

Kansas Association of School Boards

2018

The Kansas Open Meetings Act



Serving Educational Leaders,
Inspiring Student Success

Kansas Association of School Boards

Topeka, Kansas

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The Kansas Open Meetings Act

Chapter 1: Purpose & Requirements of the Act

The Kansas Open Meetings Act (KOMA) and the Kansas Open Records Act (KORA) are frequently referred to as the Kansas Sunshine Laws. They are the Kansas laws designed to ensure that government business is conducted in the open where interested citizens have access to the proceedings and the written records of any public body.

Prior to the passage of the Kansas Open Meetings Act, school boards and other public bodies could meet behind closed doors, isolating the public from the decision-making process. Concerned citizens often had no access to the information upon which the governing body's decisions were based. This aura of secrecy created distrust.

Believing representative government depends upon an informed electorate, the Kansas legislature declared it to be the policy of the state of Kansas "that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public." Rooted in the principles of democratic governance, the law presumes a public right to know about the deliberations and decisions of public governing bodies.

To ensure that the proceedings of boards of public educational institutions are open to the public, the law requires boards of education to:

- Conduct their affairs and transact their business in meetings which are open to the public.
- Refrain from taking any binding action by secret ballot.
- Provide notice of the date, time and place of any regular or special meetings to anyone requesting such notice.
- Make the agenda, if one is prepared, for any meeting available to anyone requesting the agenda.
- Recess into executive session only for those reasons stated in the statute.

Courts interpret the law liberally, narrowly construing any exceptions to the openness requirement. In interpreting the law, courts focus on the law's main purpose: an informed electorate.

Any person may attend and watch the board conduct its business in an open meeting. The person need not be a resident of the district.

The right of the public to view the workings of the board should not be confused with a right to speak at board meetings. KOMA does not give members of the public the right to express their views or participate in board meetings. Board policy or practice may, however, grant these rights. Granting the public a right to speak through policy does not grant unfettered rights. In Kansas, the crime of disorderly conduct makes disturbing a meeting a Class C misdemeanor.

Application of the Act

KOMA applies to “all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds.” As political and taxing subdivisions of the state, school districts, AVTSs, technical colleges and community colleges clearly fall within KOMA’s scope. Meetings of boards of education or boards of trustees are subject to KOMA’s requirements; staff meetings are not.

Subordinate Groups

Site councils, task forces, advisory committees and other coalitions of board members, teachers, administrators, students and concerned citizens are often formed by school boards to study issues, gather information, evaluate options, or make recommendations to the board. In almost all cases, meetings of these subordinate groups are also meetings subject to KOMA.

In State, ex rel. Murray v. Palmgren, the Kansas Supreme Court said an entity is subject to KOMA if it meets the following test:

- The group of people meeting together are a “body or agency” within the meaning of the Act;
- The group has legislative or administrative powers or is legislative or administrative in its method of conduct;
- The group is part of a governmental entity at the state or local level, whether it is the governing body or some subordinate group;
- The group receives or expends public funds or is a subordinate group of a body subject to the Act; and
- The group is supported in whole or in part by public funds or is a subordinate group of a body which is so financed.

In Memorial Hospital Ass’n, Inc. v. Knutson, the court addressed the application of KOMA to subordinate groups. The court noted, “Whenever a body or group has in any way derived the authority for its existence from a legislative or administrative agency, that body or group so created is also subject to the open meetings act.” The court went on to indicate:

“Where courts have found that the agencies or bodies were not subject to the various acts, they have looked at form and not considered how the entity came into existence or, in some instances, its purpose.

Courts have found two types of entities, whatever form they may take, which are not subject to the open meetings laws: (1) those which are merely advisory and have no decision-making authority, and (2) those which are basically independent entities which have some connection, by contract or other tie to a government entity, but are not actually created by some form of government action.”

Because a school board is a taxing subdivision of the state which receives public funds, any body created by the board, which is subordinate to the board, whether or not it receives public funding, is automatically covered by KOMA. Additionally, if four or more board members serve on any subordinate group, KOMA applies. The board cannot intentionally, for the purpose of avoiding the light of public scrutiny, appoint a board of non-elected citizens to determine for the elected board what course should be pursued. If the actions of the private citizens are in any way binding upon the elected board members, the meetings of such groups must be open to public scrutiny.

When these groups are created by an entity other than the board, they may or may not be subject to KOMA. The factors outlined by the court in *Palmgren and Knutson* should be carefully considered. If there is any doubt, the school should treat the group as being covered by KOMA's requirements.

Notice of meetings of subordinate groups should be given to persons requesting notice of those meetings. Technically, a person requesting notice of school board meetings has not requested notice of meetings of subordinate groups. To avoid a potential problem, when an advisory committee or other subordinate group is established, those who have asked for notice of board meetings should be informed, in writing, of the creation of the subordinate group and asked to submit a written request for notice of meetings of the subordinate group if they desire notice of those meetings in addition to board meetings. If the initial request for notice includes a request for notice of meetings of the board and all subcommittees or subordinate groups of the board, no further request is required—notice of meetings of any subordinate groups must be provided.

Joint Boards

Some boards, like those formed for educational service centers or cooperatives or through other interlocal agreements, are made up of board members from several different school districts or other governmental entities. Joint boards like this are subject to KOMA if they are composed of members of different governmental bodies and appointed by official action of the individual governing boards. A joint board will also be subject to KOMA if a majority of any single governing board is present at the meeting.

Nonprofit Corporations

Nonprofit corporations may be covered by KOMA if they receive or expend public funds, are subject to the control of a unit of government, and either act as a governmental agency in providing services or have independent authority to make governmental decisions. Attorney General Opinions have addressed a number of examples of entities that meet these criteria and are either subject to KOMA or not required to comply with its provisions.

The Exercise of Quasi-Judicial Functions

Any board authorized by law to exercise quasi-judicial functions is not required to have an open meeting when it is deliberating matters relating to a decision involving such quasi-judicial functions. Quasi-judicial proceedings are those in which the board acts like a court. A quasi-judicial proceeding is one that “[r]equires a weighing of the evidence, a balancing of the equities, an application of rules, regulations and ordinances to facts, and a resolution of specific issues.” Boards engage in quasi-judicial functions when serving as a hearing panel in cases of employee suspension without pay or termination or appeals of student suspensions or expulsions.

Boards are exempt from KOMA requirements when sitting in a quasi-judicial capacity for several reasons. First, the rights of persons involved in such hearings should be resolved in an atmosphere that allows for fair and impartial deliberation. Requiring these deliberations to occur in public could result in a denial of due process and a fair hearing.

Further, the public's “right to know” is not thwarted because the result of the hearing, i.e., the action taken by the board as a result of the deliberations, must occur in an open session.

When boards exercise quasi-judicial functions, the courts and the Attorney General have drawn a distinction between the gathering of information to be considered in the deliberations and the

deliberations themselves. The deliberations are not subject to KOMA; proceedings for the gathering of information are subject to KOMA.

In other words, the hearing where evidence is presented is subject to KOMA and must occur in an open meeting unless the board has a justification for adjourning to executive session. [The reasons for adjourning into executive session, which include discussion of personnel or matters affecting a student, are discussed in more detail later in this handbook.]

After the presentation of evidence, the board must discuss the evidence and the issues to determine an appropriate outcome for the proceedings. These deliberations may, but need not, occur in executive session. The deliberations are simply exempt from KOMA's requirements.

On this issue, the Attorney General has indicated members of the board may discuss the evidence and issues, draft a proposed order, and reach a consensus as long as they do not take a formal vote outside of the meeting. The board action which occurs as a result of the deliberations, e.g., expulsion of a student or termination of an employee, must occur in open session of the board. The board can never take binding action in executive session.

What Constitutes a Meeting?

When KOMA was first enacted in 1972, it contained no definition of the term "meeting," it simply required that "all meetings for the conduct of governmental affairs or for the transaction of governmental business" be open to the public. While commentators on the Act predicted that it would be broadly interpreted, it was not until 1977 that the appellate court concluded "the term includes all gatherings at all stages of the decision-making process."

In 1977, KOMA was amended to define the term "meeting" as "any prearranged gathering or assembly by a majority of a quorum of the membership of a body or agency subject to this Act for the purpose of discussing the business or affairs of the body or agency."

That definition has been amended twice. In response to the Kansas Supreme Court decision in *State, ex rel. Stephan v. Board of Seward County Commissioners*, concluding a "gathering" or "assembly" necessitated people physically being together in one locale, KOMA was amended in 1994 to include telephone calls and other means of interactive communication in its purview.

The "other means of interactive communication" provision serves as a catchall including e-mail, Web logs, chat rooms, instant messaging, computer bulletin boards and other interactive communication technologies that might develop in the future when board members use these means of communication to discuss school business.

The 1994 amendments also eliminated the requirement that a meeting be prearranged to come under the dictates of KOMA. Any spontaneous or even accidental meeting of a majority of the membership of the board is subject to KOMA, if the purpose of the meeting is to discuss school business.

KOMA was amended again in 2008 as a result of concern with serial meetings. The definition of "meeting" was amended and a provision clarifying when serial meetings must be open to the public was added. After these changes, "meeting" is defined as "any gathering or assembly, in person or through the use of a telephone or any other medium for interactive communication by a majority of the membership of a public body or agency subject to this act for the purpose of discussing the business or affairs of the public body or agency."

To be a meeting subject to KOMA's requirements, the gathering or interactive communication must meet two conditions:

- It must include a majority of the membership of the board; and
- It must be for the purpose of discussing the business or affairs of the school board.

Prior to these amendments, a meeting for KOMA purposes needed only a majority of a quorum of the board. For a school board with seven members, a quorum was four, and majority of a quorum was three members. Now a meeting occurs only if it involves a majority of the membership of the board—four members.

Although the definition of a meeting under KOMA is relatively uncomplicated, a number of situations raise KOMA questions. Special gatherings, informal gatherings, communications in writing or electronically, serial meetings, or gatherings of board members in response to the request of other groups all create situations where a meeting may take place. How the meeting is characterized is irrelevant. If a gathering involves four board members discussing school business it is a meeting for KOMA purposes.

Social Gatherings

Generally, there will be no meeting under KOMA if four or more board members happen to be at the same social gathering, be it a wedding, a concert, a holiday party, a golf tournament, or a church prayer gathering. On these occasions, even though four or more board members may be present, the purpose of the gathering is not for discussing school business. But, if the four or more board members, once at the otherwise innocuous social event, retreat to a quiet corner to discuss school business, a violation has arguably occurred. To avoid a violation, board members should refrain from discussing school business with each other at social gatherings.

Informal Gatherings

Although board members may comply with KOMA for the formal board meeting, violations may occur if four or more board members informally gather before, after or during recesses of the meeting. In the Coggins case, prior to a hearing which was open to the public, the Public Employees Relations Board (PERB) had an informal gathering "to question the hearing officer, consider legislative intent and discuss how such matters had been handled in other states." The Kansas Court of Appeals concluded that this informal gathering, which was prearranged and clearly for the purpose of discussing PERB business, was a technical violation of the Act. The prearranged requirement has been eliminated, but all informal gatherings are considered meetings for purposes of KOMA if enough members participate and the discussion centers on public business.

Meetings Initiated by Outside Groups

When outside groups—the Chamber of Commerce, the P.T.O., the local NEA, or others—request that four or more board members attend one of their meetings for the purpose of discussing school issues, the gathering is a meeting of the board for the purposes of KOMA. Even if not invited, three or more board members may choose to attend meetings other than board meetings where school issues are discussed by the board members. The fact that the meeting is requested and organized by persons other than school board members does not alter KOMA requirements.

Just because a gathering constitutes a meeting under KOMA does not necessarily make it a special meeting of the Board of Education for which all board members must have written notice two days in advance or sign a waiver of notice. It is not necessary that the meeting be treated as a special meeting of the board, that the meeting be called to order or adjourned, or that the clerk be present to record the minutes. However, because four or more board members will be present and discussing school business, it is necessary to give notice of the meeting to anyone who has requested notice under KOMA and that the meeting be open to the public.

When board members are invited to speak to outside groups or appear on panels, they should attempt to ascertain if other board members will also be on the program. Whenever four or more board members will be present, the board member should notify the clerk so that the board may comply with KOMA's notice provisions.

Seminars & Conventions

Board members frequently attend seminars, conventions or other training sessions designed to keep them informed on issues of general concern to all school board members. It is not a violation of KOMA for four or more board members from the same board to attend a seminar or the convention of the state or national school board association, so long as four or more board members do not discuss the specific business of their school district.

Retreats & Study Sessions

Frequently, boards of education decide to have retreats or study sessions for setting district goals and future planning. At these sessions, discussion is informal and no votes are taken. Regardless of the formality or informality of the session, it is a meeting at which the affairs of the school district are discussed and, therefore, must be open to the public under the Act.

