

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:00 a.m. on March 17, 1995 in Room 531-N of the Capitol.

All members were present except:

Committee staff present: Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Don Moler, League of Kansas Municipalities
Representative Doug Lawrence
Ann Charles, Kansas Press Association
Harriet Lange, Kansas Association of Broadcasters
Jim Reardan, Kansas Association of Counties

Others attending: See attached list

HB 2185--Concerning cities and counties; relating to the consolidation of law enforcement and police protection.

Representative Mike O'Neal, sponsor of the bill, had submitted written testimony in support of the bill. (Attachment 1)

Ms. Kiernan explained that **HB 2185** is similar to **SB 220**, previously heard by this committee, but it expands the Riley County provision to include Reno County and abolishes the office of Sheriff.

The Chairman suggested that **SB 220** be amended into **HB 2185** to provide that all of the other counties would have permissive consolidation with the option to have a sheriff.

Senator Tillotson made a motion to amend **SB 220** into **HB 2185** and recommend **HB 2185** favorable for passage as amended, Senator Ranson seconded, and the motion carried.

Don Moler, League of Kansas Municipalities stood to request the bill be amended to include language to allow counties and cities to have a special provision for interlocal agreements. The hang up with present language is that local units of government cannot abolish the office of Sheriff by home rule but must have statutory authority. Flexibility for cities and counties is needed with regard to the Sheriff, and while **SB 220** allows the option for removal of the office of Sheriff, the enactment of it entails other restrictive statutes.

The Chairman commented that perhaps it is too late in the session to amend the bill as suggested by Mr. Moler. Mr. Moler was in agreement to requesting a bill to amend next session.

HB 2195--Concerning certain public bodies and agencies; relating to open meetings.

Ms. Kiernan explained that Section 1 of the bill deals with public policy in that it clarifies that the Act shall not be construed to prohibit social gatherings of members of governing bodies. The definition of meeting is amended in Section 2 to include subordinate groups. Throughout the bill, reference to what an open meeting is refers back to Section 2. Another amendment excludes from the open meeting requirement meetings of public bodies in disaster emergencies proclaimed by the Governor to discuss the local disaster emergency plan only.

Representative Doug Lawrence testified in support of the bill. He noted the major points of policy decision. One is in Section 1, lines 34-36, "This act shall be liberally construed to protect and encourage the public's

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT, Room 531-N Statehouse, at 9:00 a.m. on March 17, 1995.

right of access to the decision-making process of government through open public meetings." Another is to clarify that there is no intent to prohibit social gatherings of members of governing bodies. A third is the definition of what "subordinate group" includes. Representative Lawrence informed the committee that he had worked closely with the League of Kansas Municipalities in developing the bill.

The Chairman asked what new groups are included in the definition of "subordinate group." Representative Lawrence listed the following: The Corporation for Change, KBCI, Kansas, Inc., KTEK, the Kansas Turnpike Authority, and the Koch Crime Commission could fall under it because it was established by a Governor.

Committee discussion followed regarding the exemption from notification provision and the application to social gatherings attended by members of governing bodies. Senator Reynolds asked if the bill addresses the subject matter discussed at executive meetings. Representative Lawrence said the bill does not change the executive session language, and he has no problem with this.

Ann Charles, publisher of the Parsons Sun, testified in support of **HB 2195**. (Attachment 2)

Harriet Lange, Kansas Association of Broadcasters, followed with further testimony in support of the bill. (Attachment 3) She also distributed copies of written testimony of Jeff O'Dell, Valu-Broadcasting, in support of the bill. (Attachment 4)

Don Moler, League of Kansas Municipalities, testified in support of **HB 2195** with the inclusion of **SB 82**. (Attachment 5)

Jim Reardan, Kansas Association of Counties, followed with testimony giving a historical overview of the Open Meetings Act and indicating support for parts of **HB 2195**. (Attachment 6)

Written testimony in support of **HB 2195** had been submitted by Mark Tallman, Kansas Association of School Boards. (Attachment 7)

There being no further time, the Chairman announced that the committee will meet Tuesday, March 21, for discussion and possible action on bills previously heard.

