

Approved: 2-19-98  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:00 a.m. on February 12, 1998, in Room 254-E of the Capitol.

All members were present except:  
Senator Lana Oleen, Chair - excused

Committee staff present: Mary Galligan, Legislative Research Department  
Robin Kempf, Legislative Research Department  
Theresa Kiernan, Revisor of Statutes  
Midge Donohue, Committee Secretary

Conferees appearing before the committee:  
Mr. Doug Lawrence, Open Government Alliance, Burlington  
Mr. Richard Baker, Board Member, Kansas Associated Press Broadcasters, and  
News Director, KKSU Radio, Manhattan  
Mr. Jeff O'Dell, News Director, KVOE and KFFX, Emporia  
Ms. Ann Charles, Publisher, Parsons Sun, Parsons  
Mr. John W. Koepke, Executive Director, Kansas Association of School Boards,  
Topeka  
Mr. Don Moler, General Counsel, League of Kansas Municipalities, Topeka

Others attending: See attached list

Senator Harrington, vice-chairman, announced that Senator Oleen was ill and, in her absence, she would chair the meeting today.

She noted the number of conferees scheduled to testify and that all were listed as proponents of the bill.

The hearing was opened on:

**SB 563 An act concerning certain public bodies and agencies; relating to open meetings**

Mr. Doug Lawrence, Burlington, representing the Open Government Alliance, spoke in support of **SB 563, (Attachment #1)** Mr. Lawrence described the composition and purpose of the Alliance and told the committee its membership had witnessed significant erosion of the Open Meetings Act. His testimony focused on two provisions of the bill which the Alliance supports and prompted the request for introduction of **SB 563**: specifically, language that directs the courts to construe the act liberally in favor of open access to the decision-making process, and language defining subordinate bodies. He stressed the importance of defining subordinate bodies because of the rapid development of new governmental entities and said, in doing so, it returns the Open Meetings Act to an enforceable and meaningful statement of public policy.

Accompanying Mr. Lawrence's written testimony was a statement setting out four specific provisions of **SB 563**, which he reviewed and pointed out were contained in a bill before the House in 1995.

Mr. Richard Baker, Board Member of the Kansas Associated Press Broadcasters and News Director of KKSU Radio, Manhattan, a proponent of **SB 563, (Attachment #2)**, told the committee the proposed changes in the bill perpetuate the idea that the citizenry must be informed if it is to effectively take part in the democratic process. He said open meetings are the only way to insure that the various governmental bodies truly represent the public. He pointed out that a number of organizations have been set up in such a manner to have tremendous impact on the state and its functions, yet are outside the confines of citizen oversight. Mr. Baker told the committee that very few illegal or unethical problems have come about in the light of public scrutiny. He noted the increase in public bodies in recent years that are not held accountable for the policy

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E, Statehouse, at 11:00 a.m. on February 12, 1998.

impact they have and said many of the bodies were allegedly set up precisely to thwart scrutiny of the public. Mr. Baker acknowledged that it is difficult to conform to open meeting regulations but pointed out that it is imperative for public business to be conducted in public.

Senator Harrington asked for clarification of Mr. Baker's statement that subordinate groups were being set up to avoid public scrutiny, and he gave as an example the Manhattan Memorial Hospital case which he pointed out is cited in Mr. Lawrence's written testimony. He indicated that Mr. Lawrence was prepared to discuss the case in more detail at the conclusion of testimony.

Mr. Jeff O'Dell, News Director of KVOE and KFFX, Emporia, appeared in support of **SB 563**, (Attachment #3). He told the committee he especially liked the provision that would make subordinate groups subject to the Open Meetings Act. He named subordinate boards in his home town, pointing out that the process they go through in reaching their recommendations on public policy is just as important as the decision by the governing body; that the discussion period could likely be the best opportunity for the public to have input into the process.

Mr. O'Dell mentioned his concern over the provision in the bill to eliminate the requirement for notification of the media in disaster situations where administrative actions are discussed or taken, and he commented that the media could also be called when the governing bodies call members to assemble for a meeting. He pointed out it is during disaster emergencies when the public has the greatest need for information, and this could be particularly important to news organizations with only one or two employees.