Telephone or Electronic Meetings

Telephone calls among four or more board members discussing school business are meetings subject to KOMA. A board may conduct a meeting by telephone, video conference, or any other technology that allows for interactive communication, but all of the requirements of KOMA remain in effect. The public must have access to such conversations (e.g., through a speaker phone in an area large enough to accommodate all members of the public who wish to be present) in order for conference calls among four or more members to meet the KOMA requirements. Notice of the meeting and place where access to the telephone call will be provided must be given to anyone who has requested notice of board meetings.

Serial Meetings

For many years, the Attorney General and the courts had indicated it was not a violation of KOMA for one member of the board to converse with only one other member about school business either in person or by telephone. A board member could even discuss school issues with all other members of the board, so long as all of the conversations were one-on-one. No agreements reached through one-on-one conversations, however, could be binding on a board member at a meeting of the board.

In early 1998, the Kansas Attorney General issued an opinion concluding a series of meetings, which ultimately involved a majority of a quorum of the members of a board, could result in a violation of KOMA, even if none of the individual meetings involved a majority of a quorum of the body. Attempts

by the legislature to overturn this opinion were foiled when the Governor vetoed the legislation. In response to a request from the Governor for further clarification, the Attorney General issued a second opinion.

In this opinion, the AG reiterated the stance that any interactive communication, even if it is not contemporaneous, may constitute a meeting under the 1994 definition of a meeting. The AG suggested that if e-mail between members becomes extensive enough that it amounts to a discussion of the business or affairs of the school board among the requisite number of board members, compliance with KOMA would be required. The AG went on to note that if a third party, such as a reporter or a constituent, communicates with the requisite number of board members in a series of communications about the same issue KOMA is not violated, unless the third party is acting at the request of a board member.

According to the AG, conversations on purely procedural issues, such as adjustments in the agenda, even if they involve more than a majority of members of the board, are not the type of topics contemplated for KOMA coverage. Such conversations do not violate KOMA unless they lead to discussion of the substantive issues involved. In other words, if a board member asks the board president to add an item to the agenda, but only if there will be enough votes to pass the item, and the board president then calls various other members to determine how they would vote on the issue, a violation occurs.

Finally, the AG opined a staff member can brief all board members on an issue and elicit their comments and concerns on the issue. The staff member cannot, however, discuss one board member's concerns and comments with another board member so that "a majority of a quorum [now a majority of the full membership] are made aware of and can respond to each other's concerns outside of the parameters of an open public meeting."

The statute clarifies when serial meetings are subject to KOMA's openness requirement. Serial meetings must be open to the public if:

- They collectively involve a majority of the membership of the board,
- They share a common topic of discussion concerning the business or affairs of the school board, and
- They are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the school board.

Written Memoranda or Electronic Messages

Nothing in KOMA prohibits the use of written memoranda among members of the board. Similarly, sending a message to other board members through e-mail would not, standing alone, violate the law because it is not an interactive communication.

However, if written memoranda or e-mail are used in an interactive manner, it is likely those charged with enforcing the Act would conclude this use constitutes a meeting for KOMA purposes. Indirect interactive communications, such as communications through e-mail among four or more school board members are not necessarily prohibited and may be permissible if the notice and public access requirements of KOMA are met.

If board members post messages through e-mail to other board members in a manner in which the public has notice of the site and can access the messages, no violation of KOMA occurs. If the notice and access requirements cannot be met, such communications, at least on substantive issues, are prohibited by KOMA if they meet the statutory serial meeting requirements.

Although KOMA does not prohibit the exchange of written materials, the use of written documents among four or more board members to prevent discussion of an issue at a public meeting would also be viewed unfavorably by those charged with enforcing KOMA. If written memoranda are used to effectively deny the public access to the decision-making process, a violation of KOMA has arguably occurred. Further, in some instances written memoranda may be considered public records which must be open to the public under the Kansas Open Records Act.

Negotiations

The Kansas Professional Negotiations Act provides that meetings, conferences, consultations and discussions between the teachers' organization and the board, or between their respective negotiating teams during the course of professional negotiations are subject to KOMA. Hearings before the Secretary of Human Resources to determine the existence of an impasse are also meetings which must be open to the public.

However, certain meetings held in connection with the negotiation process are specifically exempt from KOMA's provisions:

- Meetings, conferences, consultations and discussions held by the secretary for investigation of the questions of the existence of impasse;
- Meetings, conferences, consultations and discussions held in the course of and in connection with mediation and fact finding;
- The meeting required between the parties after the fact-finding report is submitted to the parties.

A further exception to the open meeting requirements allows the board to hold a closed executive session when discussing specific teachers or students. If such discussions occur during negotiations, the board can invite the teachers' association representatives to join the session so long as they actually participate in the discussion and do not just observe it. Finally, the board may adjourn into executive session to discuss negotiations during the course of a board meeting.

Summary

In order for interactive communication between board members to be subject to KOMA it must involve a majority of the membership of the board or the subordinate group and be for the purpose of discussing school business. If either of these elements is missing, a meeting has not occurred. A board should err on the side of caution. If the board believes there is a potential for a meeting to occur, it is best to give notice to anyone who has requested notice and avoid a potential violation of the Act.

Chapter 2: The Notice Requirement

KOMA provides that notice of the date, time and place of any regular or special meeting of the board must be furnished to any person requesting it.

The request can be oral or in writing. The notice need not be in any particular form, but it must be personal notice.

No fee can be charged for providing notice of meetings under KOMA.

Contrary to popular belief, publishing notice of meetings in the local newspaper or having the time of meetings announced on a local radio station does not fulfill the notice requirements. General notice to the public does not ensure that the requester actually receives the notice.

To comply with KOMA, written notice may be mailed directly to the person requesting notice or oral notice may be given either in person or by telephone. If notice is given orally, a record of the contact should be made and kept.

To alleviate the need to provide notice to each member of a large group, KOMA provides the following exceptions to the personal notice requirement:

- If notice is requested by a petition, the petition must designate one person to receive the notice. Notice to that person constitutes notice to all.
- If notice is provided to an executive officer of an employees' organization, such as the president of the local NEA notice is deemed to have been provided to the entire membership.

After the board passes the resolution in July establishing the day and time for all regular meetings, it may send requesters notice of the schedule of all regular meetings for the year. (See Appendix 2).

Providing a single notice containing the list of all meetings suffices under KOMA, but the board still must provide additional notice for any special meetings not included on the original list. Once a person requests notice of meetings, the request continues in effect until it is withdrawn.

The school board, at its discretion, may require the request for notice be renewed at the beginning of each fiscal year. However, before discontinuing notice, the school board must notify the requester that notice will be discontinued unless the person submits a new request. (See Appendix 3).

While the task of notification generally falls to the clerk of the board or the school district's secretarial staff, the statutory duty to furnish notice rests with the board president or other person calling the meeting. If notice is not furnished, that person, not the clerk, would be responsible for the violation.

Special Meetings

The notice required by KOMA is different from the notice required for board members when a special meeting is called. If a special meeting is called, all board members must be given written notice of the time, place and purpose of the meeting at least two clear days in advance. Alternatively, if the situation does not allow time for written notice, board members may receive oral notice and sign a waiver of notice at the meeting.

Citizens who request notice need only be informed of the meeting date, time and place. While efforts should be made to ensure that requesters receive notice far enough in advance so they can plan to attend the meeting, a KOMA requester is not entitled to two clear days' notice.

Nothing in KOMA requires notice to be given within a specific period of time. When emergency situations arise and the board meets only a few hours after the decision to call a special meeting, the time for notice will indeed be short. In such cases, oral notice given a half-hour before the meeting would probably be reasonable.

In general, the time at which notice should be given is a question of reasonableness. If the board attempts to provide notice in a reasonable manner, it substantially complies with KOMA. If, on the other hand, the board consistently gives notice five minutes before the meeting begins, a violation might be found.

Because a special meeting must be called for a specific purpose, a board cannot amend the agenda of the special meeting. If additional issues arise, the board may call a second special meeting for the purpose of discussing these issues. If this occurs, requesters of notice under KOMA must be given notice of both meetings.

Adjourned Meetings

Questions sometimes arise about adjourned meetings. A board generally has authority to adjourn a meeting to another time and place. The question becomes whether notice of the continuation of the meeting at a new time and place must be given to requesters of notice.

Although it can be argued notice has already been given, the Attorney General has concluded that beginning a meeting on one day and continuing it to another day without making a good faith attempt to provide notice of the new date, time and place would violate the intent of KOMA.

If a requester is present at the meeting and hears the motion to adjourn the meeting to another time and place, additional notice should not be required. If the requester is not present, additional notice should be provided.

Summary

KOMA's right to notice is triggered by a request. Any person requesting notice, orally or in writing, is entitled to receive notice of the time and place of all meetings. If there is not time to mail written notice and a requester cannot be reached by telephone or in person, all attempts to notify the requester should be documented and maintained in a file.

Although the board need not cancel or postpone the meetings because a requester was not notified, it should be able to prove that it diligently attempted to provide notice.

Chapter 3: Meeting Agendas

Nothing in Kansas law requires a board of education to prepare or publish an agenda for its meetings, but in practice, most boards do. If an agenda is prepared, KOMA requires that it be “made available” prior to the meeting to any person requesting it. The law does not require that the agenda be sent to requesters; posting the agenda in the central office in a place where people who wish to see the agenda can read it or making the agenda available at other public places fulfills the requirements of the law. Even though it is not required by law, many school districts post their agenda on their website or send out agendas with, or as notice of the meeting. Providing advance access to the agenda helps create good rapport with interested citizens.

Under the Kansas Open Records Act, a person may request a copy of an agenda because the agenda is a public record. The school must comply with the request as soon as possible and may charge a reasonable fee for copying pursuant to their open records policy. Under KORA, the school district may also require that requests for copies be in writing. Consult board policy and KORA to determine the correct procedure to follow.

The same rules apply to materials distributed to board members with, or in addition to the agenda. If these materials meet the definition of a public record and are not exempted, they must be available for public inspection and copies must be provided. A fee for copying may be charged. Some materials distributed to board members may indeed be public records. However, other materials may be exempt from KORA requirements. Consult the statute or the KASB Kansas Open Records Act Handbook to determine which records are exempt from KORA requirements.

Nothing prevents a board from amending or supplementing the agenda of a regular meeting at the time of the meeting unless it is against board policy. However, if the board calls a special meeting, notice of the time, place and purpose of the meeting must be given to board members and “no business other than that stated on the notice” can be transacted. For this reason, the agenda for a special meeting cannot be amended at the time of the meeting.

Following the Kansas Court of Appeals decision in *Stevens v. City of Hutchinson*, boards should ensure that all items known to be topics of discussion when the agenda is prepared are included. Although the board can amend the agenda to include unlisted items, if items are intentionally omitted from the agenda to prevent the public from knowing the items will be discussed, a violation of KOMA may occur. Substantial compliance with KOMA’s requirements will generally suffice unless noncompliant acts, such as intentionally leaving known items of discussion off the agenda, are undertaken as a subterfuge to defeat the purposes of KOMA.

Recording Devices at Meetings

Boards of education are required to appoint a clerk to prepare minutes of meetings but are not required, except in special circumstances, to tape or maintain recordings of past meetings. If anyone wants to record a meeting, KOMA requires that “the use of cameras, photographic lights and recording devices shall not be prohibited.” The board may design reasonable rules for the use of these devices to ensure the orderly conduct of the meeting.

The option to record applies only to open meetings. There is no right, under KOMA, to record executive sessions.

The Location of the Meeting

Boards of education generally hold their meetings in a board room where there is ample seating for citizens to observe the meeting. While KOMA places no requirements on meeting locations, if a meeting is held in a place which is virtually inaccessible to most patrons, it is likely the courts would conclude that the choice of meeting location was designed to subvert KOMA and that a violation had occurred.

Board meetings should occur in places that will accommodate the citizens who wish to observe. Meetings cannot be held in a location which would require the payment of a fee or the making of a reservation in order to attend the meeting. While the meeting facility should accommodate observers, the board is not required to change the location of a meeting simply because an unusually large crowd shows up for a particular meeting.

A further consideration when setting the location of any public meeting is accessibility. While holding a meeting in a place that is not accessible to persons with disabilities might not be a violation of KOMA, it is most likely a violation of federal and state disability laws.

Frequently when boards have planning sessions or retreats, they want to hold them in hotels or meeting rooms that are more comfortable than the board room. Nothing in the law prevents this, but again, citizens of the district should have access to the meeting. To the extent possible, these sessions should occur within the boundaries of the district. The further the board moves its meetings out of the district, the more questionable the location of the meeting becomes and the more likely a violation of KOMA will be found.

Voting at Board Meetings

Under the Open Meetings Act, any binding action taken by the board must be one in open session at an open meeting. Citizens have a right to know how their elected representatives vote on a particular matter. The vote of each individual board member need not be recorded in the minutes, but citizens should be able to observe the vote, whether it is a voice vote, show of hands, or a paper ballot vote. Secret ballots cannot be used for voting on any issue at a board meeting,

Paper ballots may be used, but only if each board member signs his or her ballot and the ballots are preserved and kept with the minutes of the meeting.

