

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:00 a.m. on January 31, 1995, in Room 531-N of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Legislative Research Department
Emalene Correll, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Senator David Corbin
Davis "Buzz" Merritt, Editor, Wichita Eagle
Representative Doug Lawrence
Mayor Edward L. Blake, El Dorado, Kansas
Mark Tallman, Kansas Association of School Boards
Dan Harden, Riley County Engineer

Others attending: See attached list

SB 82--Concerning open meetings; concerning closed or executive meetings.

The Chairman noted that this bill was introduced in connection with an interim study done on open meetings in 1994. The two changes appear on line 23, page 1, where the existing law is clarified to address some misunderstanding as to whether members of elected bodies can attend social gatherings together, and the other change is on line 24, page 2, which addresses the discussion of appointments to non-elected bodies at open meetings.

Senator David Corbin, who was Chairman of the interim committee, informed the committee that the main concern expressed during the interim study related to determining if members meeting at a social gathering would be considered in violation of the open meetings law. This concern is clarified in **SB 82**. He explained that the interim committee did not offer solutions to the concerns expressed but concluded what problems are involved.

Davis "Buzz" Merritt, Editor of the Wichita Eagle, gave formal testimony in opposition to the bill on behalf of the Kansas Press Association as well as the Wichita Eagle. (Attachment 1) He added his own personal recommendation, stating that he strongly feels the open meetings law should be repealed because, in reality, it is of no value. In his opinion, it has no teeth or enforcement because it has been amended out of existence. He concluded that he sees no need to continue to deceive the public.

The Chairman asked Mr. Merritt if he was aware of a bill passed last session which strengthened the law. Mr. Merritt responded that he was not aware of the bill. Sen. Tillotson commented that she disagrees with Mr. Merritt's opinion that this law should be repealed because in her experience of serving on elected boards the open meetings law was obeyed, and she feels this law is better than none at all. However, she added she does not agree with this bill and reiterated that last year's open meetings bill did strengthen the law.

Senator Ramirez requested that Mr. Merritt submit written copies of his testimony in regard to his personal opinion that the open meetings law be repealed, and Mr. Merritt agreed to do so.

Senator Gooch noted that one must assume that the open meetings law will be complied with as one does with all laws, therefore, if the open meetings law were repealed, one could say that all laws should be repealed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT, Room 531-N Statehouse, at 9:00 a.m. on January 31, 1995.

Mr. Merritt agreed with this philosophy, however, he suggested that another interim study be done on the open meetings law concerning the possibility of requiring that executive sessions be recorded.

Representative Doug Lawrence, testified next to express his concern for the open meetings statutes. (Attachment 2) He feels **SB 82** needs clarification. He also informed the committee that he had introduced a bill in the House of Representatives, **HB 2195**, which is an attempt to prevent further erosion of the open meetings law and deals with the law in a broader sense.

Senator Downey suggested that the language of **SB 82** be clarified on page 1, line 24, by substituting "exclusive discussion" for "conduct."

Senator Tillotson inquired if the interim committee had suggested the introduction of this bill. Senator Parkinson clarified that he had had the bill introduced, not the interim committee.

Mayor Edward L. Blake of El Dorado, Kansas, testified in support of the bill with one exception. (Attachment 3)

The Chairman called attention to written testimony submitted by Jacque Oakes, Schools for Quality Education, in support of **SB 82**. (Attachment 4)

Mark Tallman, Kansas Association of School Boards, testified in support of **SB 82**. (Attachment 5)

The Chairman continued the hearing on **SB 82** to February 2 at this point to allow time to hear the other bill scheduled to be heard at this meeting.

SB 79--Concerning townships; relating to watermarks at fords.

Dan Harden, Riley County Engineer, testified in support of the bill. (Attachment 6)

Senator Feleciano commented that the bill would lessen the liability of counties. The Chairman noted that the law does not stipulate that a county put up these signs. Mr. Harden commented that those counties which did not put up signs as suggested in his testimony probably have not been using watermark signs either. With this, the hearing on **SB 79** was concluded.

The meeting was adjourned at 10:00 a.m.

The next meeting is scheduled for February 2, 1995.

