Thanksgiving whether they will receive financial aid, so the family can make decisions while eating Turkey].
* Chair Semanoff and Camie met with the Registrar and Provost’s Office to make sure the catalog update process runs as efficiently as possible. Ideally the Registrar would like the campus to transition to CourseLeaf’s curriculum development Software. Matt Riley negotiated a price of $80,000 before he left, but the funding has not been identified. The software would elevate the need for the Registrar’s staff to enter information into Banner and into Degree Works. The current process has several data entry points that could cause errors. It was agreed that Curriculum Subcommittees would be responsible for ensuring the program modification and Level I/II forms include specific catalog language. They need the language to be in a consistent format for ease of data entry. The catalog is the foundation for student success technologies, so Chair Semanoff mentioned the need for the software during the morning pre-cabinet meeting. They also asked for the Senate’s help in getting responses from department chairs regarding the draft catalog.
* Chair Semanoff received a call from UM Western’s Faculty Senate. They are having issues regarding their evaluation of the evaluation process which was modeled after UM’s. Kevin McCrea from OCHE has intervened and is not allowing the senate to use state resources to conduct the survey. There are concerns about the information becoming public. ECOS may need to consider this when it initiates its review in the spring.
* Chair Semanoff and Chair-elect Pershouse have been meeting monthly with the President and Provost. There is some confusion regarding the separation agreements and yearly contracts. The Provost is working hard to make sure the contracts are accurate. Chair Semanoff talked with the UFA for clarification. Retrenchment is a three year plan. There has been inquiries whether faculty on sabbatical in 18-19 could sign separation agreement and not have to work for the year following their sabbatical or payback the money. There is also some interest in negotiating for reduced workloads. Chairs and deans will need to work out the specifics. The administration will support these kinds of deals.
* The Non-tenurable Faculty Report by Departments was received and sent to ECOS members.

## Business items:

* Chair-elect Pershouse received some background information regarding the email policy. He was informed that it would be rejected by OCHIE, so the Senate will have an additional opportunity to weigh-in.
* Professor Lee Banville provided a summary of his concerns about the draft Open Meeting Law policy. He followed up with a written document that was posted to the Faculty Senate agenda (appended below.) It’s interesting that the Policy references the Croft case because the Commissioner of Higher Education lost. A major concern is that if decisions are made in closed meetings that are challenged in the court the decisions will be void and the University will have to repeat the process. This happened at MSU in the 80’s. Historically the courts have said the public can be present while making the plan or voting on the plan. Privacy is where the law gets murky. The test is whether the individual has a reasonable expectation to privacy and does it clearly out way the public’s right to know. The University should always defer to openness and not close meetings.

The right to participate only applies when decisions are being made. It would be better to identify the function that actually counts. Not having a policy will not make any of the meetings more open. A procedure should describe the function of the committee not the title to determine whether it should be open or not. .  
  
ECOS discussed how it should proceed. Comments are still being collected from faculty. The statement from Professor Banville will be posted to the Senate agenda as information. ECOS can then consider the information and make recommendations in the U-approve system. [The policy was also discussed in the pre-Cabinet meeting. Legal Counsel Lucy France suggested that some of the material be put into a procedure and the policy simply reference adherence to the law. The President did not think the Policy should be something debated at the Faculty Senate.

* Ross Best commented that the policy is fundamentally flawed. It is of critical concern to the welfare of the University and there should be a general public discussion. The Faculty Senate should make this recommendation.
* Changes to the draft feedback form were discussed. Chair Semanoff had suggestions for additional questions. Camie incorporated these. The message appended below was sent to senators Saturday morning and department chairs on Monday.
* The Program Move forms were received from HHP and the MPA. ECOS agreed these should go through ASCRC and Graduate Council prior to consideration by ECOS.
* The following reviewers were assigned to the center forms received. Camie sent the procedure and Box links. They need to be completed by the November 1st ECOS meeting in order to be on the November 8th Faculty Senate meeting.
  + Center for Population Health Research (Gil)
  + IERS Termination (Marc)
  + MT Youth Sports Safety Institute (Nancy)
  + Rural Institute Name Change (Anthony)
  + Water Institute (Matt)
* The agenda below was approved. The President and Provost were added to the agenda when their meeting in Helena was canceled.