Chapter 4: Executive Session

Although KOMA promotes openness and requires that all formal action by a board of education be taken in open session, the act does allow closed or executive sessions for discussion of subjects that fall within statutorily prescribed justifications for closing the session. The executive session discussion is allowed because the privacy rights of individuals deserve protection or because the public interest is better served by not requiring discussion of the topic in open session.

While discussion of these justified topics may occur in executive session, nothing prevents them from being discussed in open session. Whether to discuss an item in executive session rests with the discretion of the board. Other laws or policies concerning confidentiality or privacy may need to be considered.

Although the topics may be discussed in closed session, and the board may reach a consensus on an issue in executive session, any binding action of the board must occur in open session. Reaching a consensus may equate with binding action, however, if the board fails to follow-up with a formal open vote on a decision that would normally require a vote. A board can never take binding action in executive session.

Going into Executive Session

To prevent abuse of closed sessions, KOMA provides the method by which a board may recess, but not adjourn, into executive session. The board must always convene in open session before recessing into executive session and must always return to open session after an executive session. There must be a formal motion to recess into executive session; the motion must be seconded; and at least four board members must vote affirmatively on the motion before an executive session may occur.

A motion for recessing into executive session must contain the following:

- A statement describing the subjects to be discussed during the executive session;
- The justification listed in the statute for closing the meeting; and
- The time and place at which the open meeting will resume.

The complete motion must be recorded in the minutes of the meeting, and the minutes must be maintained as a part of the permanent records of the school district. (See Appendix 4 for sample motions.) In making a motion to recess into executive session, it is important to accurately estimate the amount of time the discussion will take, because the board must return to open session at the time stated in the motion. The time estimation allows observers to leave the meeting, but return when open discussion of the remaining agenda items will occur. For this reason, the board cannot come out of the closed session early, and doing so could constitute a violation of the Act.

If the board overestimates the time needed for executive session, the temptation to discuss other topics is great. However, such discussions would constitute a violation of the Act and subject individual board members to civil penalties. On the other hand, if the board underestimates the amount of time needed in executive session, the remedy is simple—the board must return to open session and make a motion to return to executive session. This motion will use the same subject and justification as the first motion but will state the new time at which the board intends to return to open session.

The motion for going into executive session must state the subject to be discussed and the justification for executive session. The subject to be discussed should be stated with “a reasonable degree of specificity,” but individuals to be discussed need not be identified. Most districts have stated the

statutory prescribed reasons for recessing into executive session as the subject, and the protection of other interests, such as individual privacy rights, as the justification for the executive session. In 2017, however, the legislature amended the statute, requiring that the statutory list provide the justification rather than the subject. Although the Kansas Court of Appeals had rejected this approach to the executive session motion in *State v. U.S.D. No. 305*, the legislative action adopted the position long advocated for by the Attorney General.

In the past, a board going into executive session to discuss employee evaluations would generally move, “to go into executive session until 8:00 for discussion of personnel matters to protect the privacy interests of the individual to be discussed.” With the change in statute, the motion now would be, “to recess into executive session until 8:00 for the discussion of employee evaluations under the personnel matters exception.”

Justifications for Discussion in Executive Session

Prior to its amendment in 1977, KOMA allowed public bodies to recess to executive session at any time to discuss any topic so long as no binding action was taken and the executive session was not used to subvert the intent of the Act. With no limit on the items that could be discussed behind closed doors, “the use of such closed recesses became widespread and the exception ‘gobbled up’ the rule.”

The 1977 amendments to KOMA severely curtailed the ability of a board to recess into executive session by delineating the topics that could be discussed in closed session, thereby requiring that all other items be addressed in open session. The 2017 amendments turned this list of reasons, commonly believed to be the “subjects” that could be discussed, into the statutory “justifications” for executive session discussion.

Under the statute, a board may recess into executive session using the following justifications:

- [1] To discuss personnel matters of nonelected personnel;
- [2] For consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship;
- [3] To discuss employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;
- [4] To discuss data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;
- [5] To discuss matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;
- [6] For the preliminary discussion of the acquisition of real property;
- [7] To discuss matters relating to parimutuel racing permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804 and amendments thereto;
- [8] To discuss matters relating to the care of children permitted to be discussed in a closed or executive meeting pursuant to K.S.A.

38-2212(d)(1) or (e), and amendments thereto;

[9] To discuss matters relating to the investigation of child deaths permitted to be discussed in a closed or executive meeting pursuant to K.S.A.

22a-243(j) and amendments thereto;

[10] To discuss matters relating to patients and providers permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 39-7,119(g) and amendments thereto;

[11] To discuss matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact;

[12] To discuss matters relating to security measures, if the discussion of such matters at an open meeting would jeopardize such security measures, that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; (C) a public body or agency, public building or facility or the information system of a public body or agency; or (D) private property or persons, if the matter is submitted to the agency for purposes of this paragraph. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments; and

[13] To discuss matters relating to maternity centers and child care facilities permitted to be discussed in a closed or executive meeting pursuant K.S.A. 65-525(d), and amendments thereto;

[14] To discuss matters relating to the office of inspector general permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 75-7427 and amendments thereto; and

[15] For the governor's domestic violence fatality review board to conduct case reviews.

The first six exceptions and number 12 have potential application to school districts and will be discussed individually. The remaining exemptions generally apply only to the entities specified in the delineated statutes.

Personnel Matters

Provisions allowing boards to discuss personnel matters are common in open meeting laws throughout the country. Such provisions are intended to safeguard the privacy interests of employees, protect the personal reputations of employees, and encourage qualified people to select and remain in public employment.

The personnel matters exception is probably the most frequently cited reason for recessing into executive session by boards of education. Teacher and staff evaluations; the board's evaluation of the superintendent; interviews with prospective employees; hiring, firing, transfer and promotion recommendations; employee grievances; and discussion of complaints filed against employees are all matters which may be discussed in executive session under this exception.

Although the exception covers a broad range of topics, it is important to remember what it does not include. First, and most importantly, the exception does not allow for a general discussion of personnel policies. It is only where the privacy interests of specific individuals are discussed that a closed session is appropriate.

Second, the exception covers only non-elected personnel. Independent contractors do not fall within this category. Further, persons who are appointed to public boards and committees are not employees, they are public officers. This means that discussions concerning the qualifications of candidates for appointed positions, including candidates to fill vacancies on the board, cannot be held in executive session. While prospective employees may be interviewed by the board in executive session, prospective board or committee members cannot.

The personnel matters exception does not give the employee being discussed a right to go into executive session with the board. Further, unlike the exception covering students, it does not grant the employee a right to request that the discussion be held in open session. Because going into executive session is discretionary, and because the justification for the session is to protect the privacy rights of the individual being discussed, if that individual requests an open session, normally the board should comply. In such cases, the minutes should reflect that the employee requested the open session.

Consultation with an Attorney

Under KOMA, not every conversation between the board and its attorney can take place in executive session; only those communications which would be deemed privileged in the attorney-client relationship are appropriate for executive session. The elements necessary for the attorney-client privilege to apply are defined in the rules of evidence in the Kansas Code of Civil Procedure. In order to meet this evidentiary privilege requirement, there must be a communication between an attorney and his or her client in the course of that relationship and in professional confidence.

A communication between an attorney and client is generally not a protected professional confidence when made in the presence of third parties. Only the attorney and client can be present; if others are present, the communication is not privileged.

The nature of the communication also is significant. In order for a communication to be privileged, "It must be of a confidential character and so regarded, at least by the client, at the time, and must relate to a matter which is in its nature private and properly the subject of confidential disclosure." This exception may be used in situations involving settlements of claims or litigation involving the school district, and generally may be used "when premature disclosure of the information to be discussed might give a private adversary an advantage over the public."

Because the statutory exception applies only to "consultation" with an attorney, the attorney must be present at the executive session. The board cannot use this exception for discussing litigation or other legal matters unless the attorney is present, nor can the board discuss correspondence received from an attorney, even though the correspondence may meet the privilege requirements.

Negotiations

KOMA allows the board to discuss matters relating to negotiations in executive session. The purpose of this exception is to protect the public interest in negotiating a contract which is in the best interests of the school district and its patrons. If the board were required to discuss its position on items being negotiated in open session, its bargaining power would be destroyed.

In order to protect the public interest, the board may discuss any facet of negotiations in executive session. Even if the board is using an outside negotiator as chief spokesperson for the board, the board may discuss its negotiation positions with or without its chief negotiator present. Once a tentative agreement is reached, however, the board must ratify the contract in open session.

Although most negotiation sessions are subject to KOMA, remember that mediation, fact-finding, and the meeting between the parties after the fact-finding report is submitted to the parties, are wholly exempt from KOMA's requirements.

Confidential Data: Financial Affairs or Trade Secrets

Under KOMA, a school board may recess into executive session to discuss confidential financial data or trade secrets of a business. Although this exception will rarely be used by boards of education except, perhaps, in choosing a responsible bidder, the purpose of this exception is to protect the interests of the business involved, and generally, the exception should be used only if the business requests that the information provided be treated as confidential.

The exception applies only to financial data or trade secrets, not to any other information about the business. "Matters regarding the 'financial position of the business' could take place behind closed doors insofar as the discussion concerns such confidential data as the businesses' profits."

A trade secret is information, such as a method, technique, formula, or process, which derives independent economic value from not being generally known to the public and which is the subject of efforts to maintain its secrecy. It is information used in a business that gives the business "an opportunity to obtain an advantage over competitors who do not know or use it."

Matters Affecting a Student

KOMA allows boards of education to discuss in executive session matters favorably or adversely affecting a student. This exception, like the personnel exception, protects the privacy interests of the individual who is the topic of the conversation. The board cannot recess into executive session to discuss policies affecting all students or a group of students. In order for the exception to apply, the conversation must focus on an individual student. Under this exception, the student may request that the discussion take place in open session, and if such a request is made, the board must honor the request. It is recommended that such a request be documented and maintained with the record of the meeting.

Acquisition of Real Property: Preliminary Discussions Only

A board of education may have preliminary discussions about buying real property in executive session. The exception applies only to real property, not other forms of property. Further, only the acquisition, not the sale, may be discussed in closed session. Finally, the primary focus of the discussion must be real property; discussion of negotiating strategy alone is insufficient to bring the conversation within the exception. The purpose of this exception is to protect the public interest in obtaining the property at a fair price.

Security Measures

The 1999 amendments to KOMA added an exception that allowed discussion of "matters relating to the security of a public body or agency, public building or facility or the information system of a public body or agency, if the discussion of such matters at an open meeting would jeopardize the security of such

public body, agency, building, facility or information system.” In 2004, the language was expanded and definitions of security and security measures were added. The law still limits discussion of security issues in executive session to situations where open discussion would compromise or jeopardize the security of the school.

Under KOMA, “security” means “measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments.” This exception allows school boards to discuss security plans for the district without revealing the contents of those plans, thereby diminishing their effectiveness. A similar exception is created in the Kansas Open Records Act. Additionally, KOMA makes it clear that any confidential records or information relating to security measures that are provided to the board in executive session in conjunction with its discussion are not subject to discovery or subpoena in administrative proceedings or court actions.

The exception also recognizes that with advances in technology, much of the information about a school district, its employees and its students is kept on computers. Security of the school’s computer system and other information systems in the district may be discussed in closed session as well.

In light of 9/11 and outbreaks of violence in schools and other public places, this exception recognizes that planning for the safety and protection of students, employees, visitors and others requires a degree of secrecy in order to be effective. Discussion of security measures in open session would defeat efforts to keep information secure and potentially threaten the safety or privacy of staff and students of the district. By passing this exception, the legislature has indicated these interests outweigh the interest of the public in having access to the information. The public interest is better served by allowing such information to remain confidential.

Inextricably Intertwined Subjects

Occasionally a discussion may concern subjects that are appropriate for an executive session mixed in with subjects that are not appropriate. When this occurs, every effort should be made to separate the subjects, discussing one part in executive session and the remainder in open session. Rarely will the two be so inextricably intertwined that this cannot be accomplished.

However, on those infrequent occasions when the discussion cannot be separated, the Kansas Court of Appeals has held that the entire discussion may occur in executive session. In the case leading to this holding, the board of education questioned the appropriateness of certain administrative actions. The board determined that an impartial committee should be appointed to investigate. Generally, a board must consider committee appointments in open session. In this case, however, the board considered who it should appoint in closed session, because they wanted to determine if any prospective committee members were relatives or friends of the administrators who were to be investigated.

The court concluded that it would have been extremely difficult, if not impossible, for the board to have considered the qualifications of suggested committee members in open session without revealing the names of the administrators being investigated and potentially infringing on their privacy interests. Clearly, the board discussion of the administrators’ actions appropriately occurred in executive session under the personnel matters exception. Because the discussion of committee members was inextricably intertwined with the personnel matter, the court concluded that the entire conversation in executive session was not a violation of the Act.

Attendance at an Executive Session

A board member, and only a board member, has a right to attend an executive session. KOMA creates no procedures for excluding individual board members from executive sessions of the board. Board members cannot vote to exclude one or more board members from an executive session.

