Legislative Research Department July 9, 1976

M I N U T E S

SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS

June 22 and 23, 1976

Room 519S, State House

Members Present

Representative Lloyd Buzzi, Chairman
Senator Neil Arasmith, Vice-Chairman
Senator Arden Booth
Senator Jim Parrish
Senator Ed Reilly
Representative Fred Harris
Representative Ken Marshall
Representative Joe Mikesic
Representative Jack Rodrock
Representative Tom Slattery
Representative Earl Ward

Staff Present

J. Russell Mills, Jr., Legislative Research Department
Donald L. Jacka, Jr., Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Alan Alderson, Revisor of Statutes Office

Conferees Present

Ann Hebberger, League of Women Voters
Jim Reardon, Kansas Counties and District Attorneys' Association
Simon Roth, Ellis County Attorney, Hays
Phil Fromee, Coffey County Attorney, Burlington
Forest Swall, Committee on Penal Reform, Kansas Mental Health Association
Bill Arnold, Kansas Council on Crime and Delinquency
Carol McDowell, Kansas Trial Lawyers' Association
Richard Penaire, Kansas Trial Lawyers' Association
Jane Werholtz, Kansas Trial Lawyers' Association
Robert Tilton, Kansas Sheriffs' Association
Mark Anson, Johnson County Sun
Bill Redlin, Freedom of Information Comittee, Kansas AP Broadcasters
Ted Anderson, Editor, Leavenworth Times
Murrell Bland, Kansas Press Association
Roger N. Wilson, WIBW-TV, Topeka
Darlene Caraway, Editor, Lansing Leader
Alice Fitzgerald, Common Cause of Kansas
David Merritt, Executive Editor, Wichita Eagle-Beacon
Representative Duane S. "Pete" McGill, Speaker of the House
Ron Crotty, Freedom of Information Committee, Sigma Delta Chi
John Braden, United Press International
Ken North, Sheriff's Advisory Committee, Wyandotte County

June 22, 1976

Morning Session

The first meeting of the Special Committee on Federal and State Affairs was called to order by the Chairman, Representative Lloyd Buzzi. The Chairman asked members of the staff to briefly summarize each of the proposals assigned to the Committee for interim study.

Mr. Alderson provided background material concerning Proposal No. 19 - Rural Airport Development. He noted that two bills, H.B. 2985 and Sub. for S.B. 916 were considered by the 1976 Legislature, although neither bill was enacted. Mr. Alderson reviewed the funding mechanism of the Federal Airport and Airway Development Act of 1970 and also provided a section by section summary of Sub. for S.B. 916. This bill would establish an aid program for municipal airports in Kansas, update definitions relative to aircraft, outline various responsibilities and duties of the Secretary of Transportation, and provide for the annual registration of aircraft. The bill provides that 50% of the state's motor vehicle fuel tax collected from the sale of fuel sold and delivered into the fuel tanks of aircraft is to be credited to the State Aviation Fund, which fund is created by the bill. The remaining 50% of the fuel tax would be eligible for refund. The bill also exempts the sale of motor vehicle fuel used in aircraft from the sales tax. The Secretary of Transportation would be authorized to expend moneys from the State Aviation Fund for the purpose of making grants to any municipality undertaking the improvement or construction of a municipal airport, except airports built or improved with the assistance of federal funds. The maximum grant amount for any project would be set at $50,000 and would be conditioned on equal matching funds from the municipality.

Representative Harris noted that Sub. for S.B. 916 was designed to alleviate some of the adverse reaction which had been noted with regard to H.B. 2985. Representative Rodrock suggested that copies of Sub. S.B. 916 be sent to interested persons so that it could be used as a basis for discussion during the hearings on this proposal. Staff agreed to send copies of this bill to the appropriate parties.

Miss Torrence provided background materials regarding Proposal No. 18 - Open Public Meetings Law. She briefly reviewed the Kansas Open Meetings Act (KOMA), K.S.A 1975 Supp. 75-4317 et seq., and summarized several Attorney General Opinions which have interpreted various provisions of the Act. Miss Torrence also commented briefly on Proposal No. 21 - Due Process Requirements for Defendants Found Not Guilty for Reasons of Insanity and Proposal No. 22 - Hearings Prior to Release of Certain Inmates.

Mr. Mills discussed Proposal No. 60 - Steam Boiler Insurance and Inspections and noted that several problem areas had arisen with regard to steam boiler insurance and inspections since the repeal of the Kansas Boiler Inspection Act by the 1975 Legislature. It was noted that H.B. 2837 had been introduced during the 1976 Session to correct some of the problems with regard to steam boiler insurance and inspections and that the bill has been held over for interim study. Representative Ward stated that problems exist both with regard to the availability and cost of boiler insurance and with the responsibility for boiler inspection. Staff also briefly reviewed Proposal No. 61 - Statewide Building Code, Proposal No. 20 - Alcoholic Liquor Price Affirmation, and Proposal No. 23 - Regional Jails.

Proposal No. 23 - Regional Jails

The Chairman introduced Ann Hebberger as the first conferee on Proposal No. 23. Miss Hebberger, representing the Kansas League of Women Voters, presented her written testimony to the Committee (Attachment I) and stated the KLWV is opposed to the concept of regional jails. She stated that the League does not believe that building larger facilities to "warehouse" more people would solve any problems. Miss Hebberger suggested four specific recommendations for Committee consideration:

1. The establishment of community correctional centers to replace those jails that are in need of replacing and utilization of these facilities to maximum capability.

2. Community correctional centers should be established within each of the 29 judicial districts.

3. Centers should be built as needed in the area of each judicial district that has access to available community resources, such as mental health centers, educational opportunities, counselling, health care, and legal services.

4. The state should develop minimum guidelines that should be based on the existing jail standards for community correctional centers.

A letter was presented from Sister Delores Brinkel of the Catholic Social Service, Kansas City, Kansas, in which she requested to be heard at a later date regarding the regional jail proposal. (Attachment II).

Jim Reardon, Kansas County and District Attorneys' Association, introduced the next conferee, Simon Roth, Ellis County Attorney. Mr. Roth described the new jail facility which was recently opened in Ellis County and stated that, in effect, this jail is serving as a regional facility in that the Ellis County Jail receives prisoners from an eight-county area. Mr. Roth stated that the 24-hour surveillance requirement contained in the jail standards promulgated by the Secretary of Corrections is costing Ellis County approximately $60,000 a year. This figure includes the additional personnel necessary, uniforms, salaries, and fringe benefits.

Senator Arasmith inquired concerning cost figures for detaining inmates from surrounding counties. Mr. Roth responded that the jail charges $15 per day for out-of-county inmates and $10 per day for inmates from the city of Hays.

The next conferee was Phil Fromme, Coffey County Attorney. Mr. Fromme stated that he felt that Coffey County had a good jail, although modifications needed to meet the standards proposed by the Secretary of Corrections would cost approximately $10,000. He also stated that meeting the 24-hour surveillance standard set by the Secretary would require additional employees and greater expenditures. Mr. Fromme expressed general opposition to the concept of regional jails and stated that existing facilities could work together to resolve problems at the local level.

In response to a question, Mr. Fromme stated that the average stay in the Coffey County facility is less than three days. Most persons who are sentenced for jail terms are sent out of the county, usually to the Ottawa jail. The cost for use of the Ottawa jail is $10 per day. Mr. Fromme stated that juvenile offenders are either placed in the Lyon County Youth Center or are paroled to a responsible person. He also stated that he had experienced very little difficulty in transporting these persons to the various locations for confinement. Mr. Fromme said that he has a tendency to use the jail facilities as little as possible and preferred to parole the offenders and have them work out their fines, except in cases of serious crimes.

With regard to jail standards, Mr. Fromme felt that some of the standards were unworkable and noted that, in the case of Coffey County, the fire escape was not wide enough and the jail did not possess an exercise center as required by the standards. He felt that with only minor changes the jail could meet most of the Secretary's standards. Representative Slattery noted that the 1976 Legislature had made the jail standards advisory rather than mandatory.