## Faculty Senate Agenda

### Public Comment

Not to exceed 10 minutes

### Communications

* Vice President Cathy Cole
* Linda Green, Wellness Director, Curry Health Center – [Faculty Toolkit](http://www.umt.edu/curry-health-center/wellness/Student%20Wellness%20Advocate%20/Faculty%20Toolkit.php)
* ASUM President Alex Butler
* UFA President Paul Haber
* Chair- elect’s Reports
  + Non-tenurable Faculty Report by Departments
  + Feedback form
  + Intercollegiate Athletics Report (guests will attend November meeting to answer questions)
  + Update on policy review - Open Meeting Law .
  + Committee Vacancies

### Committee Reports

* ASCRC Chair Marc Hendrix
  + [Proposal to revise Natural Science General Education Group](http://www.umt.edu/facultysenate/documents/FSDocs17-18/GenEd-computing-proposal-5-3-18.docx)
* Graduate Council Member Sandy Ross
  + Curriculum consent agenda

### Good and Welfare

## Adjournment

The meeting was adjourned at 5:00 p.m.

## Open meeting Law Policy concerns

To: Faculty Senate

From: Lee Banville, Professor of Journalism

Date: October 10, 2018

RE: Open Meeting Policy

The proposed open meeting policy represents a mixed bag for the public and faculty. On the one hand, UM lacks any formal policy covering the public’s right to know and participate in the governing of this public institution. This policy appears to be an effort to address that and the administration should be applauded for beginning this process.

Unfortunately, the policy, as proposed, puts more burden on staff and faculty running the plethora of smaller committees while allowing critical university committees to move into a hazy area of the policy where public access and participation become less certain. Frankly, coming at this time and when the administration is moving more of its discussions behind closed doors, this policy appears to be an effort to create loopholes to allow public meetings to become more private.

It is important to note that Montana has a much broader public participation and right-to-know than most states because of the state’s constitution and that the state law stresses that those rights are to viewed broadly when considering whether meetings should be open to public scrutiny. It is also worth noting that the state law includes a section allowing decisions that are made in a process that is not public to be voided. Therefore, it is critical that the University of Montana embrace its public nature and ensure transparency in deliberation and decision-making.

Specific recommendations:

* Base policy on the function of the gathering, not its name or website listing.

The policy focuses on listing, or enumerating, specific “official” committees that will always meet as open meetings. These are listed at the University Committee website -- <http://www.umt.edu/committees/>. These 77 committees cover everything from General Education to the Arboretum to placement of public art. For these committees, a more formal requirement of posting agendas and minutes would greatly increase the work of these groups and if this policy is implemented, the Senate should consider how to perhaps restructure these committees that may not need to meet all of the time to ensure they abide by the public nature of the work but not bog them down. This may be by creating more ad hoc committees that would still need to produce these documents, but may not need to maintain archives of past work, for example. Or creating templates chairs can use to simplify the agenda and minutes tasks.

* Ensure that the critical groups at UM are covered by the policy.

The other problem with this list is the committees that are not on it – like the Academic Officers group or the President’s Cabinet or new groups that form. By creating a list of committees, we end up being focused on who is on the list and who is not. Instead the policy should stress a committee (or work group or task force or study group) should meet in the open if it is *DELIBERATING* or *DECIDING* matters of policy at the University. By focusing on function over their name, I believe it will better serve this institution.

* UM must address the growing use of informal “huddles”

Also left unaddressed is a new policy at the University to have informal huddles that do not require public notice, minute-taking or transparency. I believe this policy runs a real risk of being found unconstitutional and in violation of Montana’s Open Meeting Law. Decisions dating nearly 40 years have ruled that “a clandestine meeting violates the spirit and the letter of

the Montana Open Meeting Law.” *Sonstelie* v. *Board of Trustees* (1983) If huddles are made up of public employees discussing policies that affect the University those are meetings and should be open unless closed for matters of *individual* privacy.

