

### **Statement on SB 360**

AN ACT concerning open meetings; relating to certain justifications for closing meetings; amending K.S.A. 2015 Supp. 75-4319 and repealing the existing section.

Date: February 1, 2016

To: Senate Standing Committee on Judiciary, Kansas Legislature  
c/o Sen. Jeff King, Chair, Judiciary

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Re: Hearing February 2, 2016, on SB 360

SB 360 would clarify conditions under which public bodies and agencies may move from an open meeting to an executive session. Ideally, however, the use of the phrase “to maintain confidentiality” in Section 1.(b)(1) through (14) would be reconsidered.

Presumably, the phrase “to maintain confidentiality” appears repeatedly in Section 1.(b) in an effort to prevent officials in an executive session from drifting into discussion of non-confidential topics. When officials begin discussing topics outside the authorized scope of the executive session, they violate the law. Non-confidential matters must be discussed in an open meeting.

However, the phrase “to maintain confidentiality” is repeated so often in Section 1.(b) that it may give the impression that secrecy is valued over openness. If not removed, the repetition of the phrase “to maintain confidentiality” could have an unintended chilling effect, silencing executive session participants, even if confidentiality at some point after the session no longer is warranted.

Perhaps the purpose of the phrase “to maintain confidentiality” could be achieved without the repetition. For example, an alternative might be to amend the line in Section 1.(a)(3) that says, “Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.” The line might be extended this way: “Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion, *and shall be limited only to confidential consideration of those subjects.*” Another possibility might be: “Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion, *and shall consist only of confidential deliberations on those subjects and no deliberations on any non-confidential subjects.*”

*NOTE: As a faculty member at the University of Kansas School of Law, I teach classes and engage in research related to First Amendment. My areas of interest include laws that provide for public access to records and proceedings of public agencies. My views regarding SB 360 are entirely my own. They are not representative of the law school or the University.*