Mr. Reardon distributed a summary statement from the Kansas County and District Attorney's Association which indicated the feelings of several members of the Association. (Attachment III). The Committee was recessed until 1:30 p.m.

Afternoon Session

The Committee was called to order and a statement was distributed from Karen Blank, Executive Director of the American Civil Liberties Union of Kansas (Attachment IV). The statement noted that the American Civil Liberties Union of Kansas has taken no formal

stand with regard to the concept of regional jails but urged the Committee to give the proposal a great deal of consideration since such a project would require additional financial resources and a greater commitment to rehabilitation. The KCLU feels that putting more prisoners in one facility, with no effort at rehabilitation, would be worse than making any change in the present situation.

The next conferee was Forest Swall, Chairman of the Committee on Penal Reform of the Kansas Mental Health Association. Mr. Swall noted that the Committee on Penal Reform would oppose the regional jail concept and would support instead the concept of what he termed "regional correctional services" which would provide counselling, social integration, health services, work release, and other related areas of needed services rather than to build more jails to house people behind bars. He stated that his group would support the regionalization of community correctional services, but not regionalization of physical facilities. Mr. Swall briefly discussed the Minnesota Community Corrections Act and the Iowa Regional Corrections Act. In response to a question from Senator Parrish, Mr. Swall stated that the regionalization of community correctional services would require state funding along with local support in order to operate. He also stated that the Committee might consider aligning all correctional services with judicial district lines rather than on some other basis.

The next conferee was Bill Arnold representing the Kansas Council on Crime and Delinquency. Mr. Arnold also supported the concept of regional correctional services. He suggested that the regionalization should occur along the lines of the mental health center districts, rather than judicial districts, so that full use could be made of the various services offered by the mental health centers. He also felt that strong state support would be necessary for such a program to operate. He estimated that a jail facility with a capacity of 50 or fewer inmates would require a operating budget of approximately $100,000 per year.

The next conferee was Carol McDowell of the Kansas Trial Lawyers' Association who stated that her Association does not have a position on the concept of regional jails. She then introduced a member of the Association, Richard Penaire of Junction City. Mr. Penaire stated that he had experience in the public defenders program and was presently in private law practice. He felt that regional jails would create problems for attorneys who would be forced to travel long distances to confer with their clients on various matters. He also noted the security problems involved whenever prisoners were transported from the regional facility to the court. He also stated that reforms were needed in the area of bonding and probation and parole services.

Jane Werholtz Kansas Trial Lawyers' Association, discussed the problems faced by female offenders. She expressed the fear that regional jails would remove female offenders from their families and children and, in many cases, the cost of visitation would be prohibitive. She also noted the difficulty for the defense attorney to visit the female offender when she is removed from her home town and placed in a regional facility. She stated that, under Kansas statutes, female offenders are transported to the Kansas Correctional Institute for Women at Lansing rather than being allowed to serve their sentences in local jails. This statute also has the effect of removing female offenders from their families and home environment.

The next conferee was Kenneth North, Sheriff's Advisory Committee, Wyandotte County, who discussed various problems being faced by the Wyandotte County Jail. He felt there was much support in Wyandotte County for the construction of a new jail and that preliminary studies had been conducted. As one result of these studies, it is estimated that a minimum of 250 square feet per inmate should be the standard used for the entire building area when planning the construction of a new jail facility.

The Committee selected the following dates for future meetings: July 20-21, August 24-25, September 15-16.

June 23, 1976
Morning Session

Robert Tilton, representing the Kansas Sheriffs' Association addressed the Committee and expressed the Association's general opposition of the concept of regional jails. Mr. Tilton felt that the cost of this concept would be prohibitive and noted that in many counties only a sheriff and an undersheriff are available. Thus, were it necessary to transport prisoners for long distances, the county would be left with no law enforcement personnel. He noted that at present there are 64 combined city/county jails in Kansas. Mr. Tilton felt that, without state intervention, sheriffs will cooperate to solve most of the problems with regard to jail facilities. Mr. Tilton stated that he recently surveyed 83 counties and discovered that 6 jails were closed, 10 had been ordered closed, 3 were partially closed, and two were closed but planned to reopen in the near future.

Proposal No. 18 - Open Public Meetings Law

Mark Anson, Editor of the Johnson County Sun newspaper, presented prepared testimony to the Committee (Attachment V). Mr. Anson urged the Committee to strengthen the Kansas Open Meetings Act (KOMA) and expressed concern about the existing provisions for closed meetings. He noted that the existing Act does not spell out exactly when a public body may go into a closed session. He also cited instances in Johnson County which he felt were violations of the spirit, if not the letter, of KOMA. Mr. Anson suggested that the Committee attempt to spell out in the Act those occasions upon which the governing body may go into closed session. In response to a request by Senator Booth, Mr. Anson stated that he would submit a suggested listing of specific occasions upon which public meetings could be closed.

The next conferee was William J. Redlin, representing the Freedom of Information Committee of the Kansas Associated Press Broadcasters, who submitted prepared testimony to the Committee (Attachment VI). Mr. Redlin stated his belief that the Kansas Legislature operated in one of the most open atmospheres to be found in any state capitol in the country. He expressed his hope that the example set by the legislature would carry through to every city hall, county court house, and school board meeting room in the state. Mr. Redlin felt that several public bodies were using the executive session provision of KOMA as a subterfuge to defeat the purposes of the Act. He suggested that it may be necessary to specify the conditions that which a governmental body may recess to an executive session. He also noted problems with the "binding action" provisions of the act and stated that some interpretations of this section have led to the belief that anything other than binding action may be closed to the public. Mr. Redlin stated that no public body should be allowed to hold a meeting without giving at least 24-hour notice and, under emergency conditions, not less than six-hours notice. Mr. Redlin described a survey recently conducted by the Kansas AP Broadcasters which indicates that most problem areas in the state exist among school boards and smaller governmental bodies.

Ted Anderson, Editor of the Leavenwoth Times, presented prepared testimony (Attachment VII). Mr. Anderson cited several examples of how the current Open Meetings Act is being abused or openly ignored. He felt that one body which has practiced blatant abuse of the Kansas Open Meetings Act is the Board of Education for the Bashor-Linwood USD 458. He stated that much of that board's action is being taken in executive session. Mr. Anderson felt that the notification provisions of the Act should be strengthened to require advance public notice. He also offered the following suggestions for Committee consideration:

1. Provide a clear and definite list of those public matters which cannot be withheld from secrecy;

2. Include a clear explanation of the manner by which a private citizen can demand compliance with the Open Meetings Act;

3. Establish a clear and unmistakable requirement for advance public notice of a public meeting;

4. Establish adequate and enforceable penalties; and

5. Make it clear that it is the intent of the legislature to protect the public's right to know.

The next conferee was Murrel Bland representing the Kansas Press Association. Mr. Bland stated that the Board of Directors of the Kansas Press Association recently adopted a resolution urging this Committee to do nothing that might weaken the Kansas Open Meeting Act. Mr. Bland felt that Kansas had one of the stronger laws in the country but did see room for improvement. Mr. Bland felt several public bodies are violating the spirit of the law through the use of executive sessions.

The next conferee was Roger N. Wilson, WIBW-TV, who directed the Committee's attention to a bill draft which had been prepared during the 1976 Session but was not introduced (Attachment VIII). Mr. Wilson went through the draft section by section and stated that suggested amendments would strengthen the Kansas Open Meetings Act. He felt that perhaps the phrase "binding action" needed clarification and that Section 2(f) should be amended to provide for "reasonable rules" with regard to the use of cameras, photographic lights, and recording devices.

In response to a question from Senator Arasmith, Mr. Wilson stated that he has experienced very little difficulty with meetings on the state level and he presently felt that most violations occurred in the smaller governing bodies. Mr. Wilson urged the Committee to give careful consideration to the bill draft and the suggested changes to strengthen the KOMA.

Representative Duane S. "Pete" McGill, Speaker of the House, addressed the Committee. Speaker McGill felt that the definition of "open meeting" in Section 1(c) of the bill draft is much too broad in that it defines "meeting" as any coming together of a quorum of the members of any public body. Speaker McGill felt that in the smaller towns, if two members of the county commission dined together in a restaurant, this action would constitute a meeting under the proposed changes. He said that, if the restrictions were excessive, they would deter good and qualified people from running for office at all levels of government. Speaker McGill expressed general support for a strong Open Meetings Act but cautioned that, if it were made too restrictive, problems would arise in the smaller cities through the state.