I understand that policy-making in the public eye is difficult and at times awkward, but I believe there is a misunderstanding in this administration that the failures of leadership in the past are at least partially a result of openness or bad press. That is an effort to blame “others” for our own problems and does not justify moving public discussions behind closed doors.

* Careful consideration of the *Crofts* decision is critical

The policy uses as its test a section of a 2004 decision by the Montana Supreme Court in the case *Associated Press* v. *Crofts*. The case stemmed from an “informal” group that met over two years at the request of the Commissioner of Higher Education. This group, which changed names over the years, met every few months to discuss the MUS system and included leaders from the different campuses. The press tried to attend one of those meetings and the Commissioner said he did not need to make the meeting public. OCHE lost this case.

But in its decision, the court opined about what kind of factors would make working groups or staff meetings not public. That is the list included in the UM policy. But missing from that policy are two critical parts of the *Crofts* decision. First, the court went on to say, “Meetings where staff report the result of fact gathering efforts would not necessarily be public. Deliberation upon those facts that have been gathered and reported, and the process of reaching decisions would be open to public scrutiny.” So, the staff could report its findings, but if the group intended to discuss what those findings mean, that should be open.

Additionally, the court then stresses, “The guiding principles are those contained in the constitution;  that is ‘no person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions,’ and ‘all meetings of public or governmental bodies, supported in whole or in part by public funds, must be open to the public.’”

Conclusion

The current policy does not help the chair of a committee navigate these confusing issues. Instead, it creates ambiguity for the public and participants. Does the Academic Officers meeting need to take minutes of its discussions? It is not listed on the University Committee website. It may not be voting on any matter. It may never vote on a matter. Is it just a staff meeting for the provost? This policy does not help us answer those questions. Or, more concerning in my view, it seems to create a system where those meetings will always be closed to the public and only the decisions will appear for limited feedback and without any meaningful participation by the public.

It is my hope that the Faculty Senate will call on the administration to clarify the policy to address these issues. I believe it is also critical that the counsel and administration explain the policy of “huddles,” being sure to outline when they are used and what can and cannot be done in those meetings.

This policy discussion creates an important opportunity for the University, at a time when we are asking the public to renew its commitment to higher education through the 6-mill levy, to recommit itself to public transparency and participation. The Montana Constitution requires it and we must do more to achieve it.

## Communication from Faculty Senate Chair

Dear Colleagues,

We have had just over one week to think about the instructional budget targets that we will need to achieve by FY 21, and Faculty Senate has now received curricular proposals involving moving and reorganizing programs.  The curricular proposals are being distributed to ASCRC, Grad Council, and their appropriate sub-committees.  As was mentioned at the September Faculty Senate meeting, we will rely on the regular curricular review process to bring the reorganization proposals to the full Faculty Senate as seconded motions from the appropriate sub-committees.  The [Senate’s Review and Recommendation Process](http://www.umt.edu/facultysenate/documents/FSDocs18-19/Faculty%20Senate%20Review%20Process9.20.18.docx) outlines the plan for review.

More information about the [Presumptive instructional budget targets](http://www.umt.edu/provost/docs/InstructionalStaffingLevels_PresumptiveBudgetMetricsSept2018.xlsx) and [responses to the corrections requested by academic units](http://www.umt.edu/provost/docs/Corrections.pdf) is now available on the Provost’s website.  Please provide [feedback](https://umt.co1.qualtrics.com/jfe/form/SV_2i8d967Zu29jrU1) on the presumptive budgets, strategic investment, and reorganizations.  The [Summary of Curriculum Reorganizations and Change Forms](http://www.umt.edu/facultysenate/documents/FSDocs18-19/CurriculumSummary10-11-181.xlsx) provides links to the proposals and identifies the subcommittee responsible for the review.  You are welcome to attend meetings of ASCRC or Graduate Council when the reorganization is discussed. The [schedule](http://www.umt.edu/facultysenate/documents/FSDocs18-19/CurriculumCommitteeSchedule10-18.pdf) lists when the subcommittees will present to the full committee.

Sincerely,

Matthew Semanoff

Faculty Senate, Chair