Approved 3/3/83
Date

MINUTES OF THE House COMMITTEE ON Federal and State Affairs.

The meeting was called to order by Rep. Neal D. Whitaker at
Chairperson

1:30 ~~XX~~ a.m./p.m. on February 22, 1983 in room 526-S of the Capitol.

All members were present except:
Rep. Roe, who was excused.

Committee staff present:
Russ Mills, Legislative Research
Mary Torrence, Revisor of Statute's Office
Nora Crouch, Committee Secretary

Conferees appearing before the committee:

Rep. David Louis
Attorney General Robert T. Stephan
Buzz Merritt, Editor, Wichita Eagle-Beacon
Preston Barton, Ombudsman for Corrections
David Barclay, Administrative Assistant, Department of Corrections
Ed Schaub, Southwestern Bell Telephone
Major Stewart Elliott, Kansas Highway Patrol
Dennis McFall, Kansas Association of School Boards
Alan Alderson, Counsel, Department of Revenue
Major Weber, Director of Computer Services, City of Topeka
Mary Ann Grelinger, Computer Services, Kansas City, Kansas
Russell Townsley, Russell Daily News
Sam Zeff, Association of News Broadcasters of Kansas

Chairman Whitaker called the meeting to order and announced that HB 2327 was on hearing status.

Rep. David Louis appeared to explain the provisions of HB 2327 stating the legislature has been laboring over this bill for a long time and that every time work is stated on the issue there is a new list of people who want to be exempt. This bill is the work product of the regular session and an interim session. Rep. Louis then walked the Committee through the various new sections of the bill.

Attorney General Robert T. Stephan appeared in support of HB 2327 stating that the law needs to be as clear as possible on availability of records. He states that this bill states that records will be open unless closed and that those records that are closed are determined by the Legislature. (See Attachment A) Attorney General Stephan answered questions from the Committee.

Buzz Merritt, Editor of the Wichita Eagle-Beacon, appeared in support of HB 2327 stating that this concern has been addressed for the last 3 years and that probably everyone that has wanted to be heard has been heard. He stated that open government should be available to everyone. (See Attachment B)

Preston Barton, Ombudsman for Corrections, appeared on HB 2327 asking the Committee to consider a one sentence amendment to the bill regarding the confidentiality of records of the Ombudsman's office. (See Attachment C) His office deals with a lot of very personal, confidential information and it is their understanding that those records of case notes would be made available by this bill. The purpose of this amendment is to avoid that problem.

David Barclay, Special Assistant to Secretary of Corrections, appeared on HB 2327 regarding the records of the Department of Corrections. (See Attachment D) The reasons for closing new Section 3(b) is to provide openness of communication, protect informants against reprisals, and to protect the individual right to privacy.

CONTINUATION SHEET

Minutes of the House Committee on Federal & State Affairs 19

February 22, 1983

Ed Schaub, Southwestern Bell Telephone, appeared on HB 2327 to advise the Committee of a serious problem with the bill as it pertains to their daily dealings with the KCC. The telephone industry is a rapidly changing industry due to court decisions and mandates. It is now a much more competitive marketplace. Open disclosure could be very damaging to their industry. Mr. Schaub proposed an amendment that would clarify their problems and protect certain information. (See Attachment E)

Major Stuart A. Elliott, Kansas Highway Patrol, appeared on HB 2327 supporting the general concept of open records but expressing concerns that some sections are not clear. Major Elliott explained that Sections 3 and 7 need some clarification and presented the Committee with reasons for closing certain records. (See Attachment F)

Dennis McFall, Kansas Association of School Boards, appeared in support of the concept of HB 2327 stating their concern involves the exemption on Lines 305 through 315 on Page 9. He stated that if this were allowed there might be some inhibition on the part of school administrators if they thought every piece of paper they issued could be controversial. The Chairman requested the Board to put their proposed amendment in written form.

Alan Alderson, Department of Revenue, appeared on HB 2327 stating they are generally in support of the bill with some reservations. He urged the Committee not to take any action in regard to 58-2223b without giving the DOR an opportunity to look at the certification of values.

Major E. Weber, Director, Department of Computer Services, City of Topeka, appeared on HB 2327 stating it is necessary to balance the need for open records with the need for the privacy of the individual. Mr. Weber provided the Committee with copies of the City's concerns over the bill. (See Attachment G)

Mary A. Grelinger, a member of Right to Life of Kansas, and manager of an data base company in Kansas Cith appeared on HB 2327 expressing concerns over abuses of computer useage. An agency can hide information and can exaggerage the cost of retreiving the mater from a computer.

Russell Townsley, Russell Daily News, appeared on HB 2327 stating that he has been a reporter for many years. He learned that he could be sued and decided that if he was to be sued he would write the stories himself so he could stand up to whatever came along. He covers a lot of school board mettings and stated that the background information that goes to the executive session should be made available to the public. Open meetings, open records, and open information are public issues.

Sam Zeff, Association of News Broadcasters of Kansas, appeared on HB 2327 stating that the bill attempts to spell out what is and what is not accessable to the public and news media. Their problem is with the cost of copies and believe it would be a financial hardship on small papers and one-man news shops around the state.