Darlene Caraway, Editor of the Lansing Leader, addressed the Committee and discussed specific problem areas caused by the excessive use of executive sessions by the Lansing School Board. She felt that such excessive use of executive sessions was a direct violation of the law.

Alice Fitzgerald, Executive Director of Common Cause of Kansas, presented prepared testimony to the Committee (Attachment IX). She expressed general approval of the Kansas Open Meetings Act and said that Common Cause would oppose any amendment which would weaken the act. She felt that some areas needed strengthening and made six specific recommendations:

1. The notice provision of the statute should require public notice to be given for the calendar year, where possible, and in no case later than 72 hours before the meeting;

2. The notice provision of the statute should be amended to include special as well as regular meetings;

3. Party caucuses should be specifically covered by the statute;

4. Conference committees should be specifically covered by the statute with at least a one-hour notice required;

5. There should be a provision for the keeping of detailed minutes and their availability to the public;

6. The provisions under which a closed meeting could be held should be specified, such as matters pertaining to personnel, litigation, or security.

David Merritt, Executive Editor of the Wichita Eagle-Beacon, submitted prepared testimony to the Committee (Attachment X). Mr. Merritt congratulated the legislature for its 1975 amendment to the Kansas Open Meetings Act but felt that there exist certain loopholes that create problems which should be considered by the Committee. Mr. Merritt noted the following problem areas:

1. Although the intent of the law seems to be that executive sessions should be at announced times and places, several boards and committees often go into hiding with even the time and place of their closed meeting a secret.

2. The exception to the limitations on open meetings - "except as otherwise provided by law" - has allowed several local governing boards to write their own exceptions.

3. The use of executive sessionsdenies information to all citizens, yet nothing in the law prohibits members of boards, committees, and commissions from divulging the information they gather in these executive sessions.

4. The phase "no binding action shall be taken during such closed or executive sessions" allows discussion and decision-making to be done behind closed doors, with the announcement of the decision the only thing required to be public.

In closing, Mr. Merritt stated that the law should be amended to provide swift and sure recourse for citizens to combat abuses of the Kansas Open Meetings Act.

Mr. Merritt also submitted the written testimony of Pam Brunger, President of the Kansas Associated Press News Council, who was unable to attned the meeting (Attachment XI). The statement by Ms. Brunger suggested three areas of concern:

1. The lack of a notification procedure in the existing statute;

2. some clarification is needed to specify that policy-making, state-funded, supported, or receiving agencies of a university, such as university senate, faculty senate, and athletic boards, be under the law;

3. the law should be amended to specifically state the reasons for which a meeting could be closed.

Ron Crotty, representing the Freedom of Information Committee of Wichita Chapter of Sigma Delta Chi, a professional journalistic society, said his major concern is the notification provision of the Kansas Open Meetings Act, which he felt should be clarified. Mr. Crotty also discussed several problems which he has experienced with the Sedgwick County Commission and its use of executive sessions. Mr. Crotty submitted a proposed amendment which would limit the occasions on which a meeting may be closed (Attachment XII). The proposed amendment states that executive or closed meetings may be justified only for three reasons:

1. Discussing whether to hire prospective employees or to fire or reprimand an existing employee over which the body has direct and sole control;

2. discussing the price at which the body will consider selling or buying any property when said property must be sold or bought at a negotiated price; and

3. discussing the terms of any proposed out-of-court settlement of litigation filed in a court of law.

The Chairman called the Committee's attention to a letter he had received from the League of Women Voters of Kansas with regard to the Open Meetings Act (Attachment XIII). The League of Women Voters suggested two amendments to the existing law:

1. Opening the Senate caucus meeting; and

2. opening conference committee meetings.

John Braden, UPI, addressed the Committee and discussed certain problems he had recently encountered at a meeting of the State Board of Regents.

The Chairman reminded the Committee that the next meeting will be July 20 and 21. The meeting was adjourned.

Prepared by J. Russell Mills, Jr.

Approved by Committee on:

July 21, 1976
(Date)

LEAGUE OF WOMEN VOTERS OF KANSAS

Attachment I

Affiliated with the
League of Women Voters of the United States
3127 Huntoon
Topeka, Kansas 66604

STATEMENT TO THE SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS

Representative Lloyd Buzzi, Chairman
Topeka, Kansas
June 22, 1976

I am Ann Hebberger, member of the Board of Directors of the League of Women Voters of Kansas.

The reason that the League of Women Voters of Kansas has taken an active interest in conditions of local jails, stems from our study of the Kansas Penal System since April, 1971. Many local League members have visited their own jails during the past five years, and have had little difficulty determining that, not only most of the jails were in deplorable condition, but were appalled by the complete lack of services available to those incarcerated for whatever reason.

I could say that we would not support a regional jail system. The League does not believe that building a larger facility to ware-house more people, local or regional, or hiring more people for security reasons solves problems. This approach only tends to lock-in the same old problems in a new setting.

We would and do support a new approach to the jail situation. I would like to submit the following suggestions for your consideration.

1. The League would like to see COMMUNITY CORRECTIONAL CENTERS REPLACE THOSE JAILS THAT ARE IN NEED OF REPLACING, AND TO UTILIZE THESE FACILITIES TO MAXIMUM CAPABILITY. We support the National Advisory Commission on Criminal Justice Standards and Goals which states that, "The overall goal of the community correctional center is to furnish physical and social environments conducive to the individual's social reintegration. Central to this goal is the provision of a safe, positive environment in which the individuals have a chance to express and develop their innate abilities". We also agree with the Standards and Goals that the center concept is not suggested as a rigid formula for all communities but rather as an approach to meeting existing and projected needs, and perhaps a way to structure the diverse activities now operating in the various communities in Kansas.
2. COMMUNITY CORRECTIONAL CENTERS SHOULD BE ESTABLISHED WITHIN THE 29 JUDICIAL DISTRICTS. This would appear to be the most logical setting with court unification. If a formula is established, it should be flexible enough that the judicial districts could be combined in more sparsely populated areas.
3. THE CENTERS SHOULD BE BUILT, AS NEEDED, IN THE AREA OF EACH JUDICIAL DISTRICT THAT HAS ACCESS TO THE MOST AVAILABLE COMMUNITY RESOURCES such as: mental health centers, educational opportunities, counseling, health care and legal services. Of the above services available, they should be provided, as needed, on a contractual basis.

4. THE STATE SHOULD DEVELOP MINIMUM GUIDE-LINES that should be based on the existing Jail Standards for community correctional centers. Even though local units of government, we assume, would be cooperating on a voluntary basis to construct new facilities as the need arises, a plan should be submitted and approved before any new construction takes place. The GCCA could be considered the proper agency for review. The League's idea of planning means, first, what services and staff will or can be provided, and second, building a facility to meet those needs.

HOW TO UTILIZE FACILITIES TO MAXIMUM CAPABILITY

It would first be necessary to determine who is incarcerated in our jails now besides juveniles: pre-trial detainees, sentenced male misdemeanants, those waiting to go to prison, those waiting for a re-hearing or a new trial, etc.

There are several other possibilities for the use of community correctional centers such as:

1. Intake services
2. Pre-sentence investigations for convicted felons and misdemeanants
3. WOMEN
4. Work-release
5. More probation and parole services
6. Pre-release from a State institution to facilitate the re-integration process.
7. Short term returnees - an alternative to returning parole violators to prison for a short term.
   (Both number 6 and 7 could be provided by contracting with the Dept. of Corrections).
8. After-care service for those in need or want help with problems such as housing, marriage counseling, employment, etc.

ASSESSMENT OF NEEDS

One of the most difficult problems in planning new correctional programs is obtaining agreement as to the numbers and types of persons to be served. Changes occur that directly affect the number of offenders to be accomodated. There are new approaches to incarceration going on now in Kansas. Some of the district attorneys and prosecutors and judges are diverting some who have drug and alcohol related problems out of the jails. There are also a few pre-trial diversion programs, and some courts recognize ROR more than others. This is mentioned only to point out that more is needed in determining an assessment of needs than arrest figures for the jurisdictions that will be served.