LOCAL GOVERNMENT COMMITTEE GUEST LIST

DATE: 1/31/95

NAME	REPRESENTING
Don Moler	League of KS Municipalities
Davis Merritt	KPA & Wichita Falls
Anne Spiess	Ks. Assoc of Counties
DAN HARDEN	RILEY COUNTY
Harriet Lange	KS Assn Broadcasters
Matt Truell	AP
Jon Newmon	KS Governmental Affairs
Mark Tallman	KASB
Doug Lawrence	LEG.
Cynthia Menzel	KNEA
Stan Stewart	City of El Dorado
Ed Blake	City of El Dorado
Bill Anderson	Water Dist #1 of Jo Co.
Shannon Peterson	KBA
Chris McKenzie	League of KS Municipalities

Statement on behalf of the Kansas Press Association and other individuals, including Davis Merritt, Editor, the Wichita Eagle, on Senate Bill 82.

Before the Senate Local Government Committee, Jan. 31, 1995

The proposed changes in the Kansas Open Meetings Act will further weaken an already eviscerated law.

The first -- allowing social gatherings of members of elected bodies -- would seem only to codify existing law, as there is no part of the present law that prohibits such gatherings. And we would have no problem, if in fact that is the amendment's effect.

However, the effect of this change depends upon the interpretation of the words "conduct" and "transaction". If, for instance, does a discussion among city council members at a social gathering about some piece of business pending before them constitute "conduct of governmental affairs?"

We would argue that it does; but those who interpret the Open Meetings Act more liberally have often insisted that no discussion that does not result in "binding action" is the conduct of business.

If the committee intends to simply codify existing practice rather than drive yet another hole in the law, it should replace "conduct" and "transaction" with the simple word "discussion."

Senate Local Gov't
1-31-95
Attachment 1

Officials subject to the act complain that they come under suspicion when they appear together at social gatherings. If this is so, the remedy is simple: talk about the Super Bowl or the weather or your grandkids and keep away from public business.

We would not oppose such true codification, but the present language is too vague.

The second change would allow executive sessions to discuss appointments to non-elected boards.

This simply blows another hole in the public right of access to public affairs and should be, in our view, rejected.

We understand that there can be delicate considerations in appointing people to advisory boards and civic-duty boards and that it can be both damaging and discouraging when people willing to accept such appointments become the subject of public discussion about, perhaps, some personal matters.

But city councils and county commissions also appoint members to quasi-judicial boards, such as planning commissions, airport authorities and museum boards. Such boards often have direct authority over citizens and corporations, and citizens thus have the right to hear full discussions of appointments to those boards.

There may be no good way to make such a distinction, and if there is not, this amendment should be defeated for it clearly removes citizen input from a process that directly affects their lives and livelihoods.

You may also be aware that the House has similar legislation before it, but their version goes even further in one respect and

ould erase the last vestige of government openness. We earnestly hope that the House version never sees the light of day, but if it heads your way, please do not accept it.

In addition to the amendments in your bill, the House version would allow two or more members of any body to arrive at decisions about any public business without any public discussion, input or hearings. It is the final dagger in the heart of open government at the local level.

Doug Lawrence

STATE REPRESENTATIVE

902 MIAMI

BURLINGTON, KS 66839



TOPEKA

HOUSE OF
REPRESENTATIVES
 COMMITTEE ASSIGNMENTS
 MEMBER: AGRICULTURE AND SMALL BUSINESS
 ENERGY AND NATURAL
 RESOURCES
 TRANSPORTATION

January 31, 1995

Thank you for this opportunity to address the Open Meetings Law in general, and SB 82 in particular. I appear before you as an interested party, rather than a proponent or opponent of this particular legislation. I am here with sincere concern for the open meetings statutes.

Everytime an Open Meetings Law case is litigated, I get nervous. It seems there has been a great deal of damage done to the protection afforded by the law with each court ruling. Each year, the Open Meetings Law is eroding. I am proposing some changes to the law, which I believe will slow the erosion of this law. I hope later this session, you will get a chance to review those ideas in more detail.

Last year's Supreme Court Case brought yet another clear signal from the court. For the second time, in recent opinions, the court articulated a point which I believe is very important to everyone's consideration of the law. The Court told us that there is no inherent right of public access to government. The Constitution does not require open meetings, nor does caselaw. The only reason government must be conducted in the public forum is laws like the Open Meetings Act, and Open Records Act. Recently, interpretation of the law has degenerated into nitpicking technicalities without regard to the overall intent of opening government for public scrutiny. The law should be interpreted broadly to favor the public's right of access to government.

