

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 ~~xxx~~ a.m./p.m. on March 2, 1983 in room 526-S of the Capitol.

All members were present except:
Reps. Roe and Peterson, who were excused.

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

Conferees appearing before the committee:

- Representative Clifford Campbell
- Joan Meile
- Dr. Joseph Hollowell, Department of Health & Environment
- Irvin Franzen, Department of Health & Environment
- Murrel Bland, Kansas Press Association
- Dr. A. W. Dirks, U.S.D. 259, Wichita
- Duane West, City Commissioner, Garden City, Kansas
- Ernie Mosher, League of Kansas Municipalities
- Representative Dave Heinemann
- John Koepke, Kansas Association of School Boards
- Warren Porter, Administrative Assistant, City of Emporia
- Joei Bohr, Association of News Broadcasters of Kansas
- Mark Elliott, Wichita Chapter Sigma Delta Chi
- Douglas Merritt, Mayor, Atchison, Kansas
- Attorney General Robert T. Stephan

Chairman Whitaker called the meeting to order and announced that HB 2353, HB 2402, HB 2427, and HB 2472 were on hearing status. He further announced that since HB 2427 and HB 2472 dealt with the basic same issue that he would appreciate conferees speaking on both at once to save time.

Rep. Clifford Campbell appeared to explain the provisions of HB 2353 stating he had had a letter from a lady doing genealogy research who was having some trouble getting records and he was trying to help her out.

Joan Meili appeared on HB 2353 stating that genealogy research is the fastest growing hobby in the nation as people are becoming more aware of their heritage. In some instances city or county clerks will assist in giving information or they will let you look up information. The bill provides preservation of records for 70 years and then allows them to be researched. (See Attachment A)

Dr. Joseph Hollowell, Department of Health & Environment, appeared on HB 2353 stating that this bill will not answer all the problems and does not speak to records compiled prior to 1911. He stated that opening records prior to 70 years could still disclose illegitimate births. There are technical problems with the bill that need to be addressed. (See Attachment B)

Leland Adams, Kansas Council of Genealogical Society, appeared in support of HB 2353 but expressing concerns about a definition of the language on Line 43 on Page 1.

Dr. Irvin Franzen, Division of Vital Statistics, replied to Mr. Adams that this problem occurs when we issue certified copies and what they are talking about in opening these records would be to open any and all records to inspection so that they would not be able to adhere to the law used when they search records for copies.

Murrel Bland, Kansas Press Association, appeared on HB 2402 stating that the intent of the Press Association in seeking change was to limit the reasons an attorney can go into closed sessions with a public body. However, the

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

Minutes of the House Committee on Federal & State Affairs, 1983
 March 2, 1983

bill language is awkward and should be changed to conform with the original intent. (See Attachment C)

A. W. Dirks, USD 259, appeared on HB 2402 expressing concerns with parts of the bill. He stated that their district is presently doing a study on the closing of some schools and that is an emotional issue for everyone. He stated that there should be provisions for discussion by legal counsel on sales and leases prior to the open meeting. He suggested a change of wording on Line 53 by adding the words "and sale" after the word "acquisition." (See Attachment D)

Duane West, City Commissioner, Garden City, appeared on HB 2402 stating that Mr. Dirks had expressed their concerns.

Ernie Mosher, League of Kansas Municipalities, appeared on HB 2402 stating they object to the language of the bill.

Rep. David Heinemann appeared to explain the provisions of HB 2427 stating it was introduced at the request of the Salina City Commission so that any two commissioners can talk to each other at any time they meet. It is not their intent to make it a secret meeting. This bill is not a cure-all, there will always be people that want to do things in secret.

Duane West, City Commisioner, Garden City, appeared on HB 2427 stating he supported the striking of the words "majority of a" leaving the act to apply only to a prearranged gathering of a body of agency. He believes HB 2427 is a common sense improvement in the law and opposes HB 2472. (See Attachment E)

John Koepke, Associate Executive Director, Kansas Association of School Boards, appeared on HB 2427 stating it would change the definition of a meeting under Kansas law by substituting quorum for majority of a quorum before a meeting. They believe the change makes good sense. (See Attachment F)

Warren Porter, Administrative Assistant, City of Emporia, appeared on HB 2427 stating they support the open meetings concept and will continue to regardless of legislation. They are concerned about any law that fails to allow government body members to interact outside a formal setting. (See Attach. G)

Douglas Merritt, Mayor, City of Atchison, appeared to oppose Sec. b of HB 2472 and in support of HB 2427. He stated they are not opposed to the concept of open meetings, in fact, they encourage the concept of townhall meetings. HB 2427 might remedy some of the problems governmental units face.