There are several choices in planning for correctional centers: a single complex, the use of existing facilities, a multi-unit approach, or what is called the network approach for urban areas.

There are some disadvantages to community correctional centers:

1. It would be difficult to keep individuals involved in their home community. Ideally, to facilitate re-integration, the inmate must interact continually with his or her community, and must be allowed home furloughs to find post-release employment, housing, etc. Work-release would be difficult, but not impossible.

2. The time and cost involved in moving people to and from such a facility. These cost factors should be a part of the planning process and included in the over-all cost projections for any delivery system, regional or single county.

We do not know if what we have purposed today will lessen the crime rate. We do know that jails are the intake point for our entire criminal justice system, and that many people graduate from jails to our State institutions. Maybe if help is provided along the way, it might lower the crime rate. The League believes that providing services when needed within a community correctional center, and by contract, that it would be less expensive in human lives and money then incarceration within our penal system at a later time.

Thank you very much for the opportunity to speak to you today.

Join prison alternative program

An alternative to incarceration was made possible for criminal offenders in Johnson County when the board of county commissioners approved granting $12,000 to the Tri-County Diagnostic and Treatment Center located in Kansas City, Kan.

The money, to be taken from the District Court budget, will be matched with federal Law Enforcement Assistance Administration funds to provide $22,000 in salaries for two counselors at the center.

District court and probation officials have supported participation in the program which also includes Leavenworth County. Maurice Holman, assistant administrator of the center, said the program was originated by the Kansas City Municipal Court in 1971 as an alternative to prison for first-time offenders.

Counseling and living accommodations are provided at the center, 1200 N. 7th, for individuals on probation. Besides counseling, the center aids probationers to locate jobs.

The program has been expanded to include more than first offenders. In fact, some convicted violators have been transferred from state and federal institutions for treatment at the center, Holman said.

Not all probationers reside at the center. Some are scheduled only to report to the center two or three times weekly for counseling.

Johnson County District Judge Herbert Walton explained that the program will make the case load for the probation office more manageable. "Our case load is already over double the national average set for doing good work," Walton said.

Holman said this is the first grant of its kind to be allocated by the federal government. The federal government is enthusiastic about the program. That enthusiasm is evidenced by the fact that this money was readily available. One of the main interests of the government now is the three-county concept. They are encouraging the counties to work together.

"National attention is being focused on this. We've received calls from as far away as Washington and Boston from people wanting to know how the program is working," Holman said.

Holman said it is hoped the matching funds will be available by June 1. This will be the first Johnson County money extended for the program. In the past, Holman said, a limited number of individuals from Johnson County have been treated at the center on a complimentary basis.

In the second year of the program, LEAA will provide $22,000 more for Johnson County's participation with no additional matching funds necessary from the county Holman explained. In succeeding years, the program will become self-sufficient. At that time, some individuals convicted of crimes will be given a choice of either jail or the center. If they choose the center they will be obligated to pay a specified fee for the time kept at the center. Attempts would be made to find jobs for indigents unable to otherwise pay the fee.

V. IGNATIUS J. STRECKER, D.D., S.T.D.
PRESIDENT

LOUIS F. NOCCHARIO, A.C.S.W
DIRECTOR

CATHOLIC SOCIAL SERVICE

OF THE

ARCHDIOCESE OF KANSAS CITY IN KANSAS

415 NORTH 15TH STREET
KANSAS CITY, KANSAS 66102
AREA CODE 913, 371-3055

Attachment II

June 18, 1976

Representative Lloyd Buzzi, Chairman
Federal and State Affairs Special Interim Committee
Statehouse
Topeka, KS

Dear Representative Buzzi:

Unfortunately I will be out of the state on June 22 when the Federal and State Affairs Special Interim Committee will be hearing testimony on Proposal 23, Regional Jails. On that date I will be looking at the Omaha Department of Corrections and the development of their county corrections plan.

At a later date, I would appreciate the opportunity to share my findings with your committee about any regional approach taken by the Omaha Department of Corrections. My experiences in jail ministry and advocacy for Catholics Social Services which includes the Archdiocese of Kansas City in Kansas or the eastern fourth of the state, might also be of value to your committee.

Sincerely yours,

Sister Dolores Brinkel

Sister Dolores Brinkel
Jail Ministry

SDB:cl

FUNDED BY THE UNITED WAY OF
WYANDOTTE COUNTY
JOHNSON COUNTY
LEAVENWORTH COUNTY
AND THE ARCHDIOCESE

Attachment II

Kansas County & District Attorneys Association

707 Quincy • Topeka, Kansas 66603 • (913) 357-6351

EXECUTIVE DIRECTOR – JAMES REARDON

PRESIDENT
ROBERT W. MANSKE
Yates Center, Kansas

KARL W. MASONER - Chase County

I see the "regional" jail facility as the only solution for some small counties. HOWEVER, my personal reaction is -- PLEASE LEAVE US ALONE -- WE'LL WORK IT OUT WITH OUR NEIGHBORS.

CHARLES T. KIER - Washington County

I oppose the concept of regional jails. I ask that my name be placed with the list of prosecutors opposing the idea.

STEVEN L. OPAT - Dickinson County

The idea is proper and will in my opinion be necessitated, just as the Court reform was and eventually just as the D.A. Plan will be. The problem is lack of funds and misconceptions by legislators and the public.

DAVID J. HARDING - Trego

I am opposed.

JAMES G. KAHLER - Rice County

The recommendation of the investigator for the Secretary of Corrections which examined our jail sometime ago required that Rice County hire sufficient staff to have personal surveillance upon prisoners twenty-four hours a day. We were advised that closed circuit television would not suffice for this requirement.

Our jail in Rice County is totally unoccupied approximately one-third of the year. In the event Rice County is required to hire sufficient staff for personal observation of prisoners twenty-four hours a day the expense of hiring this staff would be prohibitive in view of the fact that they would have nothing to do for approximately four months of each year.

ROBERT E. LAUBENGAYER - Ellsworth County

It would appear to me that such regional jails would be a proper means of meeting the Standards Committee's objectives as to long term facilities, however, I believe a separate standard should be issued for short term facilities for use on a local basis. I would hope that if changes are to be made concerning this matter, the information would be quickly forthcoming since this County is at the present time in the process of choosing an architect to design a complying facility.

CHARLES L. FRICKEY - Decatur County

For longer-term detention and jailing, say in excess of 60 days, a regional type of facility would be fine. But I think we still need local jails for short-term (say under 60 days) detention and incarceration. It would be a great hardship, for example, if a person were picked up in the middle of the night and the one law officer on duty had to take him 60 miles or so to jail. Trial preparation would also be a problem if the defendant were not in the local county.

Attachment I

American Civil Liberties Union of Kansas

To: Interim Study Committee on Regional Jails

From: Karen Blank, executive director

Subject: Regional Jail Facilities

The American Civil Liberties Union of Kansas has taken no formal stand in regard to the construction or use of regional jails in the state of Kansas. We feel that such a proposal merits a great deal of consideration since such a project would require additional financial resources and a commitment to rehabilitation. More prisoners in one facility with no effort at rehabilitation would be worse than making any change in the present situation.

We are also concerned that the proposal for the construction of new jails comes at a time when correctional planners and experts are re-evaluating the nature of the corrections system in its entirety. Especially under attack is the policy of incarcerating large numbers of offenders in massive institutions. A request for the construction of new facilities or the renovation of antiquated institutions will only continue this policy and will make it more difficult to begin to find alternatives.

Groups such as the National Advisory Commission on Criminal Justice have advised a halt to correctional institution construction for the present, in order than new methods of dealing with offenders can be tested. Correctional institutions of all kinds have been shown to be 1) ineffectual, 2) probably incapable of being operated

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constitutionally, 3) productive of crime, and 4) destructive of both the keepers and the kept.