The board may invite others to attend the executive session, but only if those invited will provide information or participate in its deliberations. Persons other than board members cannot be invited to attend the session simply as observers.

Newly Elected/Not Yet Serving Board Members

Questions about including others in executive session often arise after board elections. Frequently, boards wish to include the newly elected board members in executive session to “show them the ropes.” However, if newly elected board members attend the session as only observers, the Act has arguably been violated.

There are several reasons why newly elected, but not yet serving, board members should not be included in most executive sessions. First, because they are not yet public officers, they have no duty to maintain the confidentiality of the executive session. Second, they are not entitled to any of the immunities from civil liabilities which may be afforded to board members. In other words, a newly elected board member could be sued for things he or she says in executive session and could not assert that he or she was entitled to immunity from liability like serving board members.

Under these circumstances, the school’s errors and omissions insurance policy would not cover a newly elected, but not yet serving, board member and any liability would be personal liability. Third, the purpose of protecting the individual or public interest may be thwarted if those who have no decision-making power are allowed to attend the sessions.

Occasionally, it may be appropriate to include newly elected board members in executive session, but only if their input is to be solicited. For instance, the board may want to talk with the newly elected board members about their position on items at the negotiations table or seek their input on hiring decisions.

The Superintendent

The superintendent will usually be invited into executive session with the board because he or she provides the board with information or recommendations. However, the superintendent has no right to be in executive session unless the board requests the superintendent’s presence. Other administrators or employees may also be invited into executive session to provide the board with information on the topic of discussion. However, they should not be invited if they have no participatory function.

The Clerk

The clerk will generally be excluded from executive session, but must be present to record the motion for going into executive session and the time at which the board reconvenes in open session. Again, unless invited in for a participatory purpose, the clerk has no right to be in executive session and cannot be included as a mere observer.

The Confidentiality Obligation

Boards of education recess into executive session to protect either the public interest or the privacy interest of a particular individual. If a board member discusses issues which are the topic of an executive session outside of the executive session, a violation of KOMA may occur.

However, even if KOMA is not violated, a board member who publicizes the matter addressed in executive session violates the public trust. In areas, such as negotiations and the purchase of land, revealing the board's position may well result in increased costs to the school district and the taxpayer. Discussing matters protected by the attorney-client privilege destroys the privilege and may compromise the board's position in ongoing or potential litigation.

In matters where individual privacy rights are involved, discussion outside of executive session may result in the violation of an individual's privacy rights by the board member making the statements. In other words, by discussing these matters outside of the executive session, a board member may subject him or herself to being sued as an individual and be personally liable for any damages awarded.

Maintaining the confidentiality of an executive session should not be confused with any evidentiary privilege. The fact that the board discusses an item in executive session does not mean that the substance of that conversation cannot be revealed in due process hearings or court proceedings. Unless the conversation is protected by the attorney-client privilege, no evidentiary privilege will protect the information from being revealed in a legal proceeding.

Chapter 5 Penalties & Enforcement

Penalties

Violations of KOMA can result in substantial civil penalties against individual board members.

Additionally, any action taken by a board in a meeting which is not in substantial compliance with KOMA may be voided in an action brought by the county attorney or Attorney General within 21 days of the meeting.

The district court of the county in which the meeting occurs also has broad powers to issue injunctions and other equitable relief to achieve compliance with the Act.

Finally, a violation of KOMA is grounds for recall of a board member under the recall statutes or ouster from office.

History and Changes to the ACT

When it was first enacted, the penalty for violating KOMA was criminal in nature. A person who knowingly violated KOMA was potentially guilty of a class C misdemeanor, punishable by a jail sentence of up to one month and a fine of no more than \$500. The fact that a criminal penalty was the sole remedy under KOMA was criticized by writers. One writer noted:

Aside from the practical fact that open meetings' violations are simply not prosecuted, the criminal penalty, if utilized, would not necessarily accomplish the legislative purpose, namely, to force public officials to allow the electorate to view the decision-making process, not to criminalize the conduct of public officials. Therefore, remedies more directly related to the goal of implementing public access would seem more appropriate.

In 1977, the legislature significantly amended the penalty section of KOMA by eliminating the criminal penalty and replacing it with a civil penalty not to exceed \$500 for each knowing or intentional violation. Additionally, any binding action taken in a meeting which did not comply with KOMA could be voided within ten days of the meeting. Finally, the district court was given the power to issue injunctions or writs of mandamus to enforce KOMA.

Civil Penalty

KOMA provides that any member of a board of education who "knowingly violates any of the provisions" of the act, or who "intentionally fails to furnish" notice of meetings subject to the act, "shall be liable for the payment of a civil penalty" in an action brought to enforce the provisions of the Act. The amount of the civil penalty is set by the district court, but cannot exceed \$500 for each violation.

More than one violation of the Act may occur in a single meeting, and a separate penalty may be assessed for each violation. The liability for these penalties is personal liability against individual board members. The school district can neither pay the penalties nor indemnify board members for these costs.

Enforcement

Additional amendments have significantly broadened the power to seek enforcement of the Act through “injunction, mandamus, declaratory judgment or other appropriate order.” Any person, not just the Attorney General or county attorney, may now apply to the district court for enforcement of KOMA. However, only the Attorney General or county or district attorney may seek the imposition of civil penalties or the voidance of board action. The county or district attorney and the Kansas Attorney General have concurrent jurisdiction to investigate or bring action under KOMA.

By law, the Attorney General prescribes the form to be used for filing KOMA complaints. The complainant must attest to the facts set forth under penalty of perjury. The form is available on the Attorney General’s website, www.ag.ks.gov.

Once a complaint is lodged with the county attorney, district attorney or Attorney General, the decision to investigate or bring action rests solely within their discretion. Nothing in the law requires them to pursue investigation or prosecution of every complaint. However, if investigation is pursued, the prosecutor has authority to issue investigative subpoenas, take testimony, administer oaths, examine documents, require attendance, and serve interrogatories. County and district attorneys must give the Attorney General a yearly report on the number of complaints received or handled in the past year. If a school willfully fails to comply with these investigation requests, the Attorney General or county attorney may ask a court to order a response or grant other relief.

Filing Action Seeking Enforcement

An action seeking enforcement of KOMA should be filed in the county in which the school district’s central office is located. When a person files an action seeking enforcement of KOMA, the initial burden is on that individual to put forth a prima facie case. The burden of proof then shifts to the school board to show that its action did not violate KOMA and should be sustained.

KOMA requires that actions to enforce its provisions take precedence in the district court and requires that they be assigned for hearing and trial at the earliest practicable date.

Because the courts have determined that KOMA is remedial rather than penal in nature, the court will construe the language of KOMA “in the light of legislative intent and purpose” and will give the language “broad interpretation so that its public purpose may be fully carried out.” “[C]ourts will look to the spirit of the law, and will overlook mere technical violations where the public body has made a good faith effort to comply and is in substantial compliance with the KOMA, and where no one is prejudiced or the public right to know has not been effectively denied.”

Action Brought by Individual or Group

In an action brought by an individual or group, the district court may require approved training on KOMA requirements. The court may also award court costs to the person seeking enforcement if the court finds that KOMA was violated. These costs are assessed against the board, not individual board members.

Conversely, if the court finds that the action brought by an individual was frivolous, not in good faith, or without a reasonable basis in fact or law, the court may award court costs to the school board.

Action Brought by Attorney General or County Attorney

In an action brought by the Attorney General or county attorney, a court has discretion to award reasonable expenses, investigation costs and attorney fees in most cases. The court is required to make this award if the violation was not made in good faith or was without a reasonable basis in fact or law.

Expansion of Enforcement

Enforcement provisions were again expanded by the legislature in 2015. These amendments give the Attorney General options to filing a court action when an investigation reveals a violation of KOMA has occurred. The new provisions allow the Attorney General to enter into a consent order or issue a finding of violation to a school board or other public agency prior to filing an action in district court.

Consent Order

A consent order may contain admissions of fact and any of the following:

- Require completion of training approved by the Attorney General;
- Impose a civil penalty of up to \$250 for each violation; and/or
- Set forth the school board's agreement to comply with the requirements of KOMA.

The consent order must be signed by the head of the school or any officer found to have violated KOMA.

A Finding of Violation

A finding of violation may contain findings of fact and conclusions of law and require the school board to do any or all of the following:

- Cease and desist from any further violation of KOMA;
- Comply with KOMA provisions;
- Complete training approved by the Attorney General; and/or
- Pay a civil penalty of up to \$500 for each violation.

The letters of finding must be served on the school board by certified mail, or as required by the code of civil procedure if a petition is filed.

Compliance and Judgment

The Attorney General may require submission of proof that the requirements of either a consent order or finding of violation have been met. After making a demand to comply and giving the school board a reasonable opportunity to cure a violation, the Attorney General may apply to the district court to enforce a consent order or finding of violation. If the court finds the Attorney General did not abuse his discretion in entering into the consent order or issuing the finding of violation, the court must issue an order:

- Enjoining the school board to comply with the consent order or finding of violation;
- Imposing a civil penalty of not less than the amount ordered by the Attorney General and not more than \$500 per violation;
- Requiring the school to pay the Attorney General's court and investigation costs; and
- Providing any other remedy authorized by KOMA that the court deems appropriate.

The court may also require the school to pay attorney fees in most cases, but is required to order payment of attorney fees if the violation was not made in good faith and was without a reasonable basis in fact or law.

In lieu of filing an action in district court to enforce KOMA, the Attorney General or county attorney may accept a consent judgment. The consent judgment must be approved by the district court and an entry of judgment must be made.

After the court approves the entry of judgment, any breach of its conditions is treated as a violation of a court order, subject to the penalties for such violations.

A consent judgment may contain any remedy available to the district court, but cannot award reasonable expenses, investigation costs or attorney fees.

Appendix A: The Kansas Open Meetings Act

75-4317. Open meetings declared policy of state; citation of act.

(a) In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public.

(b) It is declared hereby to be against the public policy of this state for any such meeting to be adjourned to another time or place in order to subvert the policy of open public meetings as pronounced in subsection (a).

(c) K.S.A. 75-4317 through 75-4320a shall be known and may be cited as the open meetings act.

History: L. 1972, ch. 319, § 1; L. 1975, ch. 455, § 1; L. 1999, ch. 96, § 1; July 1.

75-4317a. Meeting defined.

As used in the open meetings act, "meeting" means any gathering or assembly in person or through the use of a telephone or any other medium for interactive communication by a majority of the membership of a public body or agency subject to this act for the purpose of discussing the business or affairs of the public body or agency.

History: L. 1977, ch. 301, § 1; L. 1994, ch. 64, § 1; L. 2008, ch. 178, § 1; L. 2015, ch. 68, § 14; July 1.

75-4318. Meetings of state and subdivisions open to public; exceptions; secret ballots; notice; agenda, cameras, photographic lights, recording devices.

(a) Subject to the provisions of subsection (g), all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds shall be open to the public and no binding action by such public bodies or agencies shall be by secret ballot. Meetings of task forces, advisory committees or subcommittees of advisory committees created pursuant to a governor's executive order shall be open to the public in accordance with this act.

(b) Notice of the date, time and place of any regular or special meeting of a public body or agency designated in subsection (a) shall be furnished to any person requesting such notice, except that:

(1) If notice is requested by petition, the petition shall designate one person to receive notice on behalf of all persons named in the petition, and notice to such person shall constitute notice to all persons named in the petition;

(2) if notice is furnished to an executive officer of an employees' organization or trade association, such notice shall be deemed to have been furnished to the entire membership of such organization or association; and

(3) the public body or agency may require that a request to receive notice must be submitted again to the public body or agency prior to the commencement of any subsequent fiscal year of the public body or agency during which the person wishes to continue receiving notice, but, prior to discontinuing notice to any person, the public body or agency must notify the person that notice will be discontinued unless the person resubmits a request to receive notice.

(c) It shall be the duty of the presiding officer or other person calling the meeting, if the meeting is not called by the presiding officer, to furnish the notice required by subsection (b).

(d) Prior to any meeting mentioned by subsection (a), any agenda relating to the business to be transacted at such meeting shall be made available to any person requesting the agenda.

(e) The use of cameras, photographic lights and recording devices shall not be prohibited at any meeting mentioned by subsection (a), but such use shall be subject to reasonable rules designed to insure the orderly conduct of the proceedings at such meeting.

(f) Except as provided by section 22 of article 2 of the constitution of the state of Kansas, interactive communications in a series shall be open if they collectively involve a majority of the membership of the public body or agency, share a common topic of discussion concerning the business or affairs of the public body or agency, and are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the public body or agency.

(g) The provisions of the open meetings law shall not apply:

(1) To any administrative body that is authorized by law to exercise quasi-judicial functions when such body is deliberating matters relating to a decision involving such quasi-judicial functions;

(2) to the prisoner review board when conducting parole hearings or parole violation hearings held at a correctional institution;

(3) to any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives; and

(4) if otherwise provided by state or federal law or by rules of the Kansas senate or house of representatives.