Ernie Mosher, League of Kansas Municipalities, appeared on HB 2427 stating that as a practical matter the open meetings act is a local meetings act and it does not affect the state level. A great manority of local units are 6 members, a 5 member council and a Mayor and they must be able to discuss the problems of their city.

Attorney General Robert T. Stephan appeared on HB 2472 explaining that it will continue the level of openness currently in practice in the state. HB 2427 would close meetings of public bodies which are currently open to the public. (See Attachment H)

Joel Bohr, President of the Association of News Broadcasters of Kansas, appeared in support of HB 2472 stating the measure clarifies some terms left undefined in the current open meetings law. This measure seeks to close the loophole in the law. (See Attachment I)

Mark Elliott, Kansas Chapter of the Society of Professional Journalists, appeared in opposition to HB 2427 which would redefine the term "meeting" and in favor of HB 2472 which would seek to restrengthen the open meetings law as currently defined by law. An informed citizenry depends on policy matters being debated in the public eye from their inception. The result of being excluded could be an ill-informed and frustrated public. (See Attachment J)

CONTINUATION SHEET

Minutes of the House Committee on Federal & State Affairs, 1983

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Testimony was presented by John M. Wylie, Society of Professional Journalists, in opposition to HB 2427 and in favor of HB 2472. The provisions of the "majority of a quorum rule" is designed to protect the interests of every citizen of the state. (See Attachment K)

Testimony was presented by Davis Merritt, Executive Editor of the Wichita Eagle-Beacon, in opposition to HB 2427 stating it would allow more closed meetings, and in favor of HB 2472 stating it clears up any ambiguities in the definition of an open meeting. (See Attachment L)

Rep. Vancrum moved, Rep. Eckert seconding that HB 2532, a bill making it a class E felony to deal in the manufacturing and retailing of fake ID's be reported favorably for passage. The motion carried.

The meeting adjourned.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE 3-2-83

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
Norma Koenig	630 Ks Ave	Bd of Cosmetology
John Wisdom	630 Ks Ave	" "
Diane E. West	Box 717 - Garden City, Ks	City of Garden City
Ed [unclear]	Topeka	Longway Ks Mel [unclear]
Mary [unclear]	4343 W 16 th St, Topeka	Top [unclear]
Leslie Ray	Jo Co Courthouse, Olathe	Jo Co Board of Co Comm
James G. Meili	Lincoln, Ks	
Donald Meili	Lincoln, Ks	
Allen Serrino	Delina, Ks	
John Kaugh	Topeka	KAS
Bill [unclear]	Wichita	U.S. R. 259
Joe [unclear]	WARREN	KAN FARM
Muriel W. Bland	P.O. Box 12003	Kansas City/Ks 66112
Eugene Decker	Topeka	K.S. H.S.
Deland Adams	10821 W 91 st St, Overland Park 66214	Ks Council & Geological Soc.
Kurt Wilkin	Topeka	Geo Soc.
Harriet [unclear]	Merriam Ks	LWV-KS

My reason for asking Representative Campbell to introduce this Bill was for the purpose of genealogy research. Genealogy is the fastest growing hobby in the country today. People are becoming more aware of their heritage.

One of the very necessary items for genealogy research is primary sources. These are the original records made at the time of a birth, death, marriage, probate of a will, civil case and etc. Items in a newspaper are secondary sources. My mother-in-law was an Usher, so this item in the March 28, 1901 issue of the Lincoln-Sentinel caught my eye. "Barnard - Mr and Mrs Usher are the happy parents of a boy." To have the whole truth one must have the primary source of information.

Birth and death records have been recorded in the counties since their beginnings. It was not until 1 July 1911 that they were required to be recorded with the State. However, it was not until 1914 that even 90% of the deaths were recorded and 1917 before 90% of the birth were recorded with the State. It is the local county records that the genealogists wants to research. One can get the birth and death records of a relative from the Kansas State Department of Health and Environment if it was recorded and if it happened after 1 July 1911.

Most genealogy hand books suggest writing to the City or County Clerk for information prior to July 1911. These officials are busy enough with their day to day tasks without this extra work. A lot of these requests are disregarded because of the lack of time or interest in genealogy. They don't realize the importance of this request to this individual. Some will pass the letter on to someone in the community that is interested in such research. That is how I have become so involved in genealogy research. Believe me one does not become rich at \$3.00 an hour and driving 20 miles round trip to town. I do it because I enjoy helping other people solve their genealogy problems.