Tom Kennedy, Director, ABC Division, presented testimony to the Committee on HB 2327 expressing the concerns of his Division. (See Attachment H)

The Chairman annonnced that a sub-committee would be appointed to look at all the proposed amendments and try to put them into a workable form to report back to the Committee with. The members of the Sub-committee are Rep. Mike Peterson, Chairman, Rep. Tony Hensley, Rep. Reba Cobb, and Rep. Dick Eckert.

Testimony was given to the Committee regarding the League of Kansas Municipalities concerns on HB 2327 by Ernie Mosher. (See Attachment I)

The meeting adjourned.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE 2-22-83

(PLEASE PRINT) NAME	ADDRESS	WHO YOU REPRESENT
ED SCHAUB	TOPEKA	SWBT
BRAD SMOOT	Topeka	Attorney General
ALMEDA EDWARDS	OTTAWA	USD 290 Bd.
Mary Ann Grelinger	3340 N 66	KCKS 66104
ALAN ANDERSON	TOPEKA	DEPT. OF REVENUE
Frankie Scullin	Winfield	
Bobby Howard	Winfield	
Doris Richardson	Winfield	
Virgil F. Basgall	State office Bldg.	DISC
Stuart Ellwood	TOPEKA	KS HIGHWAY PATROL
Brent Barton	Topeka	Ombudsman
Cathy Barton	Topeka	AP
John Hindlyard	Kansas city	Dent Dinkelacker.
Fred Harris	CHANUTE	KEN-FED ASSOC.
Janie Townsley	Russell	
Ramona Townsley	Russell	
Davis Merritt	Wichita	Eagle-Beacon
Dennis McFall	Topeka	KAKE
Mayor Fairchild	City of Topeka	City
[illegible]	Topeka	Shawnee County
David Barclay	DOC	DOC
Sam Zoll	TOPEKA	A-134
Eugene Decker	"	K.S.H.S.
RN Davidson	Wichita	SELF
Frank V. Hamm	State off. Bldg.	SRS.
Pat Casey	Topeka	KDHE

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

TESTIMONY OF ATTORNEY GENERAL ROBERT T. STEPHAN

BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

HONORABLE NEAL WHITAKER, CHAIRMAN

Re: House Bill 2327

February 22, 1983

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to confer with you on 1983 House Bill No. 2327, a proposed comprehensive open records law. I am pleased to offer my wholehearted endorsement to this measure. The bill addresses a wide range of complex legal and practical problems of public access to government records and does so in a clear, complete and thoughtful fashion. House Bill No. 2327 should be enacted by the 1983 Kansas Legislature.

With your indulgence, allow me to discuss the need for this proposed legislation and some details of the bill I believe to be significant. Most of you will recall that in 1979 I asked the

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Legislature to review the present public records act, K.S.A. 1982 Supp. 45-201 et seq. During the 1980 and 1981 legislative sessions this committee permitted the Attorney General to comment on open records legislation similar to House Bill No. 2327. During our testimony on those proposals we characterized the current Kansas open records law as a "closed records law." We stated that the approach of the present law was inadequate and needed to be changed. We continue to believe that government documents are the property of the public and that the public should have ready access thereto, absent countervailing reasons justifying privacy. Further, we believe that the law needs to be as clear as possible. Confusion has a chilling effect on the exercise of this statutory right. The law needs to be workable for the average citizen. We continue to believe that the present law is unworkable and unnecessarily burdensome to the public.

You will also recall that we identified a number of specific recommendations to deal with the inadequacies of existing law.

1. Broaden the scope of the act. We asked that any new law clearly identify the agencies to which it applies and the records available for inspection. The present law is restrictive in regard to public access and an effort should be made to enlarge and clarify the parameters.

2. We asked you to consider a provision for the awarding of court costs and attorneys' fees in cases where private citizens have successfully pursued legal recourse in order to obtain access to public records under the act. We believe a provision of this type may encourage judicial interpretations through case law.

3. We suggested the elimination of criminal sanctions and creation of private legal recourse in the form of mandamus to enforce government compliance. Such a change would liberalize interpretation of the law to favor public access.

4. We suggested coordination of the public records law with other relevant statutes, including laws relating to destruction of public records, and other provisions requiring or prohibiting disclosure.

5. To protect government employees and other citizens we noted that disclosure of individual personnel data and other confidential information must be prohibited. These prohibitions should be as specific as possible and provision should be made for editing of records to delete restricted information. This will encourage a greater degree of public access to otherwise unrestricted information.

6. Finally, it was our recommendation that the statute should identify the classes of documents that are not to be subject to public access. Such classifications must be based on

identified public policy considerations, such as the protection of public health and safety, protection of individual privacy, or where public access substantially impairs officials in the performance of their legal duties.

In the interim since these recommendations, much has happened in the law regarding public access to government records. I filed suit against the state Department of Social and Rehabilitation Services to permit access to certain payment records of that agency. The Kansas Supreme Court agreed with me that such records were open to public access and the case established a number of important principles under the existing law: Computer tapes are "public records" under the law and public officials have no discretion to refuse public access to such records. Confidential data must be deleted from otherwise public information and a public record may not be kept secret in its entirety because it contains confidential data.