It is the right of the general public, for which I am concerned. Many people consider the Open Meetings Law a media statute. But the law affords no special protection or right to the media of the state. And, in general, when the media is involved compliance with the law is much better than when the person seeking access is a member of the general public. For the past year, I have had many contacts with citizens all over the state, who have been shut out. The means of their exclusion have been arrogant abuses of a law which is simple in its requirement for compliance. Citizens who do not have resources to litigate, or even know what is appropriate or inappropriate behavior. I've had members of public bodies contact me, because other members of their own group were blatantly violating the law, by excluding them from discussions at which decisions were being made. The point I want to make here is this: You will hear from the media, and some people think this is a media issue. But, In my experience in nearly 15 years of dealing with this law, the problems associated with enforcement and compliance with this law more directly affect the general public's interest and concern. You only hear about the disagreements when the media is involved. This is not a media statute.

Regarding SB 82: There are two amendments to current law included in this bill. The first makes a general statement that the act should not be construed to prohibit social gatherings. I do not believe there are court cases, or Attorney General opinions which attempt to stretch the law that far. I believe current law is sufficiently clear, and that adding this provision makes no substantive change in statute. Although, It may provide an opportunity for the courts to open another door ... or loophole.

*Senate Local Gov't**1-31-95**Attachment 2*

The Second provision allows the discussion of potential appointments to non elected boards ... commissions etc... This is a policy decision, and there may be good reason for the change. But, remember that some elected boards select their own membership, when there is a resignation. I would want this section to be clarified so that no one could use executive session for the discussion of who might be the new school board member, or city council member or other elected boards. I do not believe that is an appropriate use of executive sessions, and believe the public would not be well served. As it is, many public bodies use very broad interpretations of the Executive Session provision to justify general discussions of matters which should not be behind closed doors.

Senate Local Government Committee
Kansas Open Meetings Act
January 31, 1995 - 9:00 A.M.
Room 531N - State House
Topeka, Kansas

Committee Members:

My name is Edward L. Blake, Mayor of the City of El Dorado, Kansas. I have served as the Mayor for the past nine years and have served as an elected official for over eleven years for the City of El Dorado. As the elected Mayor, I first would like to say that I believe in the Kansas Open Meetings Act. I firmly believe that all meetings should be open to the public, because a representative government is dependent upon an informed electorate. I totally support the rights of the people so they have the opportunity to understand why and how their government arrives at decisions on issues that may or may not effect their daily lives. In fact, I have been reluctant in conducting work sessions on the off-week of our City Commission meetings, although they are attended by the local media. I strongly feel that all issues and discussions should be conducted at the regularly scheduled City Commission meetings.

With that said, there is one exception to the KOMA that I am submitting to the Senate Local Committee today. I am referring to the City Commission's responsibility for making certain appointments to boards and committees. The members of these boards and committees are unpaid volunteers that dedicate their time and effort to make the City and State a better place to live. Discussing their character and personalities publicly, is both awkward and a very delicate matter.

It is very difficult, and virtually impossible for a group of three to five commissioners or council members to discuss honestly and openly prospective appointees for these volunteer positions. Preliminary discussions and interaction between commission/council members is necessary to avoid any type of public embarrassment to any citizen.

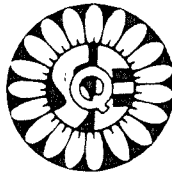
It is very important to discuss prospective appointees prior to the actual selection. However, it is difficult to discuss personalities and the capabilities of these individuals in a public forum. As stated before, it is very awkward for the governing body to discuss potential candidates that will serve in a volunteer position conducting a service

Senate Local Gov't
1-31-95
Attachment 3

without pay and then not appoint them to a board or commission. There is potential to have some type of embarrassment to these individuals because of a certain commissioner's opinion of that volunteer. We should have in place a mechanism to keep this from occurring. Because these appointees can become very personal, it is for that reason I am in favor of supporting a change or exception in the KOMA, so that commissioners have an opportunity to discuss these very important appointments without a public setting or forum. It is my recommendation to have the law changed to allow commissions to adjourn to executive session to consider appointments to boards and committees.