The annual cost of incarceration has tripled in the past decade. Compared to other methods of incarcerating offenders -- such as community treatment centers, drug programs, and of course probation and parole, it is clearly the most costly. It is no longer simply a concern for the rights of the prisoner which is motivating this evaluation, but a concern that the institutions themselves are costly, ineffective and even destructive to both the individual and society.

Our organization receives many letters each week from prisoners housed in local jail facilities. Very few complain to us about over-crowding or inadequate jail conditions. Their concerns are with the issues of receiving more appropriate educational programs and job training. They are concerned about their lack of access to family and community. These are issues which must be solved by a different approach to corrections, not by creating more room in more institutions. At the same time that we consider building more institutions, community treatment centers are being under-utilized.

Funds for educational and vocational programs comprise a minimal part of the state's budget. Such programs would help to prepare offenders to lead a productive life on the outside. Thus, far we have seen that the sole purpose of jail facilities is to warehouse offenders.

Alternatives to incarceration must be found. These alternatives will take the form of half-way houses, diversion, drug treatment programs, voluntary community supervision programs and others. In the

short range they will be much less costly than more jails. In the long range they will result in both a financial and human savings. This holds for the expanded utilization of probabtion and parole. Continuing to pour millions of dollars into institutions which simply do not work in any way, is a wasteful and demeaning process, and one which will deflect us from finding a sane and just strategy both for society and for the offender.

Attachment V

Testimony before the interim special committee on federal and state affairs of the Kansas Legislature, June 23, 1976.

I am Mark Anson of Overland Park, editor of the Johnson County Sun newspapers. The Sun Newspapers are 13 papers published twice weekly in northeast Johnson County, reaching some 60,000 homes in the county every Wednesday and Friday.

Gentlemen, on behalf of our organization, I would urge you to take this opportunity to strengthen the Kansas open meetings law. I believe ~~it~~ such an action would benefit not only the people of Kansas but the elected officials of the various governmental boards and agencies of the state as well.

Furthermore, if such an action ever is to be considered by the Kansas Legislature, and I believe it must be if we are to have open government, the time to do it is now when the voters of this state are willing to support such an action.

The existing law provides that no binding actions shall be taken at a closed meeting. But, gentlemen, it does not recognize the fact that oftimes the discussions which lead to action of a governmental body or board may be as important to the public as the action itself.

may go into a closed session. There are occasions when such action is justified. For example, personnel questions regarding employees of an agency which might lead to trial by newspaper; negotiations on such things as salary contracts between the National Educafion Association or similar group, and the school boards; discussion of possible land acquisitions -- all, I think, are matters which are of such a delicate nature that in the preliminary discussion period they could be behind closed doors. There may be others. I aill not attempt to put forth a complete list.This, I believe, you are more capable of doing than I.

But as the Kansas law stands today, there are no holds barred on a governing board going into a closed meeting and barring the public from its deliberations. There have been several instances within recent months in Johnson County alone which serve as examples, and I am sure there are other examples as flagrant, or more flagrant, elsewhere in Kansas.

In one case, a board went into so-called executive session to discuss how to expend budget funds and what kind of salary increases on a general basis to give public employees. This, gentlemen, while not a violation of the letter of the law, certainly violates the spirit of

the law.

In another instance, a governing body went into executive session to discuss the qualifications of a man proposed for membership on a public body. Even on a federal level, the qualifications of such appointees are discussed in public. Again, however, this is not a violation of the letter of the law, but of the spirit of the law.

The discussions of a city council regarding termination of a chief of police were conducted in an atmosphere of secrecy, even to the extent of moving a meeting from its originally scheduled place. Again, this is violation of the spirit, if not the letter, of the law.

I would ask, gentlemen, that you attempt to spellout in the Kansas open meetings law those occasions upon whivh a governing board may go into closed se sion, those occasions on which it would do more harm than good to talk and deliberate in the full light of the public.

Tnue, you might come up with some causes with which I would not agree. But you would, at least, give both the public and those in government something specific with which to operate. Generalities such as the law now offers only generate abuse. Specifics, if wrong, can be

corrected.

Gentlemen, I believe you can come up with a strong, new open meetings law, offering specifics to guide governing boards in their deliberations, between now and the next session of the Kansas Legislature. I am sure representqtives of the print and electonic media would welcome theopportunity to work with you in such a project.

I am convinced you would be doing a service to the people of Kansas by giving them a law which is black and white and not some shade of dirty gray.

Thank you for your courtesy in hearing me.

Attachment VI

Remarks by William J. Redlin, Chair, Freedom of Information Committee, Kansas Associated Press Broadcasters

June 23, 1976

Mr. Chairman, and members of the Committee:

Thank you very much for an opportunity to appear before you today. I welcome the opportunity to provide whatever pertinent information I have collected during my year as the chairperson of the KAPB Freedom of Information Committee.

We are fortunate in Kansas that the legislature has operated in one of the most open atmospheres to be found in any state capitol in the country. From deliberations in committee, to sessions of both Houses, and most recently even in party caucuses, the legislators of this state understand and appreciate the fact that democracy cannot function behind closed doors. You, and your predecessors, are to be congratulated. I hope your example will carry through to every city nall, county courthouse, and school board meeting room in the state. If your example fails to inspire others, I hope your consideration of the state open meetings law will serve as ample warning that the state's elected leaders do not regard the matter of public deliberation and functioning of government lightly.

In March of 1976, the Freedom of Information committee of the Kansas Associated Press Broadcasters organization surveyed radio and television A.P. members in the state on the open meetings law, and other subjects.

Their response shows clearly that some problems exist with the law as it stands, and that some governmental units in the state may be circumventing the spirit, if not the letter, of the law.

Seventeen respondants from all parts of the state answered our questions. Sixteen of those indicated they wanted information on their rights under the Kansas Open Meetings law, despite the fact that thirteen respondants felt they were familiar with it as amended during the 1975 legislative session.

Eleven of those responding said they had experienced conflicts over open meetings with school boards, local government, or other public bodies. Eight said they, or their fellow reporters, had been closed out of meetings during the year in a situation where there was some question whether the meeting could legally be closed to the public.

The responses show reporters in the state whose radio or television stations subscribe to the A.P. believe the bulk of their conflicts occur with school boards, city and county commissions, and the councils and boards that are subgroups of those commissions; and their use of "executive sessions." Many reporters believe the "executive session" provision of the current law is being used as a cover to avoid public discussion of local controversy. The typical "case" cited involves a school board or a commission declaring an executive session to discuss "personnel" matters. Later in the meeting, or at the next meeting, the group emerges from their "personnel" discussion with a public vote, or pronouncement, on a matter of some controversy or concern to the community. While the law states ("...they shall not be used as a subterfuge to defeat the purposes of this act.") that administrative or legislative bodies may use executive sessions to discuss those matters legislators felt could legitimately be kept from public scrutiny, the attitude of some public officials seems to be that the "executive

session" provision allows private discussion of any issue considered too volitale for an open meeting.

These concerns also tie in with the section of our current law which mandates no "binding action" shall be taken by secret ballot. Some interpretations of this section have apparently led to the belief that anything other than the binding action may be closed to the public.

I would urge that you consider clarifying these areas in the current statute. It may be necessary to specify the conditions under which a governmental body may recess for an "executive session." Certainly, the spirit under which the original legislation was passed intended that the public business be conducted in public. Therefore, it would not seem inappropriate to suggest the law stress the importance of the discussion leading up to a binding action as crucial to the public interest.

Another vital consideration not covered by our current statute is that of notification. Except under the most dire of emergency situations, no public body should hold its meeting without giving the public at least 24 hours notice. These bodies should be held accountable for notifying every newspaper, radio and television station in the community, or those from other communities who request regular notification, in writing at least 24 hours before any meeting. Under emergency conditions, the notification could be made by telephone no less than six hours before the meeting.

I am neither a lawyer, nor a legislator, however, as I read our current law I find the spirit of openness throughout its sections. Stripped of its clarifying phrases, it is a simple mandate that boils down to a few words from Section 2. Here is how I read it whenever I need to refresh my memory on the subject. "All meetings for the conduct of the affairs of, and the transactions of business by, all legislative and administrative bodies and agencies of the state, shall be open to the public."