History: L. 1972, ch. 319, § 2; L. 1975, ch. 455, § 2; L. 1977, ch. 301, § 2; L. 1978, ch. 361, § 1; L. 1985, ch. 284, § 1; L. 2001, ch. 122, § 1; L. 2002, ch. 162, § 1; L. 2008, ch. 178, § 2; L. 2009, ch. 58, § 1; L. 2012, ch. 16, § 32; L. 2015, ch. 68, § 15; July 1.

75-4319. Closed or executive meetings; conditions; authorized subjects for discussion; binding action prohibited; certain documents identified in meetings not subject to disclosure.

(a) Upon formal motion made, seconded and carried, all public bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include:

(1) A statement describing the subjects to be discussed during the closed or executive meeting;

(1) the justification listed in subsection (b) for closing the meeting;

(3) the time and place at which the open meeting shall resume.

The complete motion shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the public body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) Justifications for recess to a closed or executive meeting may only include the following, the need:

- (1) To discuss personnel matters of nonelected personnel;
- (2) for consultation with an attorney for the public body or agency which would be deemed privileged in the attorney-client relationship;
- (3) to discuss employer-employee negotiations whether or not in consultation with the representative or representatives of the public body or agency;
- (4) to discuss data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;
- (5) to discuss matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;
- (6) for the preliminary discussion of the acquisition of real property;
- (7) to discuss matters relating to parimutuel racing permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804, and amendments thereto;
- (8) to discuss matters relating to the care of children permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 2016 Supp. 38-2212(d)(1) or 38-2213(e), and amendments thereto;
- (9) to discuss matters relating to the investigation of child deaths permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 22a-243(j), and amendments thereto;
- (10) to discuss matters relating to patients and providers permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 39-7,119(g), and amendments thereto;
- (11) to discuss matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact;
- (12) to discuss matters relating to security measures, if the discussion of such matters at an open meeting would jeopardize such security measures, that protect:
 - (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services;
 - (B) transportation and sewer or wastewater treatment systems, facilities or equipment;
 - (C) a public body or agency, public building or facility or the information system of a public body or agency; or
 - (D) private property or persons, if the matter is submitted to the public body or agency for purposes of this paragraph.

For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments;

(13) to discuss matters relating to maternity centers and child care facilities permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 65-525(d), and amendments thereto;

(14) to discuss matters relating to the office of inspector general permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 2016 Supp. 75-7427, and amendments thereto; and

(15) for the governor's domestic violence fatality review board to conduct case reviews.

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

(d) Any confidential records or information relating to security measures provided or received under the provisions of subsection (b)(12), shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

History: L. 1972, ch. 319, § 3; L. 1977, ch. 301, § 3; L. 1981, ch. 344, § 1; L. 1988, ch. 315, § 4; L. 1992, ch. 318, § 9; L. 1993, ch. 286, § 75; L. 1994, ch. 254, § 3; L. 1996, ch. 256, § 23; L. 1999, ch. 96, § 2; L. 2001, ch. 190, § 2; L. 2004, ch. 177, § 2; L. 2005, ch. 126, § 4; L. 2007, ch. 177, § 16; L. 2009, ch. 132, § 14; L. 2012, ch. 16, § 33; L. 2015, ch. 68, § 16; L. 2017, ch. 73, § 4; July 1.

75-4320. Penalties.

(a) Any member of a public body or agency subject to the open meetings act who knowingly violates any of the provisions of such act or who intentionally fails to furnish information as required by K.S.A. 75-4318(b), and amendments thereto, shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney, in a sum set by the court of not to exceed \$500 for each violation. In addition, any binding action which is taken at a meeting not in substantial compliance with the provisions of the open meetings act shall be voidable in any action brought by the attorney general or county or district attorney in the district court of the county in which the meeting was held within 21 days of the meeting, and the court shall have jurisdiction to issue injunctions or writs of mandamus to enforce the provisions of the open meetings act.

(b) Civil penalties sued for and recovered hereunder by the attorney general shall be paid into the attorney general's open government fund. Civil penalties sued for and recovered hereunder by a county or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

(c) No fine shall be imposed pursuant to subsection (a) for violations of K.S.A. 75-4318(f), and amendments thereto, which occur prior to July 1, 2009.

History: L. 1972, ch. 319, § 4; L. 1977, ch. 301, § 4; L. 2004, ch. 177, § 3; L. 2008, ch. 178, § 3; L. 2015, ch. 68, § 17; July 1.

75-4320a. Enforcement of act by district courts; burden of proof; court costs; precedence of cases.

(a) The district court of any county in which a meeting is held shall have jurisdiction to enforce the purposes of K.S.A. 75-4318 and 75-4319, and amendments thereto, with respect to such meeting, by

injunction, mandamus, declaratory judgment or other appropriate order, on application of any person. The district court may require a defendant to complete training approved by the attorney general concerning the requirements of the open meetings act.

(b) In any action hereunder or under K.S.A. 2016 Supp. 75-4320d, and amendments thereto, the burden of proof shall be on the public body or agency to sustain its action.

(c) In any action hereunder, the court may award court costs to the person seeking to enforce the provisions of K.S.A. 75-4318 or 75-4319, and amendments thereto, if the court finds that the provisions of those statutes were violated. The award shall be assessed against the public body or agency responsible for the violation.

(d) In any action hereunder in which the defendant is the prevailing party, the court may award to the defendant court costs if the court finds that the plaintiff maintained the action frivolously, not in good faith or without a reasonable basis in fact or law.

(e) In any action hereunder brought by the attorney general or a county or district attorney, if the court finds that any provisions of K.S.A. 75-4318 or 75-4319, and amendments thereto, were violated, such court:

(1) Except as provided in subsection (e)(2), may award the attorney general's or the county or district attorney's reasonable expenses, investigation costs and attorney fees; and

(2) shall award the same if the court determines that the violation was not made in good faith and without a reasonable basis in fact or law.

(f) Except as otherwise provided by law, proceedings arising under this section shall take precedence over all other cases and shall be assigned for hearing and trial at the earliest practicable date.

(g) As used in this section, "meeting" has the meaning provided by K.S.A. 75-4317a, and amendments thereto.

History: L. 1981, ch. 344, § 2; L. 2015, ch. 68, § 18; July 1.

75-4320b. Investigation of alleged violations; powers.

(a) In investigating alleged violations of the open meetings act, the attorney general or county or district attorney may:

(1) Subpoena witnesses, evidence, records, documents or other material;

(2) take testimony under oath;

(3) examine or cause to be examined any records or other documentary material of whatever nature relevant to such alleged violations;

(4) require attendance during such examination of documentary material and take testimony under oath or acknowledgment in respect of any such documentary material;

(5) serve interrogatories; and

(6) administer oaths and affirmations.

(b) Service by the attorney general or a county or district attorney of any interrogatories or subpoena upon any person shall be made:

(1) By certified mail, return receipt requested, to the last known place of business, residence or abode within or without this state; or

(2) in the manner provided in the code of civil procedure as if a petition had been filed.

(c) If any person willfully fails or refuses to file any response to a request for information, records or other materials required by this section, respond to interrogatories or obey any subpoena issued by the attorney general or a county or district attorney, the attorney general or a county or district attorney may, after notice, apply to the district court of the county where the request, interrogatories or subpoena was issued, or of any other county where venue is proper, and after a hearing thereon the district court may:

(1) Issue an order requiring a response to the request for information, records or other materials, a response to interrogatories or compliance with the subpoena; or

(2) grant such other relief as may be required, until the person provides the requested response for information, records or other materials, responds to the interrogatories or obeys the subpoena.

History: L. 2000, ch. 156, § 7; L. 2015, ch. 68, § 19; July 1.

75-4320c. Sunflower Foundation: Health Care for Kansas; subject to open meetings law.

The Sunflower Foundation: Health Care for Kansas, established pursuant to the settlement agreement entered into by the attorney general in the action filed by Blue Cross and Blue Shield of Kansas, Inc., in the district court of Shawnee county, Kansas, case no. 97CV608, shall be and is hereby deemed to be a public body and shall be subject to the open meetings law.

History: L. 2001, ch. 122, § 3; April 26

75-4320d. Civil remedies to enforce act by attorney general; consent order; finding of violation.

(a) The attorney general may determine by a preponderance of the evidence after an investigation that a public body or agency has violated K.S.A. 75-4317 et seq., and amendments thereto, and may, at any time prior to the filing of an action pursuant to K.S.A. 75-4320a, and amendments thereto, either enter into a consent order with the public body or agency or issue a finding of violation to the public body or agency.

(1) If the attorney general enters into a consent order with the public body or agency, the consent order:

(A) May contain admissions of fact and any or all of the following:

(i) Require completion of training approved by the attorney general concerning the requirements of K.S.A. 75-4317 et seq., and amendments thereto;

(ii) impose a civil penalty as provided for in K.S.A. 75-4320, and amendments thereto, in an amount not to exceed \$250 for each violation; and

(iii) set forth the public body's or agency's agreement that it will comply with the requirements of the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto; and

(B) shall bear the signature of the head of the public body or agency, of any officer found to have violated the provisions of K.S.A. 75-4317 et seq., and amendments thereto, and of any other person required by the attorney general.

(2) If the attorney general issues a finding of violation to the public body or agency, the finding may contain findings of fact and conclusions of law and require the public body or agency to do any or all of the following:

(A) Cease and desist from further violation;

(B) comply with the provisions of K.S.A. 75-4317 et seq., and amendments thereto;

(C) complete training approved by the attorney general concerning the requirements of K.S.A. 75-4317 et seq., and amendments thereto; and

(D) pay a civil penalty as provided for in K.S.A. 75-4320, and amendments thereto, in an amount not to exceed \$500 for each violation.

(b) The attorney general may require submission of proof that requirements of any consent order entered pursuant to subsection (a)(1) or any finding of violation issued pursuant to subsection (a)(2) have been satisfied.

(c) (1) The attorney general may apply to the district court to enforce a consent order pursuant to subsection (a)(1) or finding of violation pursuant to subsection (a)(2). Prior to applying to the district court, the attorney general shall make a demand to the public body or agency to comply with the consent order or finding of violation and afford reasonable opportunity for the public body or agency to cure the violation.

(2) An enforcement action under this section may be filed in the district court of the county where the consent order or finding of violation is issued or is effective. The district court of any county shall have jurisdiction to enforce any consent order or finding of violation.

(3) If the district court finds the attorney general did not abuse the attorney general's discretion in entering into the consent order or issuing the finding of violation, the district court shall enter an order that:

(A) Enjoins the public body or agency to comply with the consent order or finding of violation;

(B) imposes a civil penalty as provided for in K.S.A. 75-4320, and amendments thereto. The penalty shall be set by the court in an amount not less than the amount ordered by the attorney general, nor more than \$500 for each violation;

(C) requires the public body or agency to pay the attorney general's court costs and costs incurred in investigating the violation; and

(D) provides for any other remedy authorized by K.S.A. 75-4320a(a), and amendments thereto, that the court deems appropriate.

(4) In any enforcement action under this section, if the court finds that any of the provisions of K.S.A. 75-4317 et seq., and amendments thereto, were violated, such court:

(A) Except as provided in subsection (c)(4)(B), may require the public body or agency to pay the attorney general's reasonable attorney fees; and

(B) shall require the public body or agency to pay the attorney general's reasonable attorney fees, if the public body's or agency's violation was not made in good faith and without a reasonable basis in fact or law.

(d) Any finding of violation issued by the attorney general pursuant to subsection (a)(2) shall be served upon the public body or agency:

(1) By certified mail, return receipt requested, to the last known place of business, residence or abode within or without this state; or

(2) in the manner provided in the code of civil procedure as if a petition had been filed.

(e) The attorney general shall maintain and make available for public inspection all consent orders entered pursuant to subsection (a)(1) and all findings of violation issued pursuant to subsection (a)(2).

(f) This section shall be a part of and supplemental to the open meetings act.

History: L. 2015, ch. 68, § 4; July 1.

75-4320e. Complaint form prescribed by attorney general.

(a) Any complaint submitted to the attorney general shall be on a form prescribed by the attorney general setting forth the facts that the complaining party believes show that K.S.A. 75-4317 et seq., and amendments thereto, have been violated. The person submitting the complaint must attest to the facts under penalty of perjury pursuant to K.S.A. 53-601, and amendments thereto.

(b) This section shall be a part of and supplemental to the open meetings act.

History: L. 2015, ch. 68, § 6; July 1.

75-4320f. Civil remedies to enforce act; consent order.

(a) In lieu of bringing an action as provided in K.S.A. 75-4320a, and amendments thereto, the attorney general or a county or district attorney may resolve the matter by accepting a consent judgment with respect to any act or practice declared to be a violation of this act. Before any consent judgment entered into pursuant to this section shall be effective, such judgment must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of the consent judgment shall be treated as a violation of a court order, and shall be subject to all the penalties provided by law therefor.

(b) A consent judgment may contain any remedy available to the district court, except it shall not include an award of reasonable expenses, investigation costs or attorney fees.

(c) This section shall be a part of and supplemental to the open meetings act.

History: L. 2015, ch. 68, § 5; July 1.