In some counties the Clerk will simply give you the book or books and let you look up what you want. Some act as though it is their own property and it is nobodies business what the records contain. It is for the sake of those who have relatives in the latter that I am here to support House Bill No. 2353.

I asked the Attorney General about the availability of the Vital statistics for personal research. I received a copy of an opinion which was written for Lyon County in 1979. It read, in part "Synopsis: Local authorities may disclose records of vital statistics only where there is a law authorizing such disclosure, and, in the absence of such a law, no disclosure thereof to the general public is permissible." It seems therefor that the only alternative is to change the law.

I presently have two (2) requests on my desk for research. One lady from Illinois is looking for her great grandfather. Her grandfather, born in 1883, was an illegitimate son. The family has known this down through the years, but it is not known who the father was. Don't you think they should have access to this information, after all these years? Genealogy has to do with blood relation and there is no way she can trace her paternal heritage without this information. The other is like so many others. A lady from Nevada needs the death date for her great grand father who died between 1877 - 1880.

This Bill will preserve the records for seventy (70) years and then allow them to be researched by an individual. It will relieve the official of the task of doing the research.

The 1910 Federal Census is available for research. It contains the name of each individual, relationship, sex, age at last birthday, marital status, etc. The 1900 Census, which is also available, gives the month and year of birth along with other information. I feel if the Federal Census for 1910 is available to us, then why not the Vital Statistics prior to 70 years.

Alc b. A

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON HOUSE BILL NO. 2353

PRESENTED MARCH 2, 1983

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

This is the official position taken by the Kansas Department of Health and Environment on House Bill No. 2353:

This bill will revise K.S.A. 65-2422 to make birth and death records open to inspection after 70 years from the date of birth or ~~30 years~~ from the date of death. We understand that House Bill No. 2353 was introduced in response to concerns of genealogists wanting more complete access to vital statistics records prior to 1911. (Central filing of birth and death records did not begin at the state level until July 1, 1911, hence provisions of the Vital Statistics Act, including K.S.A. 65-2422 are generally regarded as applicable only to birth and death records filed since 1911.) In most cases, the local custodians of birth and death records are presently searching files and verifying information on dates and places in response to the requests of genealogists, but in accordance with limitations of K.S.A. 45-201 and K.S.A. 65-2422, they are not granting complete access to all files. These statutes require confidentiality of illegitimate births and causes of death.

House Bill No. 2353 does not indicate that the new provisions of K.S.A. 65-2422 would apply to those birth and death records in local files for years prior to 1911, and it does not amend K.S.A. 45-201, which is applicable to both state and local records.

DEPARTMENT POSITION: The Department regards 70 years as too short a time span to open birth certificates to public inspection. There are over 2,100 living Kansas residents over 70 years of age who were registered as illegitimate births and the number will increase each year (by the year 2000 over 5,000 persons). The Department would accept nothing less than 100 years after the date of birth as a reasonable time to open birth certificates to public inspection. The Department would accept 50 years after the date of death as a reasonable lapse of time to open the records to public inspection.

Ach.B

Testimony on House Bill No. 2353
House Federal and State Affairs Committee
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The Department is also concerned about the apparent conflict between the new provision of House Bill No. 2353 and the provisions of K.S.A. 45-201 and the fact that this would apparently not resolve the problems of accessing locally filed birth and death records for purposes of genealogical research.

Presented by: Barbara J. Sabol, Secretary
Department of Health and Environment

Testimony presented March 2, 1983

Good afternoon. I appreciate the opportunity to make a presentation to the State and Federal Affairs Committee of the Kansas House of Representatives. I am Murrel Bland, publisher of the Wyandotte West newspaper, a community weekly which serves suburban Kansas City, Kansas. I have been a Kansas resident since 1949. I have been a working journalist for nearly 20 years. For the last 15 years I have covered meetings of public officials in my trade territory.

I speak today as an official representative of the Kansas Press Association, a group of more than 300 newspapers. As the Association's legislative chairman, I want to discuss two proposals before your committee, House Bill 2427 and House Bill 2402.

The Press Association appreciates the efforts this committee has demonstrated in previous years in passing laws which help assure open government. However, House Bill 2427 is not a proposal which promotes open government. It is rather a backward step. The present law makes a majority of a quorum of a public body subject to the open meetings law.

The proposed bill would eliminate the words "majority of a" and substantially weaken the law. I realize that the Kansas League of Municipalities, in its legislative package, calls for this change. I discussed this matter extensively late last year with the president of the League, Mr. Kent Crippin, the mayor of Leawood. Mr. Crippin assured me that the League was not advocating closed government with this proposed law. He explained that nuisance suits have resulted from "nuts" who have seen public officials together who have met by chance.