Ms. Ann Charles, publisher of The Parsons Sun, Parsons, thanked the committee for the opportunity to present testimony as president of the Kansas Press Association in support of **SB 563**, (Attachment #4). She told the committee the Association believes the bill is in the best interest of the citizens of Kansas and their right to know the decision-making process of those who govern them. She discussed the provision dealing with subordinate groups, and gave examples of groups created by units of government to evade openness. Ms. Charles complimented the committee on efforts to reemphasize that the open meetings law is to be liberally construed to protect and encourage the public's right of access to the decision-making process of government and to clarify what constitutes a "meeting". In regard to the latter, she suggested a language change, beginning line 36, page 1, "where the business or affairs of the body or agency are discussed, conducted or transacted", to read "for the purpose of discussing...". She pointed out that the word "purpose" would make the social gathering provision acceptable, although she questioned the need to specifically exempt such functions, noting there is nothing in existing law now that prohibits social gatherings.

Ms. Charles asked the committee to favorably consider the suggested changes in the best interest of the public.

Mr. John W. Koepke, Executive Director, Kansas Association of School Boards, Topeka, appeared before the committee in support of **SB 563**, (Attachment #5). Mr. Koepke said the bill addresses two concerns of the Association by clarifying in statute what has long been the interpretations of its legal staff; specifically, that social gatherings and travel do not fall within the parameters of the Open Meetings Act, and that the language regarding subordinate groups codifies the Association's long-standing interpretation of that issue. He discussed both issues and made several references to a publication of the Association which encourages its members to diligently adhere to provisions of the Kansas Open Meetings Act. Mr. Koepke called attention to language in the bill which infers that social gatherings are prohibited and suggested that "participation in" was the intent. He thanked the committee on behalf of the Association for the opportunity to express its views on this issue.

Mr. Don Moler, General Counsel, League of Kansas Municipalities, Topeka, addressed the committee in support of **SB 563** and offered amendments to the bill. He discussed changes the League suggests which are contained in a balloon version of the bill included with Mr. Moler's written testimony, (Attachment #6)

Mr. Moler stated that, for years, the League has maintained that governing bodies may get together and not be in violation of the Open Meetings Act, but such gatherings have not always been interpreted that way by others, and the interpretation may vary from area to area or newspaper to newspaper. He discussed the interpretation of various events and pointed out that it is often one of implication, rather than actuality.

Mr. Moler told the committee that the League has been supportive of the Act since its inception and believes the suggested changes do not harm its intent or application but will help strengthen it and further the purposes for which it was originally intended.

## CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE, Room 254-E, Statehouse, at 11:00 a.m. on February 12, 1998.

Senator Harrington acknowledged for the record the written testimony submitted by Ms. Harriet Lange, President/Executive Director, Kansas Association of Broadcasters, in support of **SB 563**, (Attachment #7).

The chair opened the meeting for discussion and recognized Senator Jones who asked Mr. Lawrence for background on inclusion of "social gatherings" in the bill. Mr. Lawrence related its history and discussed the opinion issued by the Attorney General regarding social gatherings as it pertains to the Open Meetings Act. Senator Jones stated that he tended to agree with Ms. Charles' testimony that the provision does not need to be included in the bill, and he cited various events he attends where individuals are present who serve on boards with him.

Another concern expressed was in the area of executive sessions held to discuss the sale of property or appointments.

Responding to a question from a committee member, Mr. Lawrence gave examples of organizations or bodies that do not fall under the Open Meetings Act and explained why they are exempt.

Senator Harrington stated that concerns raised by the committee could be addressed when the bill is worked in committee. She closed the hearing on **SB 563** and indicated action on the bill would be deferred until the chair could be present.

Senator Schraad moved for approval of the minutes of the February 9 meeting. Senator Jones seconded the motion. The motion carried.

The meeting adjourned at 12:00 noon. The next meeting is scheduled for February 16.



**Open Government Alliance  
902 Miami  
Burlington, Ks 66839**

The Open Government Alliance is a loose coalition of individuals and organizations, which share an interest in keeping government open to public access through strong open meetings, and open records laws.