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

The next meeting is scheduled for March 21, 1995.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

MICHAEL R. (MIKE) O'NEAL

104TH DISTRICT
HUTCHINSON/NORTHEAST RENO COUNTY

LEGISLATIVE HOTLINE
1-800-432-3924



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LEGISLATURES CRIMINAL JUSTICE
COMMITTEE

H.B. 2185
(CONSOLIDATION OF LAW ENFORCEMENT)
SENATE LOCAL GOVERNMENT COMMITTEE
March 17, 1995

Chairman Parkinson and members of the Committee, H.B. 2185, as drafted, would add Reno County to the statute that provided the original enabling legislation for Riley County to accomplish consolidation of local law enforcement functions. While Reno County has not yet taken action on the issue of consolidation, there has been sufficient interest in the subject voiced locally that it appears time to address appropriate enabling legislation.

Consolidation of local government functions is an important goal for policy makers at all levels of government. At the present time, for this type of consolidation to happen, there must be enabling legislation in place. I believe it would be prudent that the legislation be in place in advance of the final decision at the local level. That way, there would be no impediment standing in the way of implementation of the consolidation plan if and when the decision is made by local voters.

TOPEKA ADDRESS

STATE CAPITOL BLDG., SUITE 170-W
TOPEKA, KS. 66612-1504
913-296-7679

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HUTCHINSON ADDRESS

BOX 2977
HUTCHINSON, KS. 67504
(316) 662-0537

In the event interest in the subject of consolidation of law enforcement is limited to Reno County at the present time, the current bill is sufficient for our purposes. However, it would be my suggestion that the Committee consider removing the obstacle to consolidation in this area for all remaining counties in the state. As I understand it, the Riley County experience has been positive. Perhaps this legislation could serve as some incentive for others to consider the possible advantages of consolidation. I can imagine that the lack of statutory authority has been used on more than one occasion as an excuse not to discuss the advantages of consolidation.

Because of some concern over the original Riley County provisions, the House amended the bill to protect counties against having the issue forced on them by a large city within the county, in this case, Hutchinson. I have no problem with the House amendments.

Thank you for your thoughtful consideration of this proposal. At a minimum, please allow us to get the enabling legislation on the books for Reno County.

**Testimony Submitted by
Kansas Press Association
on HB 2195
March 17, 1995**

Mr. Chairman and members of the committee, my name is Ann Charles. I am publisher of the Parsons Sun and serving this year as the Legislative Director of the Kansas Press Association, a trade association representing the 250 daily and weekly newspapers in Kansas.

House Bill 2195 finally clarifies what everyone has known all along. Elected officials can meet socially as long as a majority of a quorum do not discuss the public's business. Kansas Press Association supports this.

The bill also clarifies who is covered by the open meetings act.

If the largest number of requests to the attorney general have been regarding classifications on "social gatherings," the second largest number of requests certainly has been on the question of what groups are covered by the act.

House Bill 2195 clearly defines boards, commissions, authorities, councils, committees and generally other subordinate groups receiving or expending, and supported by public funds as covered by the Open Meetings Act.

The Kansas Press Association supports this clarification, as well.
Thank you.

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Attachment 2*



Kansas Association of Broadcasters

800 SW Jackson #818, Topeka, Kansas 66612-1216
PHONE (913) 235-1307 FAX (913) 233-3052

Testimony before the Senate Local Government Committee

RE: HB 2195

By Harriet Lange, President
Kansas Association of Broadcasters
March 17, 1995

Thank you Mr. Chairman and Members of the Committee. I am Harriet Lange with the Kansas Association of Broadcasters. We serve a membership of radio and television stations in Kansas. We appreciate the opportunity to appear before you in support of HB 2195.

Because democracy functions best when the public has complete and open access to its government, we support the language in section one which specifically states the right to access to the "decision-making process" and that the law should be "liberally construed" to protect and encourage the public's right of access . . ."

As the structure of government changes, we believe "subordinate groups" formed by public bodies and which receive and spend public money, should also be subject to the open meetings act.

In regard to social gatherings: although there is nothing in the Kansas Open Meetings Act now prohibiting elected officials from attending the same social

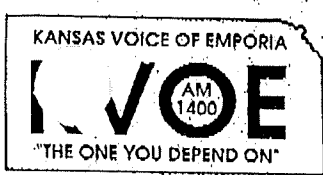
(Over)

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gathering, we think the language on line 37 of page one, is appropriate and should clarify the confusion that apparently exists among some local elected officials.

We do not support, nor will we oppose, the waiving of notification requirements during times of disaster.

Thank you for your consideration.



Emporia's Radio Stations

The New
Country 101.7 FM



To: Senate Local Government Committee
Re: House Bill 2195
From: Jeff O'Dell, News Director--KVOE AM, KVOE FM, And KFFX-FM.