I certainly have no use for those that file frivolous suits. But there are other remedies in Kansas law to deal with such nonsense. And it should be explained that the open meetings law covers only prearranged gatherings.

House Bill 2402 also deals with open meetings. The intent of the Press Association in seeking change was to limit the reasons that an attorney may go into closed session with a public body. The proposed change we suggested read "This privilege shall be that which is statutorily recognized in KSA 60-426. Communication must be a confidential character and so regarded by the governmental body and agency." The change as proposed in House Bill 2402 is awkward and confusing. It reads "and the same and any other subject shall not be discussed with any other purpose other than such attorney at the same meeting closed for the purpose of consultation with such attorney."

I would suggest that the language be changed to conform with our original intent.

Thank you for your consideration.

M. Bland

Testimony on House Bill 2402

March 2, 1983, 1:30 p.m.

A.W. Dirks, U.S.D. 259

The Honorable Neil Whitaker
Chairman of House Federal and State Affairs Committee

Members of House Federal and State Affairs Committee:

I am A.W. Dirks, representing USD #259, USD #501, U.S.A., and KASB. Thank you for the opportunity of appearing before your committee for the purpose of amending HB 2402.

At the present time, USD #259 is completing a 15 month study in preparation for the closing of some schools. This matter is tentatively scheduled for Monday, March 6. It is anticipated that the Board will close some small attendance units.

In the past the disposition of real property has followed Board Policy with priority being given to the sale, lease, or trade with other governmental units and non profit agencies. The City operated their police academy in Emerson School for many years. We traded Bridgeport School, under Urban Renewal for a data processing center location near the City and County buildings. Another example was the closing of Munger and Hilltop Manor for a Park Board Community Center. Yet another was the Eureka School which served the Community Action Agency for a number of years. In these cases our "sales" were acquisitions by another governmental unit. The sales and sometimes leases were often for negotiable amounts to support another governmental entity.

Therefore, on line 053 of the Bill (HB 2402) it is proposed that after the word "acquisition" AND SALES be added. This would provide preliminary discussion by legal counsel prior to action being taken in an open meeting.

Thank you for your consideration and support of this amendment.

Atch. 0

The City of Garden City

CITY ADMINISTRATIVE CENTER
301 N. 8th, P.O. Box 499
GARDEN CITY, KANSAS 67846

(316) 276-8263

- CITY COMMISSION -

FRANK F. SCHMALE, Mayor
GARY E. FULLER
RODNEY HOFFMAN
AL TOWLES
DUANE E. WEST

- CITY MANAGER -

DEANE P. WILEY

- ASST. CITY MANAGER -

ROBERT M. HALLORAN

- CITY CLERK -

TIM KNOLL

- DEPARTMENTAL STAFF -

LEON A. DAWSON - Airport Mgr. Solid Waste Supt
JAMES F. HAHN - Cemetery Supt.
JERALD J. VAUGHN - Chief of Police
THOMAS J. BURGARDT - City Attorney
STEVEN F. COTTRELL - City Engineer
HOMER C. RICKERSON - City Inspector
FRED W. SAUNDERS - Director of Utilities
TRESA SMITH - Housing Manager
DANIEL A. BAFFA - Park & Zoo Director
DAVID I. McDONALD - Planning Director
BILL EWING - Street Supt.
ALAN SHELTON - Vol. Fire Chief

Statement in Support of House Bill 2427

Mr. Chairman, Ladies and Gentlemen of this committee:

I appear here today in support of House Bill 2427 which was introduced in this body by Representative David Heinemann at the unanimous request of the five members of the Garden City Commission.

Under the present wording of the Kansas Open Meetings Law, K.S.A. 75-4317a defines a meeting for which notice must be given as any prearranged gathering or assembly of a majority of the quorum of the membership of the body or agency. This means two members of a five-person commission can't meet without complying with the notice provision. The bill before you today proposes to strike the words "majority of a", leaving the Act to apply only to a prearranged gathering or assembly of a quorum of the membership of the body or agency. We of the Garden City Commission believe this proposed change is a common sense proposal which needs to be enacted.

Almost all commissions, councils and other agencies of city government are part-time positions, with the exception possibly of Topeka and Kansas City, which pay little, if any, salary for those elected or appointed members. We have a limited amount of time wherein we are actually together in formal sessions. Often, we do

A. G. E.

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not have sufficient time to properly think about and discuss agenda matters which come before us. There are often matters brought before us for action that are not listed on the agenda. The ever increasing complexity of operating city government requires an ever increasing amount of time of those people involved in "legislating" on the local level and setting policy. Many city councils, of course, supervise administration via the mayor and commissioners and council members who oversee a particular part of the local governmental operation, such as streets, finances, utilities and public safety.