On behalf of the City of El Dorado, Kansas I would like to thank you for this opportunity to appear before the Senate Local Committee.

Mayor Edward L. Blake



Schools for Quality Education

Bluemont Hall Manhattan, KS 66506 (913) 532-5886

January 31, 1995

TO: SENATE LOCAL GOVERNMENT COMMITTEE

SUBJECT: SB 82--OPEN MEETINGS; CONCERNING CLOSED OR
EXECUTIVE MEETINGS

FROM: SCHOOLS FOR QUALITY EDUCATION

Mr. Chairman and Members of the Committee:

I am Jacque Oakes representing Schools For Quality Education an organization of 113 small school districts.

We are submitting written testimony in favor of SB 82 which clarifies "social gatherings" for school board members and adds an exception to the closed or executive meeting of discussions of appointments to non-elected boards, commissions, committees, councils, authorities, or other similar bodies.

School boards have long been concerned with these two items, and SB 82 will ease the minds of board members as well as their constituents who are always interested in their elected officials intentions and responsibilities.

Thank you for your interest and attention to SB 82.

"Rural is Quality"

*Senate Local Gov't
1-31-95
Attachment 4*



MEMBERSHIP ROSTER **



NORTHWEST REGION

- 103 Cheylin
- *200 Greeley County
- 212 Northern Valley
- 241 Wallace County
- 242 Weskan
- 274 Oakley
- 275 Triplains-Winona
- 280 West Graham-Morland
- 291 Grinnell
- 292 Wheatland
- 293 Quinter
- 294 Oberlin
- 301 Nes Tre La Go
- 302 Smoky Hill-Ransom
- 304 Bazine
- *314 Brewster
- 316 Golden Plains
- 318 Atwood
- 337 Royal Valley
- *467 Leoti
- 468 Healy

SOUTH CENTRAL REGION

- 254 Barber County
- 255 South Barber
- 300 Comanche County
- 311 Pretty Prairie
- 332 Cunningham
- 354 Claflin
- 355 Ellinwood
- *357 Belle Plaine
- 358 Oxford
- 359 Argonia
- 376 Sterling
- 411 Goessel
- *423 Moundridge
- 424 Mullinville
- 438 Skyline
- 474 Haviland
- 496 Pawnee Heights
- 509 South Haven
- 511 Attica

NORTHEAST REGION

- 221 North Central-Haddam
- 222 Washington
- 223 Barnes
- *224 Clifton-Clyde
- 321 Kaw Valley
- 329 Mill Creek Valley-Alma
- *339 Jefferson County
- 378 Riley County
- 380 Vermillion
- 384 Blue Valley
- *393 Solomon
- 430 South Brown County
- *488 Axtell-Bern-Summerfield
- 498 Valley Heights

SOUTHEAST REGION

- 244 Burlington
- 245 LeRoy-Gridley
- 247 Cherokee
- 252 Southern Lyon County
- 256 Marmaton Valley
- 258 Humboldt
- *284 Chase County
- 286 Chautauqua Co.-Sedan
- 287 West Franklin
- 362 Prairie View
- 366 Yates Center
- 387 Altoona-Midway
- 390 Hamilton
- 397 Centre
- 398 Peabody-Burns
- 404 Riverton
- 436 Caney Valley
- *447 Cherryvale
- 462 Central
- 463 Udall
- 471 Dexter
- 479 Crest-Kincaid
- 492 Flinthills
- 508 Baxter Springs

NORTH CENTRAL REGION

- 104 White Rock-Esbon
- 239 North Ottawa County
- *240 Twin Valley
- 269 Palco
- 270 Plainville
- 271 Stockton
- 273 Beloit
- 278 Mankato
- 307 Ell-Saline
- 324 Eastern Heights
- 326 Logan
- 395 LaCrosse
- 399 Paradise-Natoma
- 403 Otis-Bison
- 432 Victoria
- *455 Hillcrest

SOUTHWEST REGION

- 209 Moscow
- 210 Hugoton
- 214 Ulysses
- 215 Lakin
- *216 Deerfield
- 217 Rolla
- 218 Elkhart
- 219 Minneola
- 220 Ashland
- 225 Fowler
- 228 Hanston
- 374 Sublette
- *381 Spearville
- 452 Stanton
- 459 Bucklin
- 476 Copeland
- 477 Ingalls
- 494 Syracuse
- *507 Satanta

*Denotes new members

**Current as of November 28, 1994

For more information contact:

Schools for Quality Education Inc.