I work with individuals and organizations, which, for one reason or another, have a reason to interact with governmental entities. The interests among our alliance are diverse ranging from property tax, schools, and the media.

The Alliance believes this is a critical year for issues of Open Government. As the difference between public and private is blurred by the technology of government, it is important to draw clear and distinct lines regarding what information and decision-making processes are accessible to the public.

SB563 is a part of the effort to resolve critical problems that face the state's Open Meetings Act. We have witnessed significant erosion of the act through court actions, legislative enactments, and other activities, which leave the act a mere shadow of itself.

Attached to my testimony is a summary of the significant new provisions of this bill. I want to focus on two provisions which are the reason the Open Government Alliance requested this introduction and supports this legislation.

The first is the addition of the language which directs the courts to construe the act liberally, in favor of open access to the decision making process. This language is similar to that which already exists in the Open Records Act. It is important, because in recent years, the courts have taken a very narrow approach in interpreting the act. As a result, a number of decisions have significantly weakened the law. In addition, the same section of the act makes it clear the purpose of the Open Meetings Act is to provide public access to the Decision making process of government, not just the mere ability to see how an elected official votes on a particular issue.

The second significant portion of this bill relates to the definitions of subordinate bodies. In the 1980's an important Supreme Court case opened a loophole in the law. That case made it possible for public entities to create corporations or other entities, which are created to conduct public business, but behind closed doors.

Quite simply, the technology of government has changed. Increasingly, government is moving into the private arena, competing in the private sector. And as such, creates corporate entities to conduct that business. What were once purely governmental functions, have now become a blend of public and private interests. Frankly, nothing in our current act expected that government would be creating corporate bodies or structuring itself as it has. This provision draws a clear and understandable line regarding what type of body should be included under the act, and which type may not. In lieu of a test involving "Command and Control" which is complex, and frankly needs to be litigated each and every time some new governmental creature is developed, this simply establishes a creation test. Under this definition, if a public body creates an entity through a formal action, that new body is subject to the act.

This is an important new provision. Because of the rapid development of new governmental entities in this "gray area" it is important to clarify this portion of the act, and return the Open meetings Act to an enforceable and meaningful statement of public policy.

## Significant Provisions of SB 563

This bill is language which passed the Kansas House in 1995, with 98 votes, in the form of HB 2195.

This language was the work product of an extensive subcommittee study in the House Local Government committee which combined several bills at the time, and represents significant compromise.

There are four specific elements to the bill.

- 1.) Clearly indicates that the open meetings act is intended to open the "decision making process" for public access. And incorporates language from the Open Records act which directs the court to construe the act liberally in favor of providing public access. (Page 1, Lines 17--30)
- 2.) Further defines the term subordinate body to include any entity created through formal action by a public body. Closes a loophole created through a series of cases including the Memorial Hospital Case from Manhattan which essentially allowed a previously public body to go private. This language is necessary as the "technology" of government has outgrown the concepts defined in the law. Through the creation of corporate entities, and careful manipulation of how membership of boards are determined, it is now clearly possible to create a body to do the public's business behind closed doors. (This is an issue at all levels of government.) (Page 1, starting Line 38)
- 3.) Clearly states that the act should not be construed to prohibit social gatherings. This section is the result of numerous complaints that board members are prohibited from social activities which may include another board member. Current interpretation of the existing state law indicates that the act applies to prearranged gatherings for the purpose of discussing or transacting business of the body. (Page 1, Line 31)
- 4.) Allows a public body to conduct certain administrative actions in the case of a declared disaster without complete compliance with notification requirements under the act. This provision is restricted to those administrative actions outlined in the body's emergency plan which had previously been adopted pursuant to state statute. This provision requires that a proclamation has been issued declaring the emergency. While not my favorite provision, we were able to modify this language in 1995 in order to require the governing body to have developed an emergency plan and outline circumstance in which notification may not take place. I would hope that this language would encourage a local governing body to have some interaction with the public on the issue of when an action could be taken without notification being given. Note, that only the notification requirement is waived. Meetings must still comply with open requirements. (Page 2, Line 38)