This, seems to me, is the cornerstone upon which all else is built. It is unfortunate, though we all know necessary, that such a basic assumption of a free and open society must be put into statute form to force the few who would subvert the democratic process to follow such a reasonable course.

While legislative action on the Kansas Open Public Meetings law is very important, it is equally important that those charged with the public trust in reporting on the affairs of government take a firmer hold of their responsibilities. Our strongest and most effective laws are those which have been reviewed by the courts. If more reporters challenge an action by a public body that is questionable, and if the courts speak to the issue of open meetings, our law, whatever its form or its structure, will accumulate a force and a meaning beyong any weighted wording we can add here and now.

I only hope Kansas journalistic community will demonstrate its commitment to open government as well as its state legislature has done. Thank you for this opportunity to appear here today.

Attachment VII

Good morning. My name is Ted Anderson and I am the Managing Editor of The Leavenworth Times. Thank you for giving me part of your time to discuss the Kansas Open Meetings Act (KOMA). You have and will hear a great deal of moral and legal discussion on open meetings; my only hope here is to provide a few small examples of how our current open meetings statute is being abused or openly ignored.

It goes almost without saying, of course, that The Leavenworth Times is vitally interested in illuminating public affairs for public scrutiny. We recognize and applaud the majority of governmental bodies that actively pursue such an open policy. Most public officials, we have found, are scrupulously sensitive to the spirit of the KOMA, in addition to the letter of the law. Unfortunately, there are others who are not.

In our county, perhaps the one body which has shown blatant abuse of the KOMA is the Board of Education for the Basehor-Linwood USD 458. Much of that board's action has been based on what I contend is a misinterpretation of a letter from John Martin of the Kansas Attorney General's Office, dated Sept. 17, 1975.

In that letter, Mr. Martin wrote, "Nothing in the law (KOMA) as amended, or as interpreted by the Attorney General, restricts the subjects which may be discussed during executive sessions."

He was commenting on points raised in a Kansas City Kansan editorial on the KOMA, and he noted that:

"...state law imposes no restriction on the

> number or variety of subjects which may be discussed during executive sessions. It does direct that executive sessions shall not be used as a subterfuge to evade the purposes of the act, but beyond this general mandate, governing bodies and other groups subject to the act may use executive sessions for any variety of purposes which they deem appropriate as a matter of local policy."

In the case of USD 458, it is local policy to conduct virtually every piece of business in executive session. One of our reporters who covers the Basehor meetings, told me that as a matter of routine, the board members would declare their intentions to go into executive session to discuss items 3,5,7,8,9 and 12 on their agendas, for example; that they hoped to return to open session at 10:35 p.m., and would everybody please leave the room.

At one meeting, where the board was about to go into executive session on a district construction project which had gone sour, I rose to object. I informed the board that we thought they were acting in violation of the KOMA and that the issue before them was one of great public concern. The board president responded indignantly that THEY didn't think they were in violation of the law, that they had an attorney general's "opinion" to prove it (Martin's letter), that they really didn't care what I thought, and would I now leave the room.

At the next meeting, we brought our company attorney along. He too was surprised at the callous disregard that the board had shown toward the people of the district and the provisions of the KOMA. But he advised us that our legal recourse hinged on being able to prove that items were discussed in executive session which were not previously declared. But since we weren't

permitted to hear the discussions, we couldn't prove a violation.

We have, however, taken our case into the forum we find most comfortable and more convenient--our editorial page. But the Basehor board is unmoved. Meanwhile, our readers and the patrons of the district have routinely and consistently been denied access to important board proceedings. For informal verification of this situation, I suggest that you contact your colleague Rep. Patrick Hurley of Leavenworth.

The situation in Basehor is perhaps isolated and not worthy of legislative attention. But unfortunately, we all know it is being repeated in varying degrees throughout our great state. The problem is simple: our current Kansas Open Meetings Act is only a "paper tiger."

Any open meeting act is virtually worthless if it is not closely aligned with a measure requiring public notice of public meetings. Once again, my reporter has told me that the Basehor school board regularly calls "special" meetings without advance public notice. Even the fine weekly newspaper which serves the Basehor community is only rarely notified, and the items listed on the agendas reveal little if any emergency. Our reporter noted in a memo, "The items don't appear to be that much of an emergency and people down there (Basehor) feel they move things to special meetings hoping that no one will show up." Indeed, our reporter learned of one such "special" meeting on a Saturday, but when she showed up was informed that the meeting had been called off.

These are not abstract situations, they are real and

genuine developments which have arisen from an ineffectual open meetings law. The people of Basehor helplessly looked to us for deliverance. We look to you for a remedy. As you consider potential modification of the present law, may I offer a few suggestions.

1. Provide a clear and definitive list of those public matters which cannot be withheld from scrutiny; bearing in mind the multitude of issues which could conceivably be described and categorized as "personnel matters."

2. Include a clear explanation of the manner and methods which a private citizen might use to demand compliance with the KOMA. In most cases, they can't retain an attorney solely to mount a challenge. Discussing the KOMA in the Journal of the Kansas Bar Assoc. (Winter 1974) Jerry Harper noted, "Neither mandamus nor injunctive relief is specifically articulated in KOMA." He also noted that "KOMA is silent on invalidation of action as a sanction for violation of the act." Harper notes that while KOMA does not address these points directly, other Kansas law may bring them into play. If only as a matter of clarification would not inclusion of these points in the KOMA be advisable?

3. Establish a clear and unmistakable requirement for advance public notice of a public meeting, perhaps including a requirement to notify those individuals who first filed a request to be notified with the body. Certainly such a personal notification should be mandatory for such things as "emergency" sessions. It might be easier if requests for notification of meetings be limited to bona fide representatives of the news media, but such a limitation might not be in keeping with the

spirit of the KOMA.

4. Establish adequate and enforceable penalties. Remove ignorance as a possible defense. Officials who hide their actions from the public they have pledged to serve are faithless to a trust we hold sacred in this country. You, as members of the Kansas legislature, perhaps more than the rest of us here, are certainly aware of that trust. Those who would violate that trust do not deserve your sanction or your protection. Penalties must be sufficiently severe, and in this case I mean criminal penalties. Once again, in that article in the JOurnal of the Kansas Bar Association, Jerry Harper noted, "Even in cases of 'knowing' violations, reliance on criminal penalties may prove ineffective for a variety of reasons. Prosecutors are likely to be reluctant to criminalize public officials over misdemeanors."

5. Finally, whatever modifications you consider, the KOMA which will stand to protect the people's right to know what their government is doing, must boldly declare the intent of the legislature to defend and protect that right. The message should be fully understood in every corner of the state, in every town, city and hamlet.

We trust that is the message you will carry when the legislature convenes once again. Thank you.

Attachment VIII

HOUSE BILL NO. _____

By Committee on Federal and State Affairs

AN ACT relating to open public meetings; amending K. S. A. 1975 Supp. 75-4317 and 75-4318 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K. S. A. 1975 Supp. 75-4317 is hereby amended to read as follows: 75-4317. (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) For the purposes of this act, "meeting" shall be defined as any coming together of a quorum of the members of any public body which is subject to the provisions of this act at which such members discuss any matter of public business over which the body has supervision, control, jurisdiction or advisory power. No chance meeting, social meeting or electronic or written communication shall be used in circumvention of the spirit or requirements of this act to discuss or act upon a matter over which the public body has such supervision, control, jurisdiction or advisory power.

Sec. 2. K. S. A. 1975 Supp. 75-4318 is hereby amended to read as follows: 75-4318. (a) Except as otherwise provided by law, all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies, including voluntary and other planning agen-

cies, 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 bodies shall be by secret ballot.

(b) Notice of the date, time and place of any regular meeting of any public body ~~designated hereinabove~~ which is subject to the provisions of this act shall be furnished to any person requesting such information.

(c) Notice of the date, time, place and purpose of any special meeting of any public body which is subject to the provisions of this act shall be provided to the public by providing notification, by personal contact or telephone communication, to all news media organizations that have requested notification of any such meetings. Except as provided in subsection (d), such notice shall be provided no later than twenty-four (24) hours preceding the time of the special meeting, and no such meeting shall occur until at least twenty-four (24) hours after all such media organizations have been notified.