In addition, a recent court of appeals case suggests that the "kept and maintained" language of current public records act may be construed broadly to include records made in the convenient, appropriate or customary methods of discharging the duties of a public office.

These judicial interpretations and the recommendations we have previously made generally are incorporated in House Bill No. 2327.

First, House Bill No. 2327 does not discriminate as to who may have access to the information of government. All citizens are equally entitled under the bill to view government records. In many jurisdictions, by statute and common law, persons have had to demonstrate a special need or legal interest to gain access. We prefer that the law continue to distinguish between types of records and not between citizens.

Secondly, the bill changes the focus of the law -- records will be open unless closed. And those records closed to public scrutiny are determined by the legislature, not by an agency, city or other municipalities. No longer will only those records which are required to be "kept and maintained" by law be available to the public. We are convinced that there will be greater access to state and local documents.

Third, the burden for determining what records are available has been shifted to the governmental agency or unit and lifted from the taxpayer.

Fourth, time limits are placed on the agency to produce the requested materials or provide in writing the reasons for denying access. This we believe will speed up the process for the benefit of citizens.

Fifth, the new law would provide for judicial review and encourage persons to seek judicial relief where they have been wrongfully denied access to public records. Criminal sanctions are removed.

I must say that this is a particularly important provision. I know that there are some who believe that the only way to force compliance with such laws is through the use of criminal sanctions. With such persons I must respectfully disagree. Public officials are performing public service, often for no compensation, and are doing the best job they can under complex and sometimes confusing statutes. Such persons are not criminals and should not be treated as such. The equitable remedies provided by this bill provide an effective and proven method of enforcement.

Sixth, the bill is coordinated with the open meetings law to solve the recurring problem of public access to documents used during public meetings.

Seventh, with regard to those provisions concerning access to criminal investigation records, I am generally pleased. We have some concern that the exclusion of "arrest records" in the definition of "criminal investigation records" contained in new section 3(b) may conflict with provisions of the criminal history records information act in those cases in which the arrest is over one year old and without disposition. This problem may be

easily remedied by deletion of the phrase "arrest records" or reference to the latter act and I will be happy to prepare a technical amendment for your consideration if you so desire.

Finally, I have only one remaining recommendation. As most of you know, there are nearly one hundred statutes which specifically close certain government records. That list of "closed" records is not indexed as such in the Kansas Statutes Annotated. I would very much like to see that both lawyers and lay persons have ready access to that list. Hence, I urge the Committee to require a comprehensive indexing of closed records. Publication of such a list would be invaluable to all concerned.

Thank you again for this opportunity to express my support for 1983 House Bill No. 2327. We need this bill and I hope each of you will be able to support its passage this year.

I would be pleased to answer any question.

HOUSE OF REPRESENTATIVES

Committee on Federal and State Affairs

Testimony of Davis Merritt, Jr.

Executive Editor, Wichita Eagle-Beacon

Feb. 22, 1983

Mr. Chairman, members of the committee, thank you for the opportunity to be heard on the question of public access to public business.

My support of the Whitaker-Louis bill, now H.B. 2327, is well understood by most members of this committee, and I will not repeat in detail the reasons for that unless a member wishes to ask questions.

The bill is detailed, specific, has considerable hearings and history behind it, and is much needed for the state.

It also is full of appropriate compromises in areas where there is a legitimate conflict between proprietary or private matters and the right of access on the part of citizens.

The bill's theory is plain: Information in the possession of the governments we support is presumed to be public unless there are overriding reasons; the burden is on the governing body to prove the overriding reasons; and the records must be maintained

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in a fashion allowing reasonable access to public information that is comingled with arguably nonpublic information.

For detailed arguments in favor of it, I refer the committee to the rather substantial record of hearings on previous versions of the bill. For your convenience, I have a few copies of my discussions with you from previous sessions.

I would, however, call the committee's attention to three matters connected with H.B. 2327 and other proposals now before the legislature. And in the process I hope to demonstrate how the public in general--not the media alone--benefits from unfettered access to government records.

I give the first example with the understanding that H.B. 2138, which would close water district customer records, is not the subject of this hearing, but I hope that the committee will be very sensitive to its potential, particularly if its scope is spread to include other government-owned utilities.

If, five years ago, the Wichita Gas Utility's customer records had not been open to inspection, Wichita could well be sitting today with a multi-billion-dollar, unworkable and unneeded coal gasification plant.

You may recall the plan, hatched at the time of oil shortages and concerns about dwindling natural gas supplies. Wichita would

fund, with bond money, the building of a plant to convert coal to natural gas. The estimated price tag then was $1.25 billion. No telling what the price tag would have been by now.

There was much initial enthusiasm for the plan, and there were studies. Lots of studies, all done by people with a stake in the project. The marketing plan for the project was to be modeled after that of the Wichtia Gas Utility, including the concept of take-or-pay contracts, and with pricing based on a scenario of oil and gas scarcity.

We felt it incumbent upon the newspaper to take an independent look at the plan, and we spent months at it. We found some gaping holes in the logic of the plan, and some shakey interpretations of facts on which the plan was based. Some important projections for the feasibility of the plant were based on the operations of the Wichita Gas Utility. Since its records, including customer records, were open, we were able to include them in our own study.