The wording of the present law which prohibits two members from discussing city business at a prearranged meeting prevents the discussion and exchange of ideas. The more time and opportunity we have as individuals to sit and discuss on an informal basis the needs and goals of the city or agency we are serving, the better city government will be. There are many things that members of the governing body need to do in the area of formulation of policy, interaction with county commissioners and other governmental agencies, such as the Legislature, U.S. Congress, etc., that can be expedited and better handled than through the administrator or manager. Of necessity, this involves contact between individual commissioners to get letters written, phone calls

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made, innumerable things done in a variety of areas. Under the present law, such meetings to accomplish tasks as I have described above would be illegal and make the members of the governing body or agency subject to a civil penalty of up to \$500.00. This, I believe, is detrimental to good, effective city government. We certainly subscribe to the law which prevents a quorum from meeting without providing notice, etc., under the law.

Delegates at the Kansas League of Municipalities meeting last fall voted in support of the change proposed by this bill.

I think each of you would certainly not wish to be placed in a position where you could not exchange views and ideas and reflections with each other about proposed legislation and problems which confront our great state of Kansas without notifying the news media that you were going to meet and hold such discussions with a colleague! But that is exactly where the law now places members of governing bodies and agencies.

Some members of the news media claim that this proposed bill will lead to all sorts of skullduggery and horrible, horrendous happenings all over the state in the various units of government subject to this Act. I believe this is an erroneous, pessimistic and negative view

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which tends to cast aspersions upon the character and sincerity of those of us who serve on such governing bodies and agencies. Of course, the voters can always vote out of office elected officials who are acting contrary to the public's wishes.

So, once again, we sincerely plead with you to vote favorably to make this suggested change. We realize it will take a great deal of political courage to vote yea. But we believe the public wants our laws to be based on common sense. That's what HB 2427 is: a common sense improvement in our law.

Thank you very much for this opportunity to express our views.



Duane E. West

Duane E. West
Vice Mayor, Garden City, Kansas

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

5401 S. W. 7th Avenue Topeka, Kansas 66606
913-273-3600

Testimony on H.B. 2427
Before the
House Federal and State Affairs Committee
by
John W. Koepke, Associate Executive Director
Kansas Association of School Boards
March 2, 1983

Mr. Chairman and members of the Committee, we appreciate the opportunity to appear before you on behalf of the 300 member boards of education of the Kansas Association of School Boards. The topic before you in H.B. 2427 is not a new one to veteran members of the Committee. We have supported in the past similar legislation and appear here today once again in support of this change.

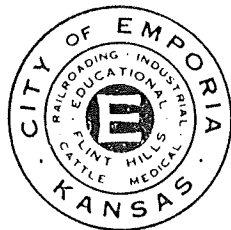
H.B. 2427 would change the definition of a meeting under the Kansas open meetings act by substituting quorum for majority of a quorum before a meeting would be subject to the act.

For school board purposes, this would raise from three to four the number of school board members who would have to be present before a "meeting" would qualify under this act. We think this makes eminently good sense. The Kansas Supreme Court, just over a week ago affirmed our longstanding view that it takes four votes on a school board to pass a motion, no matter what the subject. Three school board members, a majority of a quorum, could never enact any policy decision, no matter if only four board members, the minimum required to do business, were present at a board meeting.

Therefore, it seems to our members ludicrous to call a gathering of three board members a meeting. No amount of conspiracy by three members

John W. Koepke

could accomplish any action without the consent of a fourth. Insofar as school boards are concerned, we do not believe that the present definition of a meeting serves any public policy purpose and for that reason would urge your favorable consideration of H.B. 2427.



THE CITY OF EMPORIA, KANSAS

CIVIC BUILDING 66801

522 MECHANIC (316) 342-5127 P.O. BOX 928

J. BRENT McFALL
CITY MANAGER

STEPHEN L. ANDERSON
CITY CLERK
PHONE 342-5105

DONALD D. BLAYLOCK, MAYOR

W. J. WIETHOLTER, JR., VICE-MAYOR

J. WARREN BRINKMAN
COMMISSIONER

JUNIUS M. PENNY
COMMISSIONER

LEONORE H. ROWE
COMMISSIONER

SUBJECT: HB 2427
PRESENTED TO: House Committee on Federal and State Affairs
BY: Warren Porter, Administrative Assistant,
City of Emporia, Kansas
DATE: March 2, 1983

The City of Emporia recognizes that the Kansas Open Meetings Act has assured the openness of public decision-making and has allowed the community to be better informed about policy decision-making at the local level. The City of Emporia supports the open meeting concept, and will continue to support the idea regardless of legislation. Virtually all City of Emporia Commission Meetings are televised by Emporia State University Multi-Media Department. Local television, along with the presence and reporting by both the written and spoken media, allows citizens of Emporia to be better informed today than they probably have ever been. Citizen participation should always be encouraged at the local level.