(d) Any public body which is subject to the provisions of this act may convene in an emergency meeting when an unforseen emergency situation will result in irreparable harm to the public safety or welfare unless immediate action is taken by such body. Notice of the date, time, place and purpose of such emergency meeting will be provided to the public by providing such notice to all news media organizations that have requested notification of any such meetings. Such notice shall be provided no later than one hour preceding the time of the emergency meeting. No such meeting shall occur until at least one hour after a bona fide attempt has been made to notify all such media organizations.

~~(c)~~(e) Not less than twelve (12) hours prior to any regular or special meeting ~~hereinabove-mentioned, any~~ of any public body which is subject to the provisions of this act, an official

agenda relating to the business to be transacted at such meeting shall be made available to any person requesting said agenda. All items listed on such agenda shall be described in general terms that can be understood by any person of general understanding, and the action to be taken or the possible alternate actions that can be expected to be considered by the body shall be described in terms that can be understood by any person of general understanding. No item of business may be discussed or acted upon during any regular or special meeting unless it is listed on the official agenda for that particular meeting, except that the body may discuss or take action upon any unforseen emergency matter which, if not immediately acted upon by the body, will result in irreparable harm to the public safety or welfare.

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

Sec. 3. K. S. A. 1975 Supp. 75-4317 and 75-4318 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Attachment IX

PROPOSAL #18 OPEN MEETINGS LAW

To: Interim Committee on Federal and State Affairs

By: Common Cause/Kansas - Alice FitzGerald, Exec. Dir.

Date: June 23, 1976

Openness in government has been, and still is, a priority for Common Cause. And, within the last year or two, the issue of open meetings has been given much attention, on both the national and state levels. Common Cause/Kansas is proud that in the open meetings statute "it is the declared policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public."

We applaud that policy and would oppose amendments to weaken any provisions of the law. In fact, we believe some areas need strengthening and would like to make the following recommendations:

1. The meeting notice provision of the statute should require public notice to be given. The Citizens Conference of State Legislatures, from whom the legislature received an award as the most improved in the nation, issued a report in 1974 entitled "Legislative Openness." They state: "Openness alone is not enough. If citizens don't know when or where their interests are being discussed, they do not have access to the legislative process."

   Public notice includes written notice of meetings for the calendar year where possible, and supplemental written notice no later than 72 hours before the meeting. It includes posting of a notice at the principal office of the governmental body, or if none, where the meeting will be held. And, finally, it includes the use of other prominent places within the governmental unit, plus the news media.

2. The notice provision of the statute should be amended to include special, as well as, regular meetings.

While we realize that giving notice for special meetings is more difficult, and emergency meetings can sometimes preclude all but notice to the media, the spirit of openness requires that they be included. And, more often than not, the criteria for public notice can be met.

3. Party caucuses should be specifically covered by the statute.

Opening party caucuses is the logical extension of the steps already taken to make the legislative process open to the people. It is often at these sessions that decisions are made which determine who will hold leadership roles, in addition to the development of strategy for enacting legislation. And, events of the past year have demonstrated that there is a public desire to see that these meetings are open.

4. Conference committees should be specifically covered by the statute with at least a one hour notice given.

If party caucuses begin the open process, conference committees finalize it. No one would minimize the importance of these deliberations. And, while it is the area most difficult to inject openness into, particularly when it comes to notice, at least eight states have open conferences with notice. There is no reason why Kansas cannot be added to the list.

5. There should be added a provision concerning the keeping of minutes and their availibility to the public.

If citizens are to hold public officials accountable, it is important that records of meetings be detailed and available within a reasonable time to those requesting them.

6. The provisions upon which a closed meeting can be held should be specified, such as for matters pertaining to personnel, litigation, or security.

As the statute now reads, a closed meeting could be held for any reason if the body so wishes. The restraint of no binding action being taken is not sufficient protection of the open meeting principle.

In closing, let us say that Common Cause/Kansas has found good cooperation in a spirit of openness, from the Governor, legislators, and members of their staffs. There are many signs of this, from the bulletin board notices and mailings, to the very involved presence of the media, which we would in no way want to minimize. Some of our recommendations are intended to incorporate into the law practices that are already in existence, to ensure that they not only continue in the statehouse, but are carried out in the rest of the state.

Clearly, some recommendations concern new areas of open government, but it is the firm belief of Common Cause that a government that is open and responsive to its citizens will reap the benefits of an informed and active electorate.

Attachment X

Testimony Before the Federal and State Affairs

Interim Study Committee on Closed Meetings

June 23, 1976

Davis Merritt, Jr.
Executive Editor

The Wichita Eagle & Beacon

Thank you for the opportunity to appear and, hopefully, help this committee in its efforts to reevaluate the Kansas law on open meetings.

The legislature is to be congratulated for its 1975 amendments to the open meeting law and for its constant oversight of the way in which the law functions.

The principle which the law puts into practice is essential to the functioning of a government of free people. Without open access by the governed to those governing, the idea of democracy is a sham. This thoughtis properly expressed in the opening lines of the Kansas statute.

In practice, however, what comes after those opening words leaves loopholes and creates problems which the committee should consider in further amending the law.

None of what follows has any more to do with newspaper editors than with any other citizen of this state.

Open meeting laws are not designed for newspapers and newspaper editors. In fact, newspapers are better prepared to cope with the tragic circumstances of a closed government than are citizens at large. We are, therefor, talking about a law designed to aid the citizen.

I point out these loopholes and problems because they adversely affect all the citizens of Kansas.

Among the problems and loopholes are:

1. The intention of the law seems to be that even executive sessions should be at announced times and places. We have found that boards and committees--once they cross the line into executive sessions--often go into total hiding, with even the time and place of their closed meetings a secret. There's an old--and only somewhat wry--saying, "No man's property and liberty are safe whilst the legislature is in session." When executive sessions seem to be unavoidable, the citizen should at least know that the government is in fact meeting, so that he can inquire of the governors what is happening.

2. The exception to the limitations on open meetings--

"Except as otherwise provided by law" --has opened a door for local governing boards to write their own exceptions. The Wichita Board of Education, for instance, has written six complicated justifications for closed meetings, including a catchall of its own. The exceptions go far beyond those specified in the statute and, together with the catchall exception, give that board virtually blanket authority to operate the public school system in private.

The catchall allows executive sessions for:

"Matters which, if discussed in public, would be likely to benefit a party whose interests are adverse to those of the general community. This provision shall include but shall not be limited to, a consideration of the acquisition of land, matters involving litigation or threatened litigation, and the acquisition of school sites."

Under such a virtual blanket authorization for private meetings, anything is possible.

3. The exceptions--state statute or local ordinance--to the public meeting law deny equal protection of the law to all citizens except for those directly involved in government. The presumed reason for allowing any executive sessions at all is to protect various kinds of confidential, personal or

proprietary information the public discussion of which would damage or disadvantage individuals or businesses. Yet nothing in the law prohibits members of boards, committees and commissions from divulging or using information they gather in those sessions. Perhaps such wording would be difficult, or even unwise. But the inequality of the statute is highlighted by that fact.

4. The wording in 75-4319---"...no binding action shall be taken during such closed or executive recesses..." offers scant protection to the citizen and leads to some devices that amount to subterfuge on the part of some public officials.

The citizen is little protected or aided by a law which allows all discussion and decision-making to be done behind closed doors, with the announcement of the decision--a mere formality--the only thing required to be public. The courts of several states and the attorney general of Kansas have spoken effectively to this point.

The Florida court, in interpreting that state's open meeting law, wrote:

"The right of the public to be present and to be heard during all phases of enactments by boards and commissions is a source of strength in our country...One purpose of the law

was to maintain the faith of the public in governmental agencies. Regardless of their good intentions, these specified boards and commissions, through devious means, should not be allowed to deprive the public of the inalienable right to be present and to be heard in all deliberations wherein decisions affecting the public are being made."

The California court wrote:

"...An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices..."