You may also recall that the plant was to be funded with bonds. A city's bond rating is crucial to both it and the taxpayers who support it. Many city utilities are bond-financed. Taxpayers have a right to know how well or how poorly their utility is performing. It isn't a private matter, and cannot be. And customer records are clearly a part of that, as they were in the case of the Wichita

Gas Utility.

We had access to those records, as we might not have under an expanded H.B. 2138, and the result of our coverage was that once the public had access to all of the facts, the idea was soundly defeated at the polls. We did not set out to shoot down the plan. We set out to find and report the facts. The facts, including the important records of the Wichita Gas Utility, shot down the plan.

If the plan had gone ahead, I suspect that the people of Wichita and Kansas would be wondering now, in this time of oil glut and natural gas pricing tragedies, about their billion dollar white elephant.

And without access to the records of a publicly-owned and financed utility, they could not have had the facts.

Another case arose just last week, this one directly involving water records. The City of Wichita appointed a Water Resources Council to advise the city on future water supplies, methods for getting water and so forth. It's an important group dealing with an important task; a task that affects everyone in the city. Who is on the council that will be helping decide the future price and quantity of water for everyone in Wichita?

The largest water users in the city, who may well have interests that don't coincide with those of the great bulk of small citizen users.

How do we know that?

From the water district records, of course.

Is that information the public needs in order to judge its city government's action?

Of course it is.

The other matter deals with something even more directly vital to all citizens of Kansas--their property tax assessments and their ability to make prudent decisions in our largest single investment--buying a home.

KSA 58-2223(b), passed in 1967, operates in a way that is, as best I can tell, unique in the United States. It makes the sale price of real estate a confidential matter.

Confidential, that is, unless you are a Realtor.

Or know one real well.

Or have some other special "in" at the courthouse or elsewhere.

And, of course, if you don't have that connection and the person you are dealing with does, you are at a terrible disadvantage in dealing with him or her.

The statute requires the actual sales price to be listed in a "statement of value." That document goes to the assessing office to be factored into the assessment formula. But the statute also makes that statement confidential.

Confidential?

In Wichita, the multiple listing service publishes thousands of the sale prices in a document it stamps "confidential." It prints hundreds of copies monthly for its members. Yet 58-2223(b) says the information in the certificate of value "shall not be ...disclosed by any party having access to them to anyone other than the director of property valuation." Yet they are published.

If a Realtor is friendly enough, he'll let you see the book, so you can compare previous sale prices of the property and recent sales of comparable property. If he's not that friendly--too bad for you. And if the person you're negotiating with has the information and you don't--watch out. You're flying blind.

I assumed until recently that Realtors liked this law. The ones I have talked with, including one within the Realtor state hierarchy, do not like it. It inhibits their operations and it denies them information they need.

Sedgwick County's Tax Assessor, Doug Sensabaugh, told me last week that he thinks denying that information to the tax-paying public is ridiculous and wrong--and he said I could quote him, which I am delighted to do.

Mr. Sensabaugh also points out that when much-needed reassessment takes place, taxpayers will have no way to challenge their

assessments if they cannot have accurate sales-price information and make comparisons. As it now stands, the board of review can have the information, but not the person seeking to have his assessment reviewed. Hardly a fair combat.

There is a substantial question whether any court would uphold any reassessment process that denied taxpayers access to sales-price information.

But in Kansas, it's confidential. At least confidential to those too small or too uninformed to have friends in the right places.

There is, of course, a question of privacy. But Kansas law already makes public the amount of mortgages--and some papers even publish it. When you talk about the amount of a mortgage, you are talking about something really private--what I owe the bank.

There is indeed an element of privacy in what I pay for a piece of property. But as a member of a complex society with many competing interests, I must sacrifice that bit of privacy so that the system we have chosen for exchanging and taxing real estate operates in an even-handed manner.

I hope that the committee will look into this situation with the idea of amending H.B. 2327 so that it repeals the confidentiality of those statements of value. That would put all persons interested in protecting themselves in the marketplace and in the assessors

office on equal footing.

One further point. The committee may wish to address any possible problem that arises from the combination of this act and the Tort Claims Act. I am certainly no attorney, but I understand that the combination could possible place custodians of records in a personally exposed position. This clearly is not the intent of the open records law nor of those who back it. Open government, not punishment of those who exercise good-faith judgment, is the aim. However, if the legislature cannot resolve the conflict, I nevertheless would recommend passage of H.B. 2327 and trust to the courts and common sense of application of the law to resolve any conflicts.

In summary, I respectfully remind the committee that H.B. 2327 is the culmination of at least three years of research, hearings and debate. I'm certain that everyone with a viable interest in its impact has been heard and their legitimate needs have been addressed. The people of Kansas are entitled to unfettered access to the facts about the governments they support, and H.B. 2327 will take a major step toward providing that access.

I will be happy to respond to questions. Thank you.

PROPOSED BILL NO. _____

By

AN ACT concerning the corrections ombudsman board and the ombudsman of corrections; relating to certain records, correspondence and information.