Appendix B: Sample Letter Responding to Request for Notice

Unified School District No. 000
456 Main Street
Anytown, Ks
July _____, _____

Date

John Q. Public
123 School Street
Anytown, KS

Dear Mr. Public:

Thank you for your recent request for notice of our school board meetings. It is gratifying to know patrons of the district are genuinely interested in our schools.

Enclosed you will find a copy of the resolution passed by the board in July which establishes our regular meeting time and place for the entire year. Additionally, we will send you notice of any special meetings which may be called throughout the year. Special meetings are sometimes called in emergency situations. In such cases, if there is not time to mail notice, we will notify you by phone of the time and place of the meeting. If you would provide [name of clerk] with a phone number where you can be reached during the day, and your e-mail address if you have one, it will facilitate our efforts to ensure you are notified.

Agendas for all meetings are available for your inspection in the central office prior to the meeting and posted on our Web site at [fill in Web site address]. If you have any questions about the agenda, please call [name of person to call] at [phone number].

Thank you again for your interest. We look forward to seeing you at our board meetings.

Sincerely,

Board President

Appendix C: Sample Letter on Discontinuing Notice

Unified School District No. 000
456 Main Street
Anytown, Ks
July _____, _____

Date

John Q. Public
123 School Street
Anytown, KS

Dear Mr. Public:

It has been almost a year ago since we received your request for notice of our meetings under the Kansas Open Meetings Act. Enclosed you will find the board resolution establishing our regular meeting time for the coming year. Each year at this time, we ask persons who have requested notice to renew their request if they still desire to continue receiving notice of our meetings.

To continue to receive notice, please fill in the bottom portion of this letter, and return it to [name of clerk] at central office. If we do not hear from you by September 1, _____, we will assume you no longer desire notice.

Thank you again for your interest in our schools.

Sincerely,

Board President

I wish to continue receiving notice of all school board meetings.

Name _____

Address _____

Home Phone _____

Daytime Phone _____

Fax: _____

E-mail address _____

Appendix D: Sample Motions for Executive Session

Mr. President, I move we go into executive session [fill in subject] in order to [fill in justification], and that we return to open session in this room at [fill in time].

or

Mr. President, I move we go into executive session for [fill in amount of time] [fill in subject] in order to [fill in justification].

Examples of Subject Justification

To discuss an individual employee's performance; or

To discuss an individual employee's contract; or

To discuss evaluation of an employee

The non-elected personnel exception under KOMA

To discuss a student issue; or

To hold an appeal hearing for a student

The exception relating to actions affecting a student under KOMA

To discuss coding mechanisms

Powerschool uses to secure student data with Powerschool representatives

The exception for data relating to the financial affairs or trade secrets of a business under KOMA

To discuss potential litigation with our legal counsel

The exception for matters which would be deemed privileged in the attorney-client relationship under KOMA

To discuss the latest proposal for increasing the base pay from the teachers; or

To discuss items noticed or to be noticed negotiation; or

To discuss the board's position on teacher benefits

The exception for employer-employee negotiations under KOMA

To discuss potential properties for a new middle school

The KOMA exception for preliminary discussion of the acquisition of real property

To discuss the high school crisis plan;

To discuss exact placement of security cameras and alarms in the school buildings

The KOMA exception for discussion of security measures

Appendix E: Kansas Attorney General Opinions on KOMA

Application of the Act: In General

OPINION SYNOPSIS OF THE OPINION

- 2016-03 Whether the Kansas Open Meetings Act applies to a specific body is a fact specific determination.
- 2004-34 Sheltered Living, Inc. is a not-for-profit corporation that provides group living services for special populations. It was created and is operated by private individuals. The services provided are highly regulated and the corporation receives public funds in return for providing such services to clients, however, the corporation was not created by statute or any governmental entity and it does not provide a strictly governmental service. Receipt of public funds alone does not subject an otherwise private not-for-profit corporation to KOMA or KORA. Sheltered Living, Inc. is not a public agency as defined in KOMA or KORA and it therefore is not subject to these two Acts.
- 2001-13 Given the extent of governmental involvement with the Finney County Economic Development Corporation (FEDC), the FEDC is subject to both the KOMA or KORA.
- 2001-02 The Hesston Area Senior Center is not subject to the Kansas Open Meetings Act because it is an independent nonprofit corporation. Mere receipt of public funds is insufficient to bring an otherwise private nonprofit corporation within the KOMA.
- 2000-63 Extension Councils created pursuant to K.S.A. 2-611 are subject to the Kansas Open Meetings Act.
- 1999-64 The City of Prairie Village does not currently exercise sufficient control over the Prairie Village Development Corporation (PVDC) to bring it within the KOMA's requirements.
- 1999-22 Local historic preservation committees are subject to the Kansas Open Meetings Act.
- 97-85 The Ad Astra funds, of which the Kansas Technology Enterprise Corporation holds limited partnership interests through a holding company, are not subject to KOMA.
- 94-157 A political party precinct committee is an integral part of the election mechanism; it is not a legislative or administrative agency of the state or local government, nor is it subordinate to such a body and therefore is not subject to the KOMA's Requirements.
- 94-111 Southwest Developmental Services, Inc. (SKSI), a nonprofit corporation providing services for mentally retarded residents of Finney County, is an agency under the supervision and control of the county and the state department of SRS. SKSI is supported by various sources of public funds. As such, SKSI is a public agency within the meaning of KOMA and KORA.
- 93-130 The Kansas Turnpike Authority, as a public instrumentality with authority to perform an essential governmental function, is a public agency within the meanings of KOMA and KORA.
- 93-73 The parental boards which administer youth sports programs are subject to KOMA in that the boards receive financial assistance, use the commission's equipment, and operate under the

guidelines agreed to by the recreation commission. Although not appointed by the commission, parental boards are not independent entities but subordinate groups of a political subdivision that is supported in whole or in part by public funds.

93-41 The committee assisting the department of social and rehabilitation services (SRS) in implementing a drug-utilization review program for patients receiving medical assistance under the Medicaid program is subject to KOMA. The committee was appointed pursuant to statutory provisions and receives public funds through SRS. The contract between SRS and the Kansas Pharmacy Foundation, a nonprofit organization, does not insulate the committee from the applicability of the KOMA.

91-150 The private corporation known as "The Spirit of '76, Inc." is not in itself subject to the provisions of the KOMA. However, when members of this corporation's board are also members of a board for a public agency which is subject to the KOMA, the prearranged gatherings by a majority of a quorum of the public body are subject to the KOMA if the topic of discussion is the business or affairs of the public body.

89-149 The Parsons Chamber of Commerce, Inc., is not subject to the provisions of KOMA in administering the county motel bed tax funds. While the Chamber expends public funds, it is not an agency of the state or its political and taxing subdivisions.

88-97 A public body must comply with the provisions of the Kansas Open Meetings Act if two tests are met: (1) the body is a legislative or administrative agency of the state or one of its political or taxing subdivisions or is subordinate to such a body; and (2) the body receives or expends and is supported in whole or in part by public funds. The second test is met if the district receives federal or state grants or other such public funding.

88-25 The Mayor's Commission on Governmental Efficiency is subject to the provisions of the Kansas Open Meetings Act as it is a subordinate body of the city's governing body.

88-27; A private, nonprofit corporation is subject to the Kansas Open Meetings Act if it receives

87-143 public funds in its operations and acts as a governmental agency in providing services

87-188; to the public.

86-92 The Hutchinson city manager acted as an individual, and not as a committee subordinate to the city commission, in recommending an applicant a job. While three city employees, chosen by the city manager to assist in the selection process, were designated as the "Consultant Selection Committee," it is the nature of a group, and not its designation, which determines whether it is subject to the KOMA. In our opinion, this 'committee' is not a body required to have open meetings. The individuals assisted the city manager by lending their expertise and providing information, but they did not, as a group, make any collective decisions. Since the 'committee' did not have any decision-making authority, the Hutchinson city manager acted alone and is not a public 'body' for purposes of KOMA.

86-84 An advisory board to a county fire district appointed by the board of county commissioners, the governing body of the district, is a subordinate group subject to the Kansas Open Meetings Act because the parent body is an administrative body which receives and expends public funds.

86-38 K.S.A. 75-4318 provides a two-part test that must be met before a body can be found to be included under KOMA: (1) the body is either a legislative or administrative agency of the state or one of its political or taxing subdivisions or subordinate to such a body; and (2) the body receives, expends or

is supported in whole or in part by public funds, or, in the case of subordinate groups, has a parent or controlling body which is so supported.

85-49 A not-for-profit corporation is subject to KOMA if it (1) receives public support in its operations, such as public funds or the use of public facilities; and (2) acts as a governmental agency in providing services to the public that would otherwise be provided by state or local government. Additional factors include the degree of control which a government body has over the activities of the corporation, the degree to which the corporation's directors are selected by a government body, and whether, in the absence of the legal relationship it has with a government body, the corporation could independently exist.

84-103 A meeting called by the mayor of a city would not come under the scope of KOMA if it were attended by single representatives from other governing bodies, along with representatives of private businesses and the news media. However, if a majority of a quorum of one or more governing bodies attends, the meeting is subject to the Act, with notice accordingly required as provided by K.S.A. 75-4318.

84-81 Advisory committees appointed by a body subject to KOMA are themselves subject to the Act, even though the advisory committee neither receives nor expends public funds and is not supported in whole or in part by public funds. As such committees participate in the decision-making process by gathering information, evaluating options, and making recommendations to the governing body, they participate in the conduct of the affairs of the governing body, and so are covered by KOMA.

81-94 Parochial school boards, such as Hayden High School Board, are not bodies subject to the Kansas Open Meetings Act.

80-201 The Garden City/Finney County Alcohol Fund Advisory Committee is subject to the KOMA, even though the Advisory Committee neither receives nor expends public funds, and is not supported in whole or in part by public funds, because the Advisory Committee is a committee or subordinate group of the governing bodies of Garden City and Finney County, both of which are bodies which do meet the public funding test.

80-43 Meetings of teachers with a majority of a quorum of the membership of a school board for the purpose of discussing school district business is subject to the requirements of KOMA. Any person requesting notice of such public meeting is entitled to notice and has a right to attend.

Application of the Act: Board Acting in Quasi-Judicial Capacity

OPINION SYNOPSIS OF THE OPINION

2014-07 The Kansas Administrative Procedure Act (KAPA) applies to the activities of the investigations committee of a state licensing board only to the extent that the board's statutes expressly provide that proceedings under those statutes are governed by the KAPA. [School board proceedings are not subject to KAPA.]

If the KAPA does not apply, then the actions of an investigations committee must be held in accordance with the Kansas Open Meetings Act (KOMA). Under the KOMA, the investigations committee of a licensing board may consult with an attorney in a closed or executive session and it may recess to engage in quasi-judicial deliberations regarding a decision in a specific case. However, all other parts of an investigative or disciplinary proceeding and all policy or general discussions must occur in a public meeting, unless otherwise provided by law. Under the KOMA, binding decisions must be made by a vote in an open meeting.

97-41 The Waiver Board of the Labette County Community Corrections Camp acts in a quasi-judicial capacity when it conducts hearings on admission of inmates who do not meet the regular admission criteria. The Board's deliberations during such review are exempt from the Kansas Open Meetings Act and may be held in a nonpublic manner. Any formal vote on the matter deliberated must be conducted in open session.

97-40 A hearing on a benefits determination of a Kansas Public Employees Retirement System (KPERS) member before a single hearing officer appointed by the KPERS board of trustees pursuant to K.S.A. 1996 Supp. 74-4904(2) is open to the public pursuant to KAPA, K.S.A. 77-523, and the KOMA. The KPERS board's deliberations during such review are exempt from the KOMA and may be held in a nonpublic manner. Neither the KOMA nor KPERS statutes require the KPERS board to hold such deliberations in a nonpublic manner. Any formal vote on the matter deliberated must be conducted in open session.

91-31 K.S.A. 75-4328 permits a city's grievance committee to deliberate on the disposition of an individual employee's grievance matter outside of an open meeting because such a grievance committee is acting in a quasi-judicial manner within the scope of authority of that committee. Prior to such deliberations, K.S.A. 75-4319 permits a grievance committee to recess from an open meeting into an executive session to discuss personnel matters of non-elected personnel, and thus, employment-related grievances of individual employees of the city may discretionarily be discussed in a properly recessed executive or closed session. Individuals who aid the committee in such a discussion may be discretionarily permitted into such a closed or executive session. However, binding decisions by the committee must be made in an open meeting.

84-50 In making recommendations as to the zoning of an individual parcel of land, a planning commission acts in a quasi-judicial, rather than a legislative, function. As such, its deliberations may be held in closed session, as a specific exception to KOMA. For purposes of the KOMA, 'binding action' would occur when the commission votes to approve or deny a particular request, and would have to be done in an open meeting.

83-32 The Kansas Corporation Commission is not exempt from the KOMA during deliberations in rate-making cases since such rate-making functions are legislative in nature rather than quasi-judicial.