The Kansas Open Meetings Act has been successful in creating an open atmosphere generated at public meetings. Still, we are concerned about any law that fails to allow government body members to interact outside the formal commission setting. Communication between two members of a governing body should be encouraged rather than prohibited.

The City of Emporia supports HB 2427 in the repealing of the "majority of quorum" requirement that forbids two individual members of a five commissioner governing body, as it is presently in Emporia, from informally discussing city-related topics.

ALG. G



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 D. WHITAKER, CHAIRMAN

RE: HB 2472 and HB 2427

March 2, 1983

Dear Mr. Chairman and Members:

Thank you for this opportunity to comment on two bills concerning the Kansas Open Meetings Act. I support 1983 House Bill No. 2472 and oppose 1983 House Bill No. 2427. The former continues the level of openness currently the practice in the state. The latter will close meetings of public bodies which are currently open to the public.

Recently our office issued an opinion that declared the Kansas Open Meetings Act to be uniform in its application to cities. (Kansas Attorney General's Opinion No. 83-6.) The Act is, therefore, not subject to charter ordinance. However, the statutes which set quorum requirements for the cities of various classes and forms of government are not uniformly applicable.

Atch. H

Such statutes are subject to the exercise of a city's constitutional home rule powers. Since the Open Meetings Act defines "meetings" in terms of the "majority of a quorum" of the body or agency subject to the Act, cities may, by charter ordinance, raise or lower their quorum requirements. By raising the quorum requirement of a five member city commission, for example, from three to four members, the majority of a quorum becomes three rather than two. Thus, unlike the present situation, two members of the city governing body could then discuss city business in private. Such a change could only be made by charter ordinance subject to a protest election.

Although raising the quorum requirement may restrict the ability of the city to transact business, I have no doubt that some cities will seriously consider the quorum increase in order to "out-smart" the Open Meetings Act.

HB 2472 would close this small loophole by defining both "majority" and "quorum" for purposes of determining what "meetings" are to be open to the public.

HB 2427, on the other hand, eliminates the "majority of a quorum" test for determining what gatherings of public officials must be open. Under this bill, only when a "quorum" is present would the Open Meetings Act apply. This bill does for all governmental bodies of the state what some cities would like to do under existing law. This bill closes meetings which have heretofore been open.

As we have begun to enforce the Open Meetings Act in this state, those who prefer the convenience and comfort of closed meetings have become more and more vocal. Believe me, without the open meetings law government bodies will close meetings. So it is up to the Legislature to see that the public has access. I fail to see any real need to give away the public access to government which we have taken great pains to obtain.

It seems to me that the Legislature has basically three choices before it. You can pass HB 2472 and ensure the continued public access that you have today. You can do nothing, which permits certain cities to change their quorum requirements, potentially reducing to some degree the public access to government in the state. Or you can enact HB 2427 for a wholesale reduction in public access. Since I have difficulty understanding why mere convenience of public officials should outweigh the need for informed voters, I must urge the first course of action.

OPEN MEETINGS STATEMENT

Federal and State Affairs Committee of the Kansas House of Representatives
Association of Broadcasters of Kansas

Chairman Whittaker and distinguished members of the Kansas House
Federal and State Affairs Committee:

I'm Joeli Bohr, the President of the Association of News Broadcasters of Kansas. ANBK, as we are called, represents broadcast journalists from across the state.

We wish to testify on two of the measures before you today relating to the open meetings law in Kansas. Since they are related, we wish to address them together.

ANBK supports HB 2472 and strongly urges you to act favorably on the measure which clarifies some terms left undefined in the current open meetings law. This measure seeks to close the loophole in the law that came to light recently in an opinion issued by the Attorney General's office at the request of the city of Lawrence. We believe the legislative intent of the open meetings law is clear. When lawmakers drafted and approved the current law in the 1970's, they wanted it to apply both to meetings of the quorum of a given city commission, school board, or other governmental group subject to the law, but also to meetings of a majority of a quorum of such a group. HB 2472 would preserve that legislative intent. HB 2427, on the other hand, would not.