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

Section 1. (a) Records of the office of the ombudsman of corrections or of the corrections ombudsman board which relate to the functions of such office or board shall not be disclosed directly or indirectly to any person except as authorized by the ombudsman of corrections or by a majority vote of the corrections ombudsman board.

Att. C

KANSAS DEPARTMENT OF CORRECTIONS

JOHN CARLIN — GOVERNOR • • PATRICK McMANUS — SECRETARY

535 KANSAS AVENUE • TOPEKA, KANSAS • 66603
• 913-296-3317 •

TO: House Federal and State Affairs Committee

FROM: David Barclay
Special Assistant to Secretary of Corrections

RE: HOUSE BILL 2327 - RECORDS RELATING INDIVIDUALS IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS

DATE: February 22, 1983

PROPOSED AMENDMENT

Add the following to the list of records not required to be disclosed:

Correctional records maintained on an identifiable individual. (Insert at Line 342)

RATIONALE

A. New Section 3(b) closed:

1. Criminal investigation records of investigating agencies.
2. Criminal investigation records of criminal justice agencies.

B. Concern: Some types of non-criminal or non-investigation records of the Department of Corrections which identify individuals. These include:

1. Defense attorney reports, county or district attorney reports, furlough reports, communications between correctional officers relating to specific inmates or security, segregation reports.

C. Reasons for preventing disclosure.

1. To insure openness.
2. To protect informants against reprisals in the form of harrassment, violence or extortion.
3. To protect individual right to privacy established by constitutional caselaw.

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(b) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(c) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(d) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(e) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214 and amendments thereto.

New Sec. 8. (a) The district court of any county in which public records are located shall have jurisdiction to enforce the purposes of this act with respect to such records, by injunction, mandamus or other appropriate order, on application of any person.

(b) In any action hereunder, the court shall determine the matter *de novo*, and the burden of proof shall be on the official custodian of the record to sustain the action of the public agency. The court on its own motion, or on motion of either party, may view the records in controversy *in camera* before reaching a decision.

Atch. E

PROPOSED AMENDMENT:

New Sec. 8. (a) The public, including non-governmental parties to a regulatory proceeding, may not inspect, and a public agency shall not disclose to anyone, confidential records or data relating to financial affairs (including but not limited to marketing and sales plans), or trade secrets of a corporation, partnership or individual proprietorship, even if such entity is a regulated business. If such records or data are produced to a public agency, they shall be sealed by the agency.

(b) An entity that claims information is covered by this statute shall have the burden of proving its claim by a preponderance of the evidence.

(c) This statute shall not affect a public agency's rights, if any, under present law to access to confidential information.

(d) Notwithstanding section 4 of this Act, an agency may not publicly disclose any records or information that could reasonably be deemed to be covered by this section without giving at least five days advance written notice to all entities that may have an ownership interest in such records or information, even if the agency believes disclosure is proper.

SUMMARY OF TESTIMONY
BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
1983 LEGISLATIVE SESSION

HOUSE BILL 2327

BY THE KANSAS HIGHWAY PATROL
(MAJOR STUART A. ELLIOTT)

The Kansas Highway Patrol supports the concept of an open records act and generally believes HB 2327 is a reasonable adaptation of those principles.

We have concerns that Section 3 at subsection (b) and Section 7, when read together, may fail to address the intended actions with clarity. Specifically:

(1.) Section 7 at (a)(1) exempts disclosure when specifically prohibited by federal or state law or rule of the Kansas Supreme Court.

and (2.) Section 7 at (a)(10) exempts disclosure of "criminal investigation records", except as ordered by a court.

and (3.) Section 3 at (b) excludes "records of arrests" from the captioned "criminal investigation records".

Clarity of the intended action outlined above suffers from:

(1.) The term "criminal investigation records" is not defined in the referenced K.S.A. 22-4701. (The term "criminal history record information", commonly used in both federal and state statute, is so defined.)

and (2.) The term "records of arrests" used in Section 3 at (b) does not differentiate between "conviction" and "non-conviction criminal history record information", as outlined in K.A.R. 10-9-1 (authorized by K.S.A. 22-4701).

and therefore (3.) The disclosure (or dissemination) of non-conviction criminal history record information, as a portion of the exempted "records of arrest", would violate provisions of Title 28:20 of the U.S. Code, K.S.A. 22-4707 and K.A.R. 10-11-2 and 10-12-1.

Atch. F

We respectfully suggest that the subsection needs to be rewritten using both terms and regulations paralleling those defined or outlined in K.S.A. 22-4701, et seq. This would also avoid the conflict between Sections 3 and 7.

It is also noted that by exempting from an exemption, the (conviction) records of violating the vehiclular homicide statute could not be disclosed. K.S.A. 22-4701, et seq., permits dissemination of conviction records of this offense.

Possible revision of Section 3, subsection (b):

> (b) "Criminal history record information" means records of a "criminal justice agency" as defined by subsections (b) and (c) of K.S.A. 22-4701 and amendments thereto.

Such a revision would require the substitution of "criminal history records information" on line 0249, in Section 7.