Ladies and Gentlemen;

Just a short note to let you know that I do support the current version of House Bill 2195 as passed by the full house. Each piece of good legislation has balance; that is, different groups find benefit in a proposal and humanity is best served by the different aspects of the bill.

I applaud the element that bring "Subordinate Groups" being brought into the Kansas Open Meetings Law. With more and more rules, regulations, and procedures being handled by governing bodies, subordinate groups are being used more and more as advisory groups to relieve their work load. More and more delegate of tasks previously handled by governing bodies themselves are being tackled by subordinate groups.

Regarding waiving the notification of meetings during times of disaster: I can live with this, because I know I will make sure I know where and when meetings germane to a disaster are being conducted, and someone will be there, to be able to relay to the public, what is being handled.

Finally, in regards to social gatherings and elected officials in reference to the Open Meetings Law, I will reiterate what I have said before---attending social gatherings never was prohibited--just talking about government business while attending. The spirit of the Kansas Open Meetings Act is to facilitate discussion of public business and allow public input in an open atmosphere---not provide a forum for votes on subject in which discussion has already occurred.

Best Regards
Jeff O'Dell
Jeff O'Dell

P.O. Box 968 • Emporia, KS 66801 • 316-342-1400 • FAX 316-342-0804

VALU-BROADCASTING INC.
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**League
of Kansas
Municipalities**

LEGAL DEPARTMENT • 300 S.W. 8TH TOPEKA, KS 66603 • TELEPHONE (913) 354-9565 • FAX (913) 354-4186

LEGISLATIVE TESTIMONY

TO: Senate Local Government Committee

FROM: Don Moler, General Counsel

RE: HB 2195

DATE: March 17, 1995

First I would like to thank the Committee for allowing the League to testify today on HB 2195. After reviewing the specifics of this legislation, we have concluded that it essentially states what we already believe the law to be in the area of the intent of the Kansas Open Meetings Act (KOMA) and the belief that the act should be liberally construed to encourage the public's right of access to the decision-making process of government.

We believe that most subordinate groups of public bodies in Kansas are in fact already subject to the provisions of KOMA and will continue to be with or without the changes of HB 2195. It is our belief that some, but not all, quasi-public bodies are now also subject to the provisions of KOMA and that the amendments do significantly change the coverages of the act to include those quasi-public bodies.

We appreciate the amendment having to do with the declaring of a state of emergency and the fact that the provisions of the act would not apply to public bodies in jurisdictions threatened or affected by the disaster but realize that with or without the open meetings act, a city governing body will probably take whatever actions are appropriate in an emergency situation. Thus, we do not oppose the changes found in HB 2195 but would suggest that with the apparent tightening of the act with the specific inclusion of quasi-public bodies that we should put HB 2195 together with SB 82 so that all provisions could be integrated into a single piece of legislation. Specifically we would be able to strongly support this legislation if the provisions from SB 82 relating to the appointment of boards and commissions is included. We believe this to be appropriate given the fact that the cities are asking for a slight loosening of certain requirements under KOMA in SB 82 and that HB 2195 represents a slight tightening as KOMA would then apply to all quasi-public bodies.

Once again I would like to thank the Committee for the opportunity to appear before you today and offer testimony regarding KOMA.

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"Service to County Government"

215 S.E. 8th
Topeka, Kansas 66603-3906
(913) 233-2271
FAX (913) 233-4830

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Anderson County
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Sarnett, KS 66032
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Nancy Hembpen
Douglas County Treasurer
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Lawrence, KS 66044
913/832-5275

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110 S. National
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913/223-3801 Ext. 54

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Hickman, KS 67454
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127 Nemaha
Nemaha, KS 66538
913/336-2120

DIRECTORS

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Douglas County Sheriff
111 E. 11th
Lawrence, KS 66044
913/841-0007, Ext. 200

Ethel Evans
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7603 S. Rd. E.
Jivness, KS 67880
316/356-4676

Frank Hembpen, Jr.
Douglas County
Director of Public Works
1242 Massachusetts
Lawrence, KS 66044
913/832-5293

Patsy McDonald
Lawnee County Clerk
203 E. 7th
Lawee, KS 66603
913/233-8200 Ext. 4155

Ray Patton
Dewey County
Director of Special Projects
P.O. Box 687
Newton, KS 67114
913/283-1890

Robert Paxson
Abraham County
Commissioner
P.O. Box 54
Penokee, KS 67659
913/674-5660

Sam Schmidt
Vesey County Appraiser
110 Courthouse Plaza
Manhattan, KS 66502
913/637-6310