124 Bluemont Hall

Kansas State University

Manhattan, KS 66506

(913)532-5886.



TO: Senate Committee on Local Government
FROM: Mark Tallman, Director of Governmental Relations
DATE: January 31, 1995
RE: Testimony on S.B. 82

Mr. Chairman, Members of the Committee:

We appreciate the opportunity to appear today as proponents of S.B. 82, which makes certain amendments to the Kansas Open Meetings Act. KASB supports the concept of open meetings for the deliberation of public business. We believe that in certain areas, however, KOMA is unduly restrictive. S.B. 82 addresses several of these areas.

First, it clarifies that members of a public body may be together in social gatherings without violating KOMA, as long as no public business is discussed. While this may seem obvious or even somewhat petty to bring up, we assure you that many school board members have expressed concern that simply being seen together for any reason could be seen as a violation, and in fact, under 1994 amendments that removed the requirement that a meeting be "prearranged," they have reason to be concerned. At a time when many districts report having trouble finding citizens to run for the school board, we believe members should not feel unable to sit together a football game or attend a Christmas party together.

Second, the bill would allow public bodies, including school boards, to go into executive session to discuss appointments to advisory bodies. Perhaps the best example for school boards are the school site councils required by state law. Not all site councils are appointed by school boards; the method of selecting membership varies among districts. But it seems to us clearly in the public interest to allow board members to discuss privately any concerns that may arise about individual appointments.

We would note that a similar bill, H.B. 2162, makes one other change not contained in this bill. It would allow a majority of a quorum to meet without violating the open meetings act if a full quorum is required for binding action. The practical effect would be to allow three board members - instead of the current two - to meet without constituting an official meeting, because under state law, four board members are required to take any action. Although this change is not as significant as the first two, we would support it as an amendment.

Thank you for your consideration.

Senate Local Gov't
1-31-95
Attachment 5

**TESTIMONY OF
DAN HARDEN, P.E.
RILEY COUNTY ENGINEER**

**BEFORE
KANSAS SENATE
LOCAL GOVERNMENT COMMITTEE
REGARDING SENATE BILL NO. 79
CHAired BY
SENATOR MARK PARKINSON
31 JANUARY 1995**

The Kansas County Highway Association has requested K.S. A. 68-119 be repealed. This request is made because the Association feels the statute is obsolete. K.S.A. 68-119 requires the township trustee install watermarks at fords of rivers and streams. In counties that have adopted the county unit road system this responsibility falls to the county.

The purpose of the watermark is to advise the traveling public of the depth of water on the ford. It is the opinion of the members of the Association this requirement detracts from public safety rather than enhancing public safety. The Association believes this to be the case for two reasons. First the watermark often creates a false sense of security in the motoring public. There are members of the driving public that will take as an invitation to enter a flooded ford a watermark showing a water depth on the ford of 2 feet.

*Senate Local Gov't
1-31-95
Attachment 6*

If the velocity of the stream is high enough, the water will contain sufficient kinetic energy to sweep some vehicles off of the ford at this depth. The other situation encountered is the case where the watermark may only show a foot of water on the ford, however the ford has been washed out and the actual water depth is now seven feet with the one foot depth being reported by the watermark. Since the driver has no knowledge of this situation, the driver boldly drives onto the ford and disappears from sight.

The Manual on Uniform Traffic Control Devices and the Kansas Low Volume Road Handbook address the modern signing strategy for ford crossings. The modern strategy is to place a yellow warning sign in advance of the ford with the language "Impassable During High Water". At the anticipated edge of the flood waters a black on white regulatory sign, with the language "Do Not Enter When Flooded", is placed. This combination clearly tells the driving public to stay out of the ford. The only enticement to enter the ford is then the watermark that is also there because it is required to be there by K.S.A. 68-119.

I therefor urge the Committee to repeal K.S.A. 68-119.