79-225 While a board of zoning appeals is not subject to KOMA when acting in a quasi-judicial capacity, this exclusion extends only to deliberations and not votes, which must be taken in public.

What constitutes a meeting?

OPINION SYNOPSIS OF THE OPINION

2009-022 "Interactive communication," for the purposes of the Kansas Open Meetings Act (KOMA), requires a mutual or reciprocal exchange between members of a body or agency subject to KOMA. Accordingly, "interactive communication" does not occur when a non-member of a body or agency communicates with a majority of that body or agency board and a member responds and shares the response with other members. Should there be further interactive communications among a majority of the members concerning the business of the body, and there is an intent by any or all of the participants to reach agreement on a matter that would require binding action, those communications are subject to KOMA.

2005-3 A public body subject to the KOMA may legally conduct meetings by telephone, if it does so in compliance with all of the requirements of the KOMA. Regardless whether a meeting is to be conducted telephonically, in person, by video-conference, or even through third parties, the requirements of the KOMA remain applicable.

2001-27 A prayer gathering of a majority of a quorum of city council members at which they pray for guidance and wisdom in the performance of their elected duties but do not discuss the specific business of the body, does not constitute a "meeting" for purposes of KOMA.

2000-64 It is not a violation of KOMA for a majority of a quorum of members of a public body or agency, without giving KOMA notice, to independently attend a meeting concerning city business so long as the members do not engage in the discussion. The members do violate the KOMA under these facts if no notice is given to those requesting it and the members engage in the discussion of city business.

98-49 A series of meetings or communications between members of a public body, each of which may involve less than a majority of a quorum of a public body, but collectively totaling a majority of a quorum, the purpose of which is to discuss a common topic of the business or affairs of that body so that the views of members are exchanged in an interactive dialogue, constitutes a meeting for purposes of KOMA. The communications need not be direct for the Act to apply but must be at the behest of the members of the body. Whether a series of communications is a violation of the Act is very fact-specific, and each situation must be decided on its facts.

98-26 A series of meetings, each of which involves less than a majority of a quorum of a public body but collectively totaling a majority of a quorum at which there is a common topic of discussion of the business or affairs of that body, constitutes a meeting for the purposes of the KOMA.

96-32 The Kansas dental board does not possess express or implied authority to alter the number of members required to constitute a quorum thereby altering the requirements of the KOMA.

95-13 School board members may be in violation of the KOMA if three or more board members simultaneously engage in interactive discussion of board business using computer terminals. However, simply sending a message to other board members would not, standing alone, constitute an "interactive communication" within the meaning of the Act.

93-140 Absent express or implied authority within the enabling statutes, or any general grant of authority, the Blue Valley recreation commission has no authority to change the number of commissioners required to constitute a quorum for purposes of the KOMA.

91-73 It is our opinion that unless a specific law alters common law, the presence of five of a nine-member board constitutes a quorum of that body, and a majority vote of those five members (three) is sufficient to bind the body. If one of the members abstains from the vote, he is deemed to have voted with the majority unless he has an interest or bias in the matter and is therefore disqualified. Where the required majority exists without the vote or presence of the disqualified member, his vote or presence will not invalidate the results. Members disqualified from voting may not be counted when determining whether a quorum is present.

87-152 A quorum must be present for a public body to conduct business. Quorum for the five-member Kansas Board of Polygraphists (Board) is a majority of the total membership, or three members.

87-45 The mere fact that two members of a five-member city council in a city of the third class are married to each other does not violate the open meetings law or any other Kansas statutes.

86-110 A "majority of a quorum" is the smallest number of members of the governing body that can take official action.

86-92 The Hutchinson city manager acted as an individual, and not as a committee subordinate to the city commission, in recommending an applicant for the job as engineering consultant. While three city employees chosen by the city manager to assist in the selection process were designated as the "Consultant Selection Committee," it is the nature of a group, and not its designation, which determines whether it is subject to the KOMA. In our opinion, this "committee" is not a body required to have open meetings. The individuals assisted the city manager by lending their expertise and providing information, but they did not, as a group, make any collective decisions. Since the "committee" did not have any decision-making authority, the Hutchinson city manager acted alone and thus is not a public "body" for purposes of the open meetings laws.

84-103 A meeting called by the mayor would not come under the scope of the KOMA if it were attended by single representatives from other governing bodies along with representatives of private businesses and the news media. However, if a majority of a quorum of one or more governing bodies attends, the meeting is subject to the Act, with notice accordingly required as provided by K.S.A. 75-4318. Likewise, the restrictions on executive sessions would apply, with such session permitted only for the discussion of those topics specified in K.S.A. 75-4319. However, if members of the media are allowed to sit in on such executive sessions to the exclusion of members of the general public, the sessions cease to be closed, with admittance of anyone required.

82-266 Prearranged staff briefings of board members, where a majority of a quorum is present are subject to KOMA.

82-133 Members of a city governing body may attend and participate in annual conventions of the League of Kansas Municipalities, so long as members do not use such occasions to discuss among themselves the specific business or affairs of the body. Such discussion would subvert the purposes of KOMA and should occur only at meetings held in strict compliance with the Act.

82-16 KOMA does not prohibit the use of written memoranda between members of a public body subject to the Act. However, use of written documents at an otherwise public meeting, which effectively denies the public access to the decision-making process, may constitute a violation of the KOMA.

81-268 A private telephone conversation between a majority of a quorum of a government body made for the purpose of discussing an item on the agenda of the body or general business of the body may constitute a 'meeting' within the meaning of the KOMA. Such discussions may be lawfully conducted by substantial compliance with the notice and access requirements of the Act.

81-262 Informal gatherings of a majority of a quorum of a city commission to discuss city business, held prior to, during or immediately following regularly scheduled meetings, are subject to the requirements of the KOMA.

81-264 Prearranged gatherings of a majority of a quorum of a city governing body with local special interest groups may constitute meetings subject to the Kansas Open Meetings Act when the purpose of the gathering is the discussion of issues of concern to the governing body.

80-197 The KOMA applies to work session of the Louisburg City Council where the topics of discussion include the business or affairs of the city council. The Act does not require minutes to be kept unless an executive session is held, in which case the information specified in K.S.A. 1979 Supp. 75-4319(a) must be included in the minutes of the body.

80-173 A telephone conference call among members of a public body may constitute a meeting of such body where the number of members engaged in such call is sufficient by statute to transact the business of the body and so long as all members thereof are notified of the conference call and given the opportunity to participate. Meetings held pursuant to telephone conference calls are subject to KOMA where such calls involve a majority of a quorum of the public body's membership, even though the number of members involved is not enough to transact the business of the public body.

80-159 It is not a violation of the Kansas Open Meetings Act for a single member of a seven-person governing body to converse over the telephone with another member of the body. However, any vote taken by polling of the members of the governing body is ineffective and does not constitute binding action.

80-43 Meetings of teachers with a majority of a quorum of the membership of a school board for the purpose of discussing school district business are subject to the requirements of KOMA. Any person requesting notice of such public meeting is entitled to notice and has a right to attend.

80-28 KOMA applies to meetings of a majority of a quorum of a school board when meeting to discuss local school issues with members of local interest groups.

79-200 In order for a meeting of a public body to be subject to the requirements of the Open Meetings Act, it is not necessary that business be formally transacted.

The Notice Requirement

OPINION SYNOPSIS OF THE OPINION

2000-64 It is not a violation of KOMA for a majority of a quorum of members of a public body or agency, without giving KOMA notice, to independently attend a meeting concerning city business so long as the members do not engage in the discussion. The members do violate the KOMA under these facts if no notice is given to those requesting it and the members engage in the discussion of city business.

96-14 K.S.A. 75-4318 requires that actual notice of regular and special meetings subject to the KOMA be individually provided to those persons requesting such notice. If there is no intent to subvert the KOMA, a meeting subject to that act may be adjourned, recessed or continued to another date, time or place. The notice requirements and intent of KOMA are violated by giving notice that a meeting will begin on one day and then subsequently continuing that meeting to another day without making a good-faith attempt to provide notice of the new date, time and place to those requesting notice.

95-112 Notice of meetings of bodies subject to the KOMA should be provided to requesters of such notice. The membership of each body should be considered when determining if a majority of a quorum is present at a given discussion of the business of that body.

93-113 KOMA applies to legislative conference committee meetings, When such meetings take place, appropriate notice under the circumstances must be given to any person requesting such notice.

86-133 If a request for notice of meetings subject to KOMA is made by petition, notice is required to be given only to a designated person. Individual notice is not required to be given to each person on the list. If individual requests for notice are made, however, notice must be given either in writing or by telephone to each person. If a public body has regularly scheduled meetings, the notice requirement is met by providing a single notice containing a list of such meetings. Additional notice of any changes of special meetings must be given.

83-173 Advisory committees appointed by a body subject to the KOMA are, themselves, subject to the Act, even though the advisory committee neither receives nor expends public funds and is not supported in whole or in part by public funds. As such committees participate in the decision-making process by gathering information, evaluating options, and making recommendations to the governing body, they participate in "the conduct of the affairs" of the governing body and are covered by KOMA.

82-141 KOMA requires notice of all regular and special meetings of bodies subject to the Act to be provided to all persons requesting it. Publication of notice of legislative interim study committees in the Kansas Register is adequate notice to those persons who subscribe to that publication. However, individual notice is still required for persons who do not subscribe to the Register. Absent changes in the law of the rules of the House and Senate, such persons may not be denied notice of interim study committees for failure to pay the subscription fee for the Register or mailing and postage charges arising from the providing of individual notice.

81-206 While the provisions of K.S.A. 72-8205 do not prohibit one special meeting from being concluded, and another special meeting called and held immediately thereafter, any such meeting must comply with the requirements of the KOMA. Under the Act, notice of a special meeting must be given to any person who has requested notice of board meetings.

81-137 A request for notice of public meetings remains valid indefinitely, at least for a reasonable period of time. No written statement is required to withdraw a request for notice, although such written withdrawal would be advisable. No charge may be made for the providing of notice of public meetings. Requests for notice are to be honored regardless of residency of the requester. The death of the requester permits the governmental unit to cease providing such notice, except where the deceased person had requested notice as a representative of an organization of known individuals.

81-22 Although written requests for notice of government meetings are preferred and the absence of a written request makes prosecution under the Kansas Open Meetings Act nearly impossible, oral requests for notice are to be honored.

81-15 A city ordinance calling for notice of regular or special meetings only to those who request it in writing does not comport with the mandates of KOMA. Although written request for notice of government meetings are preferred, and the absence of a written request makes prosecution under the Act nearly impossible, oral requests for notice are to be honored. Requests for agendas also may be made orally. Notice of special meetings cannot be restricted to situations where prior notice is possible. If a meeting is prearranged and subject to the KOMA, notice must be provided for those who request it.

Agendas

OPINION SYNOPSIS OF THE OPINION

86-133 Under KOMA, a distinction is made between the requirements concerning notice and the agenda. While notice must be furnished to the person requesting it, an agenda must be made available to the requester if one is prepared. A public body is not required to mail copies of an agenda if it can be obtained at a public place.

79-218 The proposal of the city of Wakefield to provide copies of the agenda prepared for meetings of the city governing body by making the agenda available at the city building during business hours and by mailing copies to persons requesting the agenda who submit a self-addressed, stamped envelope complies with the requirements of KOMA.

78-281 KOMA does not require that an agenda be prepared of the business to be transacted at any meeting which is subject to the Act. It does require that if an agenda is prepared, it must be made available to persons requesting it.

Meeting Location

OPINION SYNOPSIS OF THE OPINION

2011-023 A public entity subject to the Kansas Open Meetings Act may conduct meetings outside of Kansas or by teleconference or videoconference if the public entity complies with all of the requirements of the Kansas Open Meetings Act.

86-153 KOMA provides that meetings of public bodies must be “open to the public.” The key to determining whether the location of a meeting would subvert the statutory mandate of openness is accessibility of the meeting to the public. Assuming the notice and other requirements of KOMA are met, it is our opinion that the proposed meeting of the Kansas Dental Board to be held in Kansas City, Missouri, would not violate KOMA.

82-133 The majority of a quorum of the governing body of a Kansas municipality may not conduct a retreat to the Colorado mountains to discuss the business or affairs of the body. Such gathering is unreasonably inaccessible to residents of the municipality and constitutes a meeting which is not open to the public in violation of KOMA. Members of a city governing body may attend and participate in annual conventions of the League of Kansas Municipalities, so long as members do not use such occasions to discuss among themselves the specific business or affairs of the body. Such discussion would subvert the purposes of the KOMA and should occur only at meetings held in strict compliance with the Act.

80-148 KOMA does not permit governing bodies subject to the Act to require the payment of a fee or the making of a reservation in order to attend a public meeting. No person may be excluded from such meeting for refusal to make a reservation or pay a ‘fee.’ Where meetings are held in a public restaurant, the establishment may require reservations for those persons who intend to dine and may charge those persons who are served meals.

79-253 A governing body of a taxing subdivision subject to KOMA does not violate the Act by refusing to move a regular meeting of the body from its usual and normally adequate meeting place to more spacious quarters to accommodate an unusually large crowd of citizens.