CITY OF TOPEKA

Department of Computer Services

215 S.E. Seventh Street • Topeka, Kansas 66603

Open Records Act-House Bill #2327

Representatives Neal Whitaker and David Louis are to be commended for addressing a very relevant and difficult issue facing public officials today. With government collecting information on our daily activities and personal affairs, it is absolutely necessary to balance the need for open access to public records with the concurrent right to privacy which is guaranteed by our Constitution.

Government agencies collect, create and compile much information in the normal course of business just as any private individual or business does. As the bill #2327 presently reads, if enacted into law, Kansas could become a gold mine for any and all mail order, catalog and mass mailing organizations seeking new sources for creating and building mass mailing lists. Kansans, who have complied with various laws and regulations, and entrusted government to preserve and protect information, which has been disclosed through such routine activities as licensing, registration or the recording of legal transactions, could be flooded with junk mail soliciting donations or huckstering worthless products.

I believe that the legislation introduced by Representatives Whitaker and Louis, with some modifications, will provide reasonable and effective guidance to insure accesses to public records, yet protect the right of individual privacy.

The following is a brief outline of modifications suggested for consideration:

1. Under Section 3, paragraph (f), line 0059, the definition of "Public Record: Should exclude copyrighted materials,documents or publications which are protected under federal laws from unauthorized reproductin and distribution.

2. Under Section 4, paragraph (c), item (2) line 0136 should be revised to a time or item request limit for interactive (on-line) inquiries to fifteen minutes or thirty items and a batch processing cost limit of ten dollars. Any requests exceeding these limits would be billed at the prevailing rates established by the

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agency, but in no case could the rates exceed the actual costs for delivering such service. As the requirement now stands, it is very probable that an agency may be required to devote one-eighth of a computer resource for a single request, and with a one-thousand line per minute printer, print a sixty-thousand line report at a cost exceeding two-hundred dollars and not to be reimbursed one cent! Also recommended is an additional paragraph declaring the following: "Computer based data shall be available only in the format, sequence and detail normally reported and utilized by the governmental entity for which it is maintained." This is proposed to limit the demand for reprogramming and documentation activities that would be required and insure timely responses to public requests.

3. Section 7, line 0217, exceptions to required disclosure. There are several exceptions which are designed to protect individual identity including a provision which calls for the removal of identifying information from records. However, there are no provisions excluding financial/credit histories on individuals. In particular, many municipalities and counties operate service utilities such as water, sewer, refuse or gas in which they maintain consumption, billing and payment records on each individual customer. This information should not be open to public inspection except in its aggregate form, i.e. total number of accounts, total billing receivables or total payments, etc. To protect the privacy of individuals, the following is proposed:

(26) "Financial records pertaining to individual billing and payment transactions for utility services" (shall be exempted).

4. Under Section 7, paragraph (16), line 0290 should be modified to read as follows:

"Software programs for electronic data processing and computer instructions required to initiate or execute a computer program(s) and documentation thereof."

This modification insures the preservation and integrity of security procedures designed for computer based information systems.

5. There are several citations referring to exemptions of preliminary drafts, notes memoranda (line 0304), research records (line 0327) and records, documents or data are cited in open meetings or distributed to a majority of a quorum of any body which has authority to take action or make recommendations...(lines 0308 thru 0311) the document instantly becomes an open public record. There are serious conflicts which occur in a Commission form of government because Commissioners

serve both in an executive and legislative role. Under the Open Public Meeting law and this legislation, it is practically impossible for a majority of Commissioners to review and discuss administrative matters confidentially. Not only are their statements and comments open records, but any document they look at is open record with some limited exceptions. Of particular concern in this is the open exposure of bid specifications for the intended purchase acquisition of some product or service. It is my experience, in both the public and private sector, that bid specifications are confidential until the bidding process if officially approved. I feel there are two very good reasons for this:

1. In the bid specification development process, there is considerable pressure placed on those involved by private vendors to influence the slant of the specifications in their favor. If specification drafts are exposed to public scrutiny prior to their completion and release, it is not difficult to imagine the pressure from potential bidders public officials may be exposed to to change or modify specifications prior to release.

2. The bid process as established by State and local regulations is designed to provide for equal opportunity for all potential bidders. There are distinct competitive advantages to a bidder who has early access to specifications prior to competitors. The advantages include more time to prepare proposals, buy up supplies of hard to get items or even negotiate agreements with a competitor to place them in a non-competitive situation.

My recommendation is to include the following additional exemption to the Open Public Records Act:

(27) "Specifications for sealed competitive bidding until officially approved by the governing body" (shall be exempted).

NEW SECTION 10, should be broadened such that no person (including corporations as currently defined) should be allowed to use the information obtained for their own private profit and gain.

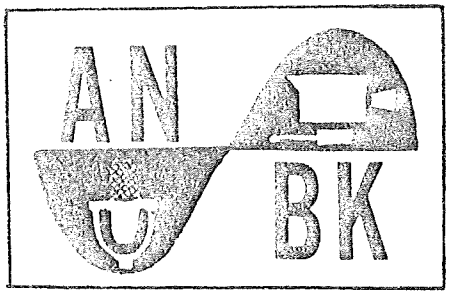
That section might be changed to read:

"Except to the extent otherwise authorized by law, no persan shall knowingly sell, give or receive, for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records; nor shall any person use the material secured for their own private profit or personal financial gain. Public records applicable to this section

shall include those maintained for the purpose of operating utility billing, public housing rent rolls, real estate propertay tax systems and employee rosters as well as other licensing registration programs."

