

Governmental Business in Secrecy in Kansas ***2019 Update***

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The Kansas *Open Meetings Act* [K.S.A. 75-4317 through 75-4320(f)] specifies that in closing an open meeting, any governmental body subject to the *Act* must pass a formal motion that includes (1) a statement describing the subjects to be discussed during the closed or executive meeting, (2) the justification for closing the meeting, and (3) the time and place at which the open meeting shall resume. The complete motion must be recorded in the minutes of the meeting and maintained as a part of the permanent records of the public body or agency. Discussion during the closed or executive meeting must be limited to those subjects stated in the motion.

These requirements enable Kansas citizens to know enough about what their elected officials are doing so that they may respond appropriately. To serve that purpose, the required motions need to give citizens *meaningful* information about the subjects being discussed. Meaningful information is information that would allow a member of the public to identify the *issues* that are to be discussed in the closed meeting.

THE 2016 STUDY OF 2014

In order to determine the degree of compliance with the Kansas *Open Meetings Act*, in 2016, I reviewed the 2014 minutes of the governing bodies of the ten most populous cities and the ten most populous counties in Kansas.

The 2014 minutes revealed that 631 closed sessions were held for a total of at least 240 hours. All of the governing bodies except the Manhattan City Commission closed meetings at times without disclosing *any* meaningful information about the subjects they discussed. In doing this, they conducted at least 200 hours of governmental business in complete secrecy.

The amount of business conducted in secrecy varied widely. The highest was 41 hours by the Saline County Board of Commissioners, followed 31 hours by the Salina City Commission, 25 by the Shawnee County Commission and 20 by the Riley County Commissioners. The Manhattan City Commission conducted no governmental business in secrecy.

In 2014 the Lawrence City Commission conducted 8 hours and the Douglas County Commission 1 hour of business in secrecy.

The subjects to be discussed during closed sessions were most commonly described as

“personnel matters” or an equivalent or “privileged communications.” Rarely in these cases was an informative subject disclosed. In 88% of closed sessions and for 83% of closed session time, governmental business was conducted in secrecy. 25% of the governing bodies never or rarely stated the times at which open meetings were to resume. 75% never stated the places at which their open meetings were to resume.

Although the Kansas *Open Meetings Act* requires that any binding action be taken in open sessions, at times governmental bodies made decisions in closed sessions and then passed meaningless motions in open sessions, thereby subverting this requirement.

THE 2017 AMENDMENTS TO THE *OPEN MEETINGS ACT*

Legislation amending the *Open Meetings Act*, introduced by Senators Marci Francisco and Molly Baumgardner, was passed in 2017 and signed into law. That legislation identified the allowed *justifications* for closing meetings, made clear that the *subjects* to be discussed were different than the justifications for closing meetings, and made several other modifications to improve the *Act*. The amended *Open Meetings Act* went into effect on July 1, 2017.

THE 2019 STUDY OF 2018

In order to determine the degree of compliance with the Kansas *Open Meetings Act* since the 2017 amendments went into effect, I reviewed the July-through-December 2018 minutes of the same governing bodies as were previously reviewed. The methods were kept as close to those used in the 2016 study as possible.

In 2018, the time spent by City and County governments in closed meetings continued to vary widely, from none (for the Manhattan City Commission) to 32.2 hours per year (for the Salina City Commission). The time spent by these groups doing business in secrecy also varied widely, from none (for the Manhattan City Commission) to 24.5 hours per year (for the Sedgwick County Board of Commissioners). 90% of the governing bodies closed meetings at one time or another without giving *any* information about the subjects they were discussing, down only 5% from 95% in 2014. 60% of the total time spent in closed sessions was spent doing business in secrecy, down from 83% in 2014.

25% of the governmental bodies continued their practices of never or almost never stating the time at which open meetings were to resume. 45% of the governmental bodies improved greatly in stating the place at which the open meetings were to resume while another 25% continued their practices of never or almost never stating the place at which open meetings were to resume. In 2018 the Lawrence City Commission and the Douglas County Commission always stated both.

K.S.A. 75-4318(a) and K.S.A. 75-4319(c) prohibit governmental bodies from taking action in closed sessions by requiring that decisions made in closed sessions be enacted through motions

passed in open meetings. The Lenexa City Council, the Leavenworth Board of County Commissioners and the Board of Riley County Commissioners discontinued their practices of passing meaningless motions after resuming open meetings. However the Olathe City Commission did not. The motions passed by the Olathe City Commission clearly defeat the purpose of the law, with meaningless action taken in open sessions and the significant action taken in closed sessions. This subterfuge should not be used.

RECOMMEND ACTION

It is apparent from the recent review that, although some progress has been made in open meetings practices, almost all of the governing bodies of the largest cities and counties in Kansas continue to pass meaningless motions and thereby conduct governmental business in complete secrecy. The *Open Meetings Act* should be amended to require that when closing an open meeting, a governmental body describe the specific *issues* to be discussed in the closed session in sufficient detail to allow members of the public to identify those issues. Recommended motions for closing meetings can also be made available in order to help governmental bodies to comply with the requirements to include the times and places at which their open meetings will resume in their motions for closing meetings. These steps can be taken without harming the interests of the governmental bodies involved.