TO: MEMBERS OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
FROM: RICHARD BAKER  
BOARD MEMBER, KANSAS ASSOCIATED PRESS BROADCASTERS, PAST  
PRESIDENT OF A.P.B. AND NEWS DIRECTOR, KKSU RADIO, MANHATTAN  
RE: PROPOSED CHANGES ON OPEN MEETING LEGISLATION CONTAINED IN  
SENATE BILL NO. 563

These changes have my heartiest endorsement...they perpetuate the idea that for a citizenry to effectively take part in the democratic process, that citizenry must be informed. It seems to me that most of the debate over open meetings is a philosophical one with roots that go back a long way. In the "Federalist Papers," Alexander Hamilton and Thomas Jefferson seemed to have much the same philosophical argument. Both men were advocates of the people, but their thoughts on government were far apart. If I remember right, Hamilton felt that he, and a small group of informed elite, should run the country...much as a father runs his family. Hamilton felt there was no need for the common man to be informed or worry about affairs of state. It was, in fact, an autocratic argument. Jefferson, on the other hand, felt that citizens needed to educate themselves...to inform themselves...and to govern themselves...something we call democracy. Years later, Abraham Lincoln said, "I go for all sharing the privileges of government who assist in bearing its burdens." The fact is that democracy depends on an informed citizenry with as much information as possible at their fingertips. They have a right to base the accuracy of their opinions and their understanding of various situations on information that is, by all rights, theirs to begin with.

I believe that open meetings are the only way to insure that the various governmental bodies truly represent us. There are any number of organizations that have been set up in such a manner as to have tremendous impact on the state of Kansas and its governmental functions, yet they are outside the confines of citizen over-sight. We don't know exactly what they do, how they do it, or their motives. It seems logical that many of those who control these agencies would like to avoid any controversy, and a simple way to do that is behind closed doors. But, once the door closes, the temptation to bend the rules is often too great to fight. And, after once giving into temptation, bending the rules can become common place. Very few illegal or unethical problems have come about in the light of public scrutiny.

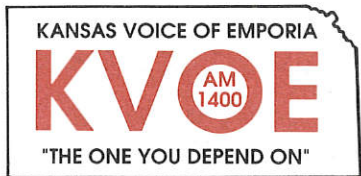
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Attachment: # 2

One other point...in recent years we have seen tremendous growth in the number of "public" bodies that are not held accountable for the policy impact they have. Some go so far as to say many of these bodies were set up precisely to thwart the scrutiny of the public, by avoiding the aegis of the "Open Meetings Act." These bodies too must conform...the days of doing the public's business in smoked-filled rooms is over, and that is why Senate Bill No. 563 is so important.

Conforming to open meeting regulations is a difficult task, but it is one that any person who accepts the public trust has to undertake. It is absolutely imperative that the public business be conducted in public. I have heard it said that there are two things one does not want to see made...sausage and public policy. But, in today's environment, I want to see exactly how that sausage is made. And, I want to know exactly what public officials do in my name...and why they did it. To do otherwise strikes at the very heart of an open, democratic government. Senate Bill No. 563 supports the legacy of Thomas Jefferson and Abraham Lincoln...a legacy of openness, accountability, and responsibility on the part of both government officials and those they serve.



# Emporia's Radio Stations



Country  
101.7 FM



To: Senate Federal and State Affairs Committee

From: Jeff O'Dell, News Director; KVOE AM/FM, and KFFX FM

February 11, 1998

Ladies and Gentlemen,

I support the current version of Senate Bill 563, under consideration. What I especially like, is the element adding subordinate groups to the open meeting law. There are groups in Emporia, who are subordinate boards created by The City Commission, The Lyon County Commission and The Emporia Board of Education, who did not exist ten years ago. They work on tasks assigned to them by governing bodies who are facing more and more work each day. Those governing bodies depend more and more on the advisory capacity of those subordinate groups: for example, the Golf Advisory Board, The Recycling Advisory Board, The Regional Development Association of East Central Kansas, and The Emporia Schools Facilities Task Force. The work of these boards is advisory to the governing body...But the process they go through in reaching their recommendations on public policy is just as important as the decision by the governing body. That is why their discussion is just as important to the public as the final decision by the governing body. That discussion period could likely be the public's best opportunity for having input into that process.