Major E. Weber, Director
Department of Computer Services

City of Topeka



ASSOCIATION OF NEWS BROADCASTERS OF KANSAS, INC.

Testimony of Sam Zeff
Association of News Broadcasters of Kansas
House Bill No. 2327
Federal and State Affairs Committee
February 22, 1983

Mr. Chairman and Committee members:

My name is Sam Zeff, northeast regional director of the Association of News Broadcasters of Kansas. Our president, Joei Bohr, is somewhat ill and could not be here this afternoon.

ANBK is the largest broadcast news association in the state, representing both radio and television reporters. We are here to voice our support of House Bill 2327.

First, let me express our delight that a measure such as this is before your committee. As you all know, it represents many years of work by the legislature, work by both Republicans and Democrats, conservatives and liberals. Work on a new open records law such as the one in 2327 dates back to 1976, when it was introduced by Republican Representative Carlos Cooper from Bonner Springs. The issue arose again in 1979 when Democrat Woody Thompson of Wichita introduced a revised open records law.

HB 2327 is, of course, the result of two years of work and study by the legislature, and shows how the public and private sectors can work together for quality legislation.

Zeff testimony, 2-2-2

ANBK is pleased to see a bill that will make the issue of open records less nebulous, a bill that will spell out what is and what is not accessable to the public and news media.

However, we do have one concern. The bill, in its present form, allows the agency keeping the record to recover costs associated with retrieving it.

Of course, we have no objection to paying for copying. But we are concerned about the reimbursement of staff time.

The bill allows for reimbursement of staff time over one hour. We are unsure whether this is one hour per visit, or an accumulated total for several visits. If the latter is true, we think this would be a financial hardship on small newspapers and one-man news shops around the state. These types of operations are the bulk of the news media in Kansas.

I have worked with public officials who would take any opportunity to try and make retrieving public records as difficult as possible. Some officials would love the chance to keep time records of reporters, so they could begin charging them for staff time after one hour.

ANBK does not believe this is the intent of the bill. But the language does leave some questions.

We also believe the Attorney General shares our views. In numerous opinions in the past several years, Attorney General Bob Stephan has said the price of good government...which we enjoy here in Kansas...includes the price of staff time.

Zeff testimony, 3-3-3

In conclusion, let me again express ANBK's support of 2327, and our thanks for the long hours of work that went into putting together this legislation.

MEMORANDUM

TO: Honorable Neil Whitaker
Chairman, House Federal and State Affairs Committee

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: House Bill 2327

DATE: February 22, 1983

PURPOSE

House Bill 2327, as introduced, is an act concerning public records; amending K.S.A. 1982 Supp. 75-104 and repealing the existing section; also repealing K.S.A. 45-202, 45-203 and 45-204 and K.S.A. 1982 Supp. 45-201.

PERSPECTIVE

If House Bill 2327 were enacted in its present form, it would appear that any person would have the right to inspect the hundreds of files which the Alcoholic Beverage Control Division is required to keep on applicants and others. People, out of curiosity sake who may or may not have beneficial interest in any type of license, could demand to see the applications and supporting documents.

House Bill 2327 requires that the request to view public records shall be in writing and that the Division is obligated, by no later than the second day of business following the day of request, to produce such records. The problem with a small division such as the Alcoholic Beverage Control Division, is that the division is quasi-criminal in nature and we would have to have an investigator present to remove any KBI or FBI rap sheets, police reports or investigator reports in that the general public is prohibited from viewing these type documents. Also, the viewer should not have access to lease material as it pertains to monthly payments or yearly payments. If this bill is enacted, it will require that the division go through each licensees file prior to a person viewing it to insure that only those documents which are actually public in nature would be viewed. An alternative the Director is considering is to use two (2) folders within one (1) jacket for each licensee and segregate the public information from information which is prohibited to be viewed under the Disclosure Laws. If this alternative is adopted, it will require several months to accomplish because it will need to be done in addition to regular duties.

Att. 4

The bill speaks to charging only for duplicating costs. At the present time, we are sharing a duplicator and if many requests were received for duplicating work, it is conceivable an additional duplicator may be needed. The cost for duplicating has been addressed by the Secretary of Revenue and therefore would create no problems. A method for accounting for and turn in of monies received would need to be developed.

If this bill were enacted in its present form, it would definitely have an impact on the ABC Division in two ways: Additional space would be needed as well as additional employees. Space is a very critical problem in the Alcoholic Beverage Control Division now and if we had to provide space for the public to view records, we just don't have it.

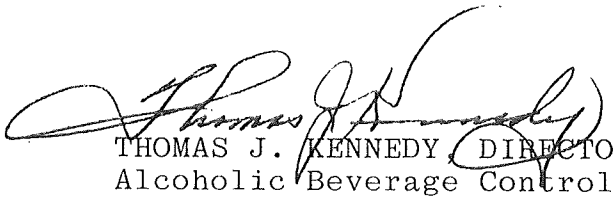
Further, it would require additional employees. These employees would be used to segregate files, act as custodian of files while they are being viewed and to duplicate public records as requested.