ANBK opposes Representative Heinnemann's bill and urges you to kill the measure that would strike three words from the current open meetings law--a proposed change that would make the state's open meetings law applicable only to a quorum of any group now subject to the law.

It may sound very attractive at first, to be able to discuss pending government business with a fellow city commissioner, board member or committee person and not have to worry about breaking a law. Rep. Heinnemann's measure may seem an ideal solution to the frustration of not being able to do just that. But it is not a solution.

To understand why, I'd like you to ask yourselves some questions. What annoys you the most when you deal with another governmental body or agency? Is it a concern that someone is trying to make an end run around your authority on a matter you knew nothing about? Is it having suddenly to comply with a regulation you had no input on?

The way to avoid such annoyances is to have access to the full decision making process, not access to just the session where a decision is formally made. That is what the current open meetings law was designed to insure.

The current law also makes provisions for handling more sensitive matters, like land purchases or employer/employee negotiations.

It may seem inconvenient and even frustrating at times not to be able to discuss pending matters informally, but it can be equally frustrating to members of the public when a matter of key concern to them is discussed in a way where their input cannot be heard.

Kansas has one of the best open meetings laws in the country. It should not be weakened.

Atch. I

Mark Elliott

OPEN MEETINGS STATEMENT

Federal and State Affairs Committee of the Kansas House of Representatives
Kansas chapter - Sigma Delta Chi

The Kansas chapter of the Society of Professional Journalists, Sigma Delta Chi wishes to state its support of HB 2472, which we understand, would plug a loophole in the current Kansas Open Meetings Law, and its opposition to HB 2427, which would redefine the term "meeting" under state law and would lead, we feel, to closed sessions of portions of elected bodies.

As we understand HB 2472, it would seek to restrengthen the open meetings law by defining both "majority" and "quorum" in the section of the current law which defines meeting, KSA 75-4317-A. Due to an Attorney General's opinion rendered the city of Lawrence, it is our understanding that elected bodies of individual units of government can now define quorum as they desire, in effect chartering out from under the law, and allowing small groups of elected bodies to meet in a closed session to debate policy matters and pending business.

If a number of units of government in the state elect to use the loophole afforded them by the Attorney General's opinion, we feel the results would not serve the interests of public, press, or ultimately, the interests of the elected officials themselves. We recognize and empathize with the situation that elected officials on city commissions, school boards, panels and other divisions of government find themselves in. They are forced to do business in a "goldfish bowl" in almost all cases. In addition, when public issues are debated in the public view, frustration and criticism of elected officials can frequently be the result.

Even though the current situation is admittedly frustrating for elected officials, we feel that an informed citizenry depends on policy matters being debated in the public eye from their inception. It would seem to build confidence in a governmental body when all policy proposals and pending business is debated openly, and members of the public know not only the final decisions, but the discussion, desires and motivations that went into the making of those decisions. Conversely, it would not seem to build confidence when small groups of elected officials could meet to plan and discuss policy matters privately. The result could conceivably be an ill-informed and frustrated public, one that might not think kindly of elected officials who would introduce matters of public business "through the back door."

We recognize that most elected bodies in the state have operated in an open and above board fashion. There have been some notable exceptions, however, in such cases as the Galena city council and the Thomas County hospital board affairs, in which the right of the public to scrutinize the decision makers as they acted was sorely abused. We urge that the law be tightened to prevent the possibility of further abuse.

We also feel that the law should be strengthened for another reason. As the open meetings law is written now, a number of exemptions are in force that allow a body to meet privately in certain circumstances. In consulting with an attorney, in handling employer/employee negotiations and in a number of other cases, elected bodies are now allowed to hold closed sessions. We feel the current law provides sufficient grounds for excluding press and public when necessary.

Finally, we urge you to examine the current law and its exact wording. When the "majority of a quorum" language was passed in the mid-1970's, the intent of the legislature was clear. We suggest the legislature did not frame that language lightly or frivolously and that it was aware of the

Mark Elliott

problems that would arise on the local level when it passed that language then. We urge, again, the passage of HB 2472, in order to keep the law true to its original intent.

Our opposition to HB 2427, by Representative Heinemann, arises from similar grounds. We do not feel it proper to authorize small groups of elected officials of a particular body to meet and talk with press and public excluded. We do not feel that such a situation would build confidence in public institutions or in the elected officials who run them, and would deprive the public of knowledge of a portion of the decision making process. Again, we feel the current law contains ample grounds to exclude public and press when it is felt sensitive issues need to be covered.