Jim Williams
Levy County Commissioner
2018 Wayne Drive
Manhattan, KS 66502
913/637-6748

Tom Winters
Wagawick County
Commissioner
225 N. Main, Suite 320
Wichita, KS 67203-3759
913/383-7411

NACo REPRESENTATIVE
Pat Holt
Pottawatomie County
Commissioner
22005 Oliver Creek Road
Box 156
Westmoreland, KS 66549
913/292-4566

Executive Director
John T. Torbert, CAE

To: Senator Mark Parkinson, Chairman
Senate Local Government Committee

From: Kansas Association of Counties

Date: March 17, 1995

Re: HB 2195 - Kansas Open Meetings Act

The Kansas Association of Counties supports requiring meetings of governmental bodies to be held in sessions which are open to the public. However, it is our contention that the current language of K.S.A. 75-4317a is overbroad, exceeds the original intent of the legislature, and creates unintentional violations of the Kansas Open Meetings Act.

A Historical overview:

The original Act was enacted in 1972. It recognized that public officials when acting in an official meeting have the ultimate power of enactment. It required all "meetings for the conduct of governmental affairs and the transaction of governmental business" to be open to the public. The original language was never intended to prevent elected officials from having chance encounters and social gatherings.

In 1977, legislation was introduced that would have added the following language to K.S.A. 75-4317a:

"No chance meeting, social meeting or electronic or written communication shall be used in circumvention of the spirit or requirements of this act."

This wording was rejected by the 1977 legislature.

Protective Language Added in 1977

The following language was added to the Act in 1977:

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"As used in this act 'meeting' means any prearranged gathering or assembly by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency".

The word "prearranged" had never been contained in the original definition. It was clear that the legislature wanted to protect local governments from the possibility that chance meetings and social gatherings could violate KOMA. The addition of the word "prearranged" provided the necessary protection.

This language became codified as K.S.A. 75-4317a.

The Legislature Reacts to a Supreme Court Decision:

The current statutory language was introduced in the 1994 session (HB 2784) in response to a ruling by the Supreme Court of Kansas in Stephen v Board of Seward Co. Commissioners 254 Kan. 466 (1994). In this decision the Supreme court ruled that the definition of "meeting" contained in K.S.A. 75-4317a is construed not to include telephone calls.

In the zeal to expand KOMA to telephonic and electronic communications the Attorney General's office totally undid what the 1977 legislature passed. The "prearrangement" language the 1977 legislature had thoughtfully included was removed in 1994. The result is a chaotic statute that ignores the following stern warning issued by the Kansas Supreme Court.

In Stephen v Seward Board of County Commissioners the Supreme Court urged caution in crafting language to amend KOMA:

"Public officials need to know just what conduct is proscribed by KOMA. Uncertainty is not in the best interest of either the public or public officials subject to KOMA. We note over 50 Attorney General Opinions have been issued to answer various questions raised by KOMA. Considerable confusion obviously exists as to what KOMA requires."

Most violations of K.S.A. 75-4317a are "acts of ignorance" rather than "acts of arrogance". They are unintentional and essentially harmless transgressions which take place at social gatherings, or as a result of uncertainty as to what conduct was prescribed by this statute. It is our opinion that KOMA was never intended to apply to unofficial meetings of local officials. This law will continue to have unintended consequences until social gatherings are addressed and we support the language which would not construe the act to prohibit social gatherings.

We think the language of HB 2195 addressing emergency management situations at Section b. (3) is very necessary based on testimony heard during the interim hearings.

We urge extreme caution in adopting further language of HB 2195.

Example: Section 1 (c) would expand public access well beyond "open meetings" to the "**decision making processes**" of government. What are the "decision making" processes?

We consider this language to be a prime example of the kind of needless, over-reaching, and ill-defined language that causes local governments to exercise undue and even comical precautions in order not to violate its nebulous terms.

Thank you for your consideration of our concerns.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS



1420 S.W. Arrowhead Rd, Topeka, Kansas 66604
913-273-3600

TO: Senate Committee on Local Government
FROM: Mark Tallman, Director of Governmental Relations
DATE: March 17, 1995

RE: **Written Testimony on H.B. 2195**

KASB had the opportunity to present our concerns on the subject of open meetings before the Senate Local Government Committee earlier this session.

We support the provision of H.B. 2195 which clarifies that the Kansas Open Meetings Act does not prohibit social gatherings of members of governing bodies. We do not object to the other provisions of the bill.

Thank you for your consideration.

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