COMMENTS AND/OR RECOMMENDATIONS

In that this bill, if enacted, would not take effect and be in force until January 1, 1984, we would have time to prepare for its implementation. The problem in the interim will be the availability of people to prepare files, space for the additional employees and eventually, space for the public to view files.

The Director is neither a proponent nor an opponent of this bill.

Respectfully submitted,



THOMAS J. KENNEDY, DIRECTOR
Alcoholic Beverage Control Division

TJK:cjk

To the House Committee on Federal and State Affairs
By E.A. Mosher, Executive Director, League of Kansas Municipalities
Statement on HB 2327--Open Records
February 22, 1983

The League of Kansas Municipalities has a convention-adopted policy statement on public records, which reads as follows: "State laws governing public access to official records should be clarified and codified, made practical and workable at the local level, and provide for confidentiality when necessary to protect private rights and the public interest."

Thus, we do not oppose HB 2327. Our primary concern is that the final act be practical and workable at the local level. Designing a single law which applies equally to the University of Kansas and to a township cemetery district presents some practical problems. We are dealing with a proposed act which applies to the state of Kansas and all its hundreds of agencies, to 105 counties, to 627 cities, to 326 school districts, to 1,419 townships, and to a couple of thousand special districts. On top of this, we assume that such city agencies as the planning commission, board of zoning appeals, board of electrical examiners, library board, recreation commission, and so on, are all public agencies under the act. The total number of public agencies affected by HB 2327 appears to be in the range of 5 to 6 thousand.

As a result, most of our comments relate to its practical application at the local level. Frankly, our comments are comparatively few, since HB 2327 appears to be the best drafted bill on the subject we have seen.

Proposed Amendments

Page 3. Frankly, we are somewhat confused as to the meaning of the three sentences in lines 86 through 95. Perhaps the confusion results from using different terms in lines 89 and 91. To make the sentence beginning on line 90 parallel with the previous sentence, it should read "If the request is acted upon immediately. . ."

Page 5, line 166. In most cases, it appears reasonable to provide that all the fees go to the local general fund. In some cases, however, it may well be more appropriate to assign fee collections to a special fund. To achieve this, the following phrase could be added at the end of line 166: "or by action of the governing body thereof."

Page 5, line 188. We are somewhat perplexed as to the practical application of HB 2327 to the many, very small local units where the records of the clerk of a city, township or special district is the kitchen table. There are no "regular office hours" for those units. I do not know where the term "weeks" in line 188 came from; perhaps "business days" is more appropriate.

Page 8, line 277. This section exempts from the public records act real estate appraisals and engineering estimates as to the acquisition of real property. While a city engineer's estimate of the probable contract cost of a bridge may involve "real estate" it would seem advisable to add the word "personal property" in the exemption.

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Page 11, lines 379-389. It seems to us that the provision of court costs and attorney fees in subsection (c) and (d) have a double standard. The plaintiff maintaining the action is subject to court order costs and fees only if they acted "frivolously, not in good faith, or without a reasonable basis in fact or law." What happens when a city clerk denies a record, acting in good faith and upon reasonable basis of fact or law, and even with an opinion of the city attorney that it is not in fact a public record. To equalize the situation, the following could be added before the period on line 382: ", and the official custodian acted frivolously, not in good faith or without a reasonable basis in fact or law."

Use of Records for Commercial Purposes. As we read new Section 5, on page 3, the record custodian must make copies available of any public record on request, under some kind of an arrangement. The custodian may not refuse to make copies and simply make the record available for view. In general, this copy provision requirement is new, and raises some policy questions as to the use of public records for private purposes. The issue here is not whether certain information is an open public record, but whether copies must be made, or provided for under subsection (b), for any record that is an open record, absent a statutory prohibition against it. An example is voter registration records, which are open records but with a class C misdemeanor felony for using such lists for commercial purposes (K.S.A. 25-2320a). I don't believe the legislature wants to require cities to prepare neat mailing lists from city utility records, even if the copying is paid for, to be used for commercial solicitations.

Memos and Letters as Public Records, page 9. Finally, I would call to your attention one of the most substantive policy changes in HB 2327--the requirement that drafts, notes, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed are open public records under certain circumstances. This includes their being cited or identified in an open meeting or on an agenda, or the distribution to a majority of a quorum. These are not public records required by law to be maintained, and therefor are not now public records.

Under our representative system, we have a responsibility to keep the determination of public affairs as open as possible. However, I would suggest that we have an equally important concurrent responsibility to help governments to function effectively, particularly as to those governmental units which exist primarily to provide direct public services to the public. In my own judgement, elected governing body members should have unfettered access to suggestions and information from their staff and employees. State laws should not discourage the exploration of options, or restrain the development of imaginative choices in public decision-making, by the fear that everything put in writing will be made public. Striking subsection (b), beginning on line 310 would soften the impact of the bill. However, I would note that we have submitted this position before, to no avail, and simply raise the issue at this time.