The current law seeks to "let the light shine in" on the workings of deliberative bodies. We ask you to strengthen the current law, and not leave it weak or alter it in any fashion that would diminish its impact.

Prepared testimony of John M. Wylie, II
Region 7 Freedom of Information Director
Society of Professional Journalists,
Sigma Delta Chi

Wednesday, March 2, 1983
House Federal and State Affairs Committee

Honorable Committee Members:

I am John M. Wylie, II, Region 7 Freedom of Information Director for the Society of Professional Journalists, Sigma Delta Chi; and Past President of the Kansas City Press Club. I live at 5112 Nall Avenue in Roeland Park, Kansas. I appear today on behalf of the hundreds of STJSDX members in Kansas and the readers, listeners, and viewers we serve throughout the state -- the citizens of Kansas.

I deeply regret that my duties in covering yesterday's municipal elections prevent me from appearing in person before this committee. As many of you know from my previous appearances before this committee in past sessions, the Kansas Open Meetings Law is of special concern to me and our members. Kansas now has an excellent law, one which serves the public, the media, and the government bodies of this state well.

I have particular concern about one proposed change -- the alteration of the so-called "majority of a quorum rule". We consider it vital that this provision be retained in tact. This is not, as some would imply, a special interest rule designed to protect the interests of the media. Instead, it is a provision of Kansas law that gives protection to every citizen of the state.

In Johnson County, where the three-member commission recently expanded to five members, a joke among the hold-over commissioners is that it is nice to have suspense at meetings again. With a three-member commission, once a proposal is moved and seconded, passage is virtually automatic and because of the number of such three-member and five-member bodies in the state, it is vital that the "majority of a quorum rule" remain. Without it, a minority of a public body could set the agenda and actions of a public body in private then vote in open session without regard to the views of the excluded member or members. That could have the practical effect of disenfranchising up to one-third of the citizens of that body politic -- all those represented by the excluded member or members. Yes, openness in government can at times be prickly. But it long has been the policy of this state and, in the end, openness best serves all Kansans.

March is Freedom of Information month. As you consider any changes in the open meetings law, which has worked so well, we urge you to keep in mind our slogan, representing all Kansans: "No news is not good news!" Thank you.

John M. Wylie, II

The Wichita
Eagle-Beacon

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825 E. DOUGLAS · P.O. BOX 820

WICHITA, KANSAS 67201

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W. DAVIS MERRITT, *Executive Editor*

March 2, 1983

Rep. Neal D. Whitaker
Room 115 S
State Capitol
Topeka, KS 66612

Dear Rep. Whitaker:

The press of business in Wichita keeps me from appearing before the committee today on the changes in the open meetings law. I request that this letter become a part of the record, so that our position is known on the various proposals.

H.B. 2427 would allow more closed meetings, and more decisions arrived at in private, by changing the definition of a quorum. It would, therefore, be a step backwards in open government for the state. It would allow groups substantial enough to prearrange a decision to meet, discuss and, in effect, make the decision not only away from the public eye but also away from the observation of other members of the body.

The committee bill, H.B. 2472, on the other hand goes in the other direction by clearing up any ambiguities in the definition. It is my understanding that the Attorney General's office has run into problems, as have we, with the existing language and has been involved in suggesting this language. As the primary officer enforcing this law because of a lack of local action, the Attorney General needs this tool.

H.B. 2402 is apparently designed to clarify the working of the attorney-client relationship within the context of open meetings. That shelter against openness has been distorted beyond recognition in some cases which I am familiar with, and any language which reduces the abuse would be welcomed.

One fear often expressed is that somehow officeholders are going to be subject to abuse and penalty because of chance or social encounters, and repeated efforts have been made to write language limiting such exposure.

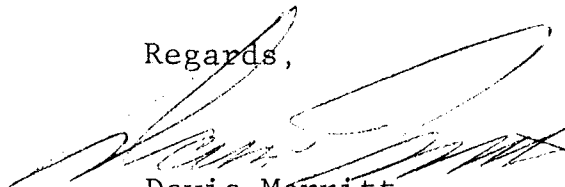
I know of no instance in which an office holder has been so abused, and suggest that ample protections exist in the judicial process to

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make such instances unlikely.

Kansas citizens have a difficult enough time knowing what their various governments are up to without additional roadblocks. I urge that the committee and the Legislature act favorably on H.B. 2472 and H.B. 2402 and reject H.B. 2427.

Regards,

A handwritten signature in black ink, appearing to read "Davis Merritt", written over a horizontal line.

Davis Merritt
Executive Editor

be