Voting

OPINION SYNOPSIS OF THE OPINION

2007-017 A board for a technical college operating pursuant to K.S.A. 2006 Supp. 72-4470 and 72-4470a may allow staff such as the college's president to assist with and even make some initial decisions concerning real property acquisition or leasing, employment matters, or bill paying. However, the board has final decision making authority on such matters and, therefore, is required to review and give final approval of decisions made on such matters. Any final and binding decision made by the board for a technical college should be done openly in accordance with the provisions of the Kansas Open Meetings Act.

86-176 Under KOMA, no binding action can be taken by secret ballot. The purpose of this provision is to make public every official's vote on the public's business. A "secret ballot" then, is one in which the voter's choice or decision is not known. Delegates may, however, vote by paper ballot if each delegate signs his or her name to the ballot and the ballots are open for public inspection.

81-258 A board of trustees of a community college may not vote by secret ballot to appoint a person to fill a vacancy on the board. The taking of such binding action by secret ballot is prohibited by the KOMA.

81-106 The provisions of KOMA preclude the election of the acting president of the City Council by secret ballot.

Executive Session

OPINION SYNOPSIS OF THE OPINION

2011-023 K.S.A. 2010 Supp. 74-99b07(b)(3) authorizes the Kansas Bioscience Authority to close an open meeting to discuss or consider marketing or operational strategies absent a "contract for" such topics if the KBA finds disclosure of such information would be harmful to its competitive position.

95-119 Unlike review of a public record in open meeting, executive session review of a public record by an entity subject to KOMA does not alter the nature of or laws applicable to disclosure of that record.

93-55 KOMA declares as the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public. Based on this policy, no binding action shall be taken during closed executive sessions. A city may not take a binding action on a settlement agreement during executive session.

92-132 Public records which might otherwise be permissibly closed pursuant to K.S.A. 1991 Supp. 45-221(a)(4) must be disclosed if such records are reviewed and discussed by a public body during an open meeting subject to KOMA or if the public body takes binding action on such a record.

90-47 KOMA requires Kansas cities to record specific information when an open meeting is recessed into an executive session. Minutes setting forth other matters discussed at a meeting are not dictated or required by the Kansas Open Meetings Act. In the absence of statutory directives, a city governing body is not required to record specific information in the minutes of special or regular meetings.

Executive Session: In General

OPINION SYNOPSIS OF THE OPINION

2007-013 Gubernatorial appointees can exercise the powers, duties, and functions of a Board member only if the appointee is either: (1) confirmed by the Senate; or (2) authorized by the confirmation oversight committee. However, a person nominated by the Board's nominating committee but not yet appointed by the Governor or confirmed by the Senate has the same standing as a member of the public to participate in open meetings, to the extent allowed by the Board. As with any non-Board member, such person may attend and participate in discussions during a Board executive session if such person, in the Board's opinion, will aid its discussion. However, a gubernatorial appointee cannot vote until authorized by the confirmation oversight committee or confirmed by the Senate. Whether or not Board action is affected by virtue of a person voting on a matter in which the person had no authority to do so will depend upon the facts.

91-78 KOMA requires that the motion to go into an executive session contain a statement concerning the subject and justification for the executive session. The justification statement should be more than a reiteration of the subject. The KOMA does not require the statement to be so detailed that it negates the usefulness of an executive session. A justification statement must be contained in the motion, and this statement should explain why an executive session is permissible and in the public interest, and may remind the members of the public body of the limitations upon and purpose served by the executive session discussion.

89-42 Discussion by a public hospital's governing body concerning records and reports mandated to be confidential under the risk management and peer review laws are not required to be discussed at an open meeting.

89-170 K.S.A. 19-204 does not require the county clerk to attend the executive sessions of the board of county commissioners. Only the members of a public body have the right to attend executive sessions of that body.

86-143 Only the members of a public body have the right to attend closed meetings of that body. Members of the five advisory boards in Unified School District No. 512, therefore, do not have the right to attend executive sessions held by the board of education. Advisory board members may attend such executive sessions upon invitation by the board of education to provide information to the body or participate in its deliberations, but may not attend merely as observers to gather information to aid them in making recommendations.

84-103 The restrictions on executive sessions apply, with such sessions permitted only for the discussion of those topics specified in statute. If members of the media are allowed to sit in on such executive sessions to the exclusion of members of the general public, the sessions cease to be closed, with admittance of anyone required.

82-176 A public body may not permit individuals or special interest groups, including members of the news media, to attend executive sessions as mere observers while excluding the public generally. Individuals may attend executive sessions of government bodies subject to the Act upon invitation where such persons are present to provide information to the body or participate in its deliberations, but may not attend merely as observers.

Executive Session: Personnel

OPINION SYNOPSIS OF THE OPINION

2016-03 If the Workers Compensation and Employment Security Boards Nominating Committee is a public agency subject to the Kansas Open Meetings Act, it may not recess into closed or executive session to interview and/or discuss the applicants for workers compensation administrative law judges, workers compensation appeals board members, or employment security board of review members because such applicants are not personnel within the meaning of the Kansas Open Meetings Act.

2009-021 The evaluation of an employee may lawfully take place in executive session. To the extent that the employee is being evaluated upon their performance relative to a policy or directive adopted by the governing body or agency, such a policy or directive may be discussed only within the context of the employee's performance. At what point discussion moves from permissible discussion to impermissible discussion of the policy itself will depend upon the facts.

2008-022 A general discussion of quality of care and staffing issues [by a private hospital management company operating a county hospital] would not be allowed in an executive session unless the topic concerned an individual staff member, patient or another subject closed by statute.

2002-28 The municipal court judge in the City of Emporia is not "personnel" as that term is used in the Kansas Open Meetings Act, and discussions of a body subject to the Kansas Open Meetings concerning a candidate for that position should take place openly and not in an executive session.

2000-63 No body subject to the KOMA may go into executive session to discuss "elected personnel."

96-61 Public bodies subject to the Kansas Open Meetings Act may go into executive session to interview, discuss, and consider applicants or prospective employees of that body under the personnel matters exception to the Act. Binding action may not be taken in executive session.

91-31 K.S.A. 75-4318 permits a city's grievance committee to deliberate on the disposition of an individual employee's grievance matter outside of an open meeting because such a grievance committee, while otherwise subject to the KOMA, is acting in a quasi-judicial manner within the scope of authority of that committee. Prior to such deliberations, K.S.A. 75-4319 permits a grievance committee to recess from an open meeting into a closed or executive session for the purpose of discussing personnel matters of non-elected personnel, and thus, employment-related grievances of individual employees of the city may discretionarily be discussed in a properly recessed executive or closed session. Individuals who aid the committee in such a discussion may be discretionarily permitted into such a closed or executive session. However, binding decisions by the committee must be made in an open meeting.

88-25 Discussions concerning consolidation of departments and the addition or elimination of job functions or positions may not be held in executive session under the "personnel matters" exception.

87-169 The "personnel matters" exception to the open meetings law pertains to employees of public agencies. Independent contractors hired by public bodies are not employees. Therefore, discussions concerning the qualifications of persons and firms in selecting independent contractors cannot take place in an executive session.

87-10 Persons appointed to public boards and committees are not employees, they are public officers. Therefore, discussions concerning the qualifications of candidates for such appointed positions cannot take place in an executive session but must be held in an open meeting.

86-33 A public body adjourning to executive session pursuant to the exception for “personnel matters” must specify the subject to be discussed with a reasonable degree of specificity, although identification of the particular individual or individuals involved need not be made.

81-39 Governing bodies subject to the Kansas Open Meetings Act may not discuss salary schedules for hospital personnel, hospital budgets, hospital room rates, or other related financial affairs during closed or executive session. Salaries for hospital employees may be discussed during executive session only when such discussion focuses on individuals.

80-102 Matters involving specific persons under K.S.A. 75-4319(b)(1) and (5) may be discussed in executive session so long as no binding action is taken. However, investigations and research projects affecting groups of persons generally, but not specifically, are not the proper subjects of a closed meeting, unless discussion concerns a subject matter otherwise specifically permitted to be considered in closed or executive session.

Executive Session: Consultation with an Attorney

OPINION SYNOPSIS OF THE OPINION

2014-07 If the Kansas Administrative Procedure Act (KAPA) does not apply [as with school boards], the actions of an investigations committee must be held in accordance with the Kansas Open Meetings Act (KOMA). The investigations committee of a licensing board may consult with an attorney in a closed or executive session and it may recess to engage in quasi-judicial deliberations regarding a decision in a specific case. All other parts of an investigative or disciplinary proceeding and all policy or general discussions must occur in a public meeting, unless otherwise provided by law. Binding decisions must be made by a vote in an open meeting.

92-56 Bodies subject to KOMA may conduct executive sessions pursuant to the terms and limitations established by K.S.A. 75-4319. Such bodies may include in some executive sessions those individuals the body determines will assist with the executive session discussion, but mere observers may not attend executive sessions. K.S.A. 75-4319(b)(2) may only be used to close meetings if the attorney for the body is present, if persons other than the client and the attorney and his or her agents are excluded, and the communication in the executive session is privileged in nature. More than one attorney may be present in an executive session if the attorneys both represent the public body and the communication in executive session is privileged in nature.

86-162 K.S.A. 75-4319(b)(2) authorizes public bodies subject to KOMA to recess into an executive session for the purpose of “consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship....” The term “consultation” as used in the KOMA necessarily implies the presence of an attorney. Even though a letter from an attorney to his client containing advice is a privileged communication, we must conclude that members of a public body cannot recess into an executive session to review and discuss among themselves a letter from their attorney. Therefore, it is our opinion that the “consultation with an attorney” exception to the open meetings law cannot be invoked unless the attorney for the body is present.

82-247 K.S.A. 1981 Supp. 75-4319(b) authorizes legislative and executive bodies or agencies subject to KOMA to conduct an executive session or recess for the purpose of “consultation with an attorney for the body or agency which would be deemed privileged in the attorney-client relationship.” However, the attorney-client privilege may not be invoked if the attorney is not present, or if persons, other than the attorney and his or her agents, are parties to the communication. Moreover, the communication must be confidential in character and be so regarded by the governmental body or agency.

Executive Session: Financial Data/Trade Secrets

OPINION SYNOPSIS OF THE OPINION

88-148 A public body may recess into executive session to discuss confidential financial data or trade secrets. KOMA is to be interpreted broadly to give effect to the legislative intent that meetings of public bodies be accessible to the public; exceptions to the Act must be construed narrowly. Public bodies must take care to recess into executive session on the basis of K.S.A. 75-4319(b)(4) only when the topic of conversation clearly involves confidential financial data, or “trade secrets” as that term has been defined by Kansas courts.

86-48 Questions involving the prospective location of a business in the area may be discussed in executive session only as they concern the acquisition of real property or confidential data relating to the financial affairs of the business.

Executive Session: Negotiations

OPINION SYNOPSIS OF THE OPINION

92-51 K.S.A. 72-5423 and K.S.A. 75-4317, et seq. may be read in harmony. Thus, although K.S.A. 72-5423 mandates applicability of KOMA to certain meetings between professional employee organizations or their representatives and a board of education or its representative, the provisions of K.S.A. 75-4319, nevertheless, permit certain discussions to be closed.

Executive Session: Matters Affecting Students

OPINION SYNOPSIS OF THE OPINION

92-51 If a specific employee or student may be discussed pursuant to K.S.A. 75-4319, an executive session may permissibly include individuals who aid the public body. Mere observers may not attend executive sessions.

Executive Session: Acquisition of Real Property

OPINION SYNOPSIS OF THE OPINION

89-92 KOMA provides that only certain subjects may be discussed behind closed doors. In absence of an applicable exception, discussions concerning negotiation strategy in formulating offers, and offers received relating to the acquisition of a water utility must be held in open, public meeting. The “acquisition of real property” exception, K.S.A. 1988 Supp. 75-4319(b)(6) may only be used when the primary focus of the discussion is real property.

87-91 Under KOMA, public bodies may recess into an executive session to discuss only those six subjects listed in the act. K.S.A. 75-4319(b)(6) provides that discussions concerning the acquisition of real property by a public body may take place in a closed meeting. Therefore, discussions relating to the sale of real property owned by a public body must be held in an open meeting. The procedures to be followed in conducting an executive session and in returning to an open meeting are left to the discretion of the members of the body as the KOMA does not regulate the operation of executive session.

86-48 Questions involving the prospective location of a business in the area may be discussed in executive session only as they concern the acquisition of real property or confidential data relating to the financial affairs of the business.

Penalties and Enforcement

OPINION SYNOPSIS OF THE OPINION

90-120 A recall petition states sufficient grounds under K.S.A. 25-4302 if that petition contains an allegation and sufficient information concerning a public official's alleged willful violation of KOMA. The election district referred to in K.S.A. 25-4320 and 25-4325 is the district which currently exists and which the local elected official now represents.

80-168 The willful neglect of duty by a member of a governing body in failing to perform those duties imposed by the KOMA may constitute grounds for ouster pursuant to K.S.A. 60-1205.