Applying this thinking to the Kansas law, the Attorney General wrote (Opinion 75-171):

"The same must be said of the Kansas act. All meetings 'for the conduct of governmental affairs and the transaction of governmental business,' regardless of the formality or informality, are required to be open to the public. If a study or planning meeting of members of the government body is held for the purpose of discussing, planning and studying

present and future programs...those deliberations just as surely involve the 'conduct of government affairs' as an official and formal decision..."

The problems of executive sessions are many. The most important one, of course, involves the inability of citizens to properly gauge their elected officials' performances. This is particularly so in the very areas in which exceptions to the law are allowed. In litigation, for instance (setting aside the Wichita school board's extra-added "threatened litigation"): A city commission decides not to pursue a damage claim against a supplier of materials. Since it involves "litigation", the issue is discussed behind closed doors and decided. The decision is merely announced to the public. Why was the litigation not pursued? What is the impact of the city's failure to pursue it? What alternatives were available? Surely the level of potential unease--if not distrust--of the citizen is aroused by such action.

The earnest citizen, seeking to vote into office those people he feels he can trust, needs more than a bottom-line result to make his judgment. Did his elected official pursue enough alternatives? Was his weighing of those alternatives in line with the citizen's thinking?

It is interesting that officials--some of whom act behind closed doors--often seek later to "explain" their votes. And they should indeed do that. But when the explanation is ex parte and without the benefit of the context in which the decision was made, the explanation becomes little more than self-serving rationalization. And the voter has no true basis for evaluating the decision.

We can--and must--be attentive to the precision of the law's words. But we must not let our lawyering obscure these principles:

First--The recourse against abusive or incompetent government is in publicity and at the ballot box.

Second--The relationship between the government and the governed must contain some element of wary trust. But a trust that is bottomed by a clear understanding of clear laws and procedures.

Third--The role of newspapers in this equation between citizen and government is as both conduit and commentator. Newspapers, as the cutting edge of citizen knowledge about government, must have adequate legal tools for dealing with government bodies which seek to operate outside the public limelight.

Fourth--And perhaps most importantly among the things this committee should consider in amendment to the law--there should be a swiftand sure recourse for citizens to combat abuses of the open meeting law.

Attachment X

23 June 1976
TO: Committee on Federal and State Affairs
FROM: Kansas Associated Press News Council
Pamela Brunger, President

The Associated Press News Council of Kansas finds three major areas of concern regarding the Kansas open meetings law.

One is the law's lack of notification procedure for a meeting. A remedy is needed.

Another is in respect to state university agencies. We seek some clarification in the law specifying that policy making, state funded, supported or receiving agencies of a university be under the law. Examples are university senates, faculty senates, student senates and their sub-groups and executive committees, and meeting of athletic boards which receive state funds, operate state facilities, etc. We do not seek to open every academic committee or promotions or tenure groups.

The final area of major concern is some clarification in the law to limit matters for which a meeting may be closed -- perhaps only for discussion of personnel matters, land purchases and one or two other specified topics. Currently under the law a group may vote to move to a closed session so long as members take no binding action. We believe this circumvents the spirit of the law and denies the public information about the decision making process of government.

Respectfully,

Pamela Brunger, President, Kansas AP News Council

Attachment XII

A BILL

1. KSA 75-4319 is hereby amended to read as follows: KSA 75-4319. Closed or executive meetings, when; no binding action. Upon formal motion made, seconded and carried, all bodies and agencies subject p to this act may recess, to a specified time, but not adjourn, open meetings for closed or executive meetings provided no binding action shall be taken during such closed or executive recesses and that they shall not be used as a subterfuge to defeat the purposes of this act. The justification for closing any meeting must be stated. Cases Executive or closed meetings may be justified only for the following:

(1) discussing whether to hire a prospective employe or whether to fire or reprimand an existing employe over which the body has direct control.

(2) Discussing the price at which the body will consider selling or buying any property, when said property must be bought or sold at a negotiated price.

(3) Discussing the terms of any proposed out-of-court settlement of pending litigation.

2. KSA 75-4319 is hereby repealed.

3. This act shall take effect upon publication in the official state newspaper.

Attachment XIII

LEAGUE OF WOMEN VOTERS OF KANSAS

Affiliated with the
League of Women Voters of the United States

STATEMENT TO THE 1976 INTERIM COMMITTEE ON FEDERAL AND STATE AFFAIRS
June 23, 1976

PROPOSAL NO. 18
OPEN PUBLIC MEETINGS LAW

Mr. Chairman and Members of the Committee:

Among the notable changes which led to the well-deserved Legislative Improvement Award presented this past session to the Kansas Legislature was cited the enactment of an open meetings law. The League of Women Voters of Kansas could not agree more heartily that a Legislature worthy of such an honor must indeed have to its credit a strong open meetings law, honored in both letter and intent. It need hardly be said that the LWVK which has for all the years of its existence espoused the cause of citizen participation in government is in complete agreement with the need for the greatest possible degree of openness in all governmental proceedings at every level of government. The statement of purpose prefacing the Kansas Open Meetings Law itself, states the single most important rationale for such a law when it recognizes that "---a representative government is dependent upon an informed electorate".

We do understand that citizen participation calls for citizen responsibility. Meetings cannot be disrupted; discourtesy on the part of observers or participants cannot be countenanced. We do concede the need for confidentiality of information on rare occasions. If application of the law as it refers to the use of executive session appears to pose a problem for local governing bodies, a clarification that would provide general guidance to legitimate justifications for executive sessions might be of assistance, though we feel such clarification should be advisory only and that the law itself should stand as it is.

With appreciation for the steps already taken by the Kansas Legislature to open state governmental decision-making to public scrutiny, the LWVK suggests two further steps: 1) opening the Senate caucus meetings; 2) opening conference committee meetings.

We were very pleased to see the House of Representatives open its party caucuses to the public at the beginning of the 1976 session. We hope the experience thus gained in the House will move the Senate to follow its example. Caucuses are far more than private party operations. They bear directly upon the formation of public policy in dealing with both procedural and substantive matters vital to the ultimate decisions made on public issues.

Equally important is the conference committee. Public frustration is never higher than during the end-of-the-session rush of conference committees. Legislation followed in every detail throughout the session suddenly vanishes from sight only to reappear a few days later--sometimes in considerable altered form--and with no

citizen understanding of how the final version was arrived at. The desire of legislators, at that crucial stage of the legislative process, to fight out their sometimes considerable differences in comfortable anonymity is understandable. Unfortunately the impression left in the public mind, however unfair it may be, is of high-powered back-stage political maneuvering. The idea that the public should not be privy to the bargaining-table atmosphere which necessarily attends much controversial legislation does not take into account an increasingly sophisticated public fully aware of the necessity for compromise.

Indeed, the League cannot understand how conference committee meetings can fail to fall under the stated intent of the present open meetings law. The report of the 1976 interim Legislative Budget Committee noted specifically, however, that though it was recommended that the open public meetings law be made applicable to meetings of both House and Senate and to all of the standing, select, and special subcommittees thereof, no similar provision was made in the Joint Rules with regard to meetings of conference committees. It is likely that opening conference committees to the public would meet with scheduling and public notification problems of some magnitude in the hectic session's end. We urge you, however, to address such difficulties with a determination to give Kansas citizens the totally open government they deserve.

It is not entirely clear to the League what problems may have occasioned this interim study. We find the present Kansas Open Meetings Law an enlightened and forward-thinking piece of legislation. Kansas government has been ahead of the pack in this respect, as we are well aware from contact with League members from other states. As governmental bodies continue to work in the public eye, we can see only a greater public understanding of the problems and the process of government attended by more responsive, accountable public servants as a result.

It is our firm belief that government-in-the-open can only reflect credit on a legislative body nationally recognized by the Center for Legislative Improvement for "---continuing dedication to the ideal of responsible, effective state government." Certainly it is a matter of compelling interest to every Kansan.

The League of Women Voters of Kansas appreciates this opportunity to address our views to this committee.

Marilyn Bradt

Marilyn Bradt
Legislative Chairman
League of Women Voters of Kansas