I am concerned about the element in Senate Bill 563 that would eliminate the requirement for notification of the media in disaster situations where administrative actions are discussed or taken. In a disaster situation, the media and the public needs every opportunity for contact with governing bodies. If governing bodies can call members to assemble a meeting, they can call the media too. This element could become particularly important to news organizations who may have only one, at the most two, employees, to assemble a news story and get the information to the public. It is during disaster emergency when the public has the greatest need for information.

Best Regards,

A handwritten signature in cursive script that reads "Jeff O'Dell".

Jeff O'Dell

P.O. Box 968 • Emporia, KS 66801 • 316-342-1400 • FAX 316-342-1401

VALU-BROADCASTING INC.

Sen. Federal & State Affairs Comm.

Date: 2-12-98

Attachment: # 3



# Kansas Press Association, Inc.

5423 SW 7th St., Topeka. KS 66606 • (785) 271-5304 • Fax (785) 271-7341  
<http://www.kspress.com>

Testimony on SB 563  
Senate Federal and State Affairs Committee  
Feb. 12, 1998  
by Ann Charles, Parsons Sun  
Representing Kansas Press Association

Madam chairman and members of the committee:

I am Ann Charles, publisher of the Parsons Sun and I appreciate the opportunity to present testimony today as president of the Kansas Press Association, which we feel is in the best interest of the citizens of Kansas and their right to know the decision-making process of those who govern them.

The amendment dealing with subordinate groups is praiseworthy. More units of government are creating subordinate groups to evade openness in government, while the argument that government can't compete with the private sector is being heard more frequently. KU Medical Center garnered that exception earlier this session. The retail wheeling bill includes that exemption for municipal utilities. Municipal hospitals try to avoid public scrutiny all the time. Sports programs, economic development programs and more have been arguing they are outside the laws of government. By defining "subordinate group" you reiterate the importance of keeping their meetings open.

I also applaud the committee in reemphasizing that the open meetings law is to be liberally construed to protect and encourage the public's right of access to the decision-making process of government, as stated in Section 1(c), and in the clarification of what constitutes a "meeting."

It is within that definition however that I seek a change. Sec.2(a) contains the phrase "... for the purpose of discussing, conducting or transacting the business

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or affairs of the body or agency." I respectfully request that the wording be changed to read, "... where the business or affairs of the body or agency are discussed, conducted or transacted."

With the proposed addition that states "Nothing in this act shall be construed to prohibit social gatherings" it is possible that the majority of a quorum might meet at a social function without having the intended purpose of discussing official business, yet fall into such a conversation. Under the proposed amendment that would be entirely acceptable, although I am sure it is not your intention.

Additionally, when the purpose of a social gathering is interpreted to be a non-official function, it is entirely plausible that the Attorney General would misconstrue such a discussion is an intended exception. Under such an interpretation, social gatherings could become a ruse for bypassing the open meetings requirement altogether.

There is nothing in the existing law that prohibits social gatherings currently, so I question the need to specifically exempt such functions. It is only through the inaccurate interpretation by officials or their legal counsel that these bodies might think they are not allowed to visit with each other; but if the committee insists on specifically including such an exemption, then I ask that you seriously consider the ramifications that might bring this back to your committee during a future session. There is no reason to provide this loophole.

Most newspapers editors whose staffs have been trying to attend meetings for the public know that the profound preamble of this bill is a smoke screen of what often happens. And when there is a violation of open meetings by government it is yet another arm of the government to regulate them. I ask that you make changes in this law that are in the best interest of the public.

Again, thank you and I would be glad to answer any questions.



TO: Senate Committee on Federal and State Affairs

FROM: John W. Koepke, Executive Director  
Kansas Association of School Boards

DATE: February 12, 1998

RE: **Testimony on S.B. 563-Open Meetings**

Madam Chair and members of the Committee, we appreciate the opportunity to appear before you on behalf of our member boards of education to express our support for S.B. 563. This measure addresses two issues of concern to our members regarding the Kansas Open Meetings Act. We believe that both of these measures clarify in statute what have long been interpretations of our legal staff.

The issue of social gatherings and travel has been the subject of differing interpretation on the part of the attorney general and other school district attorneys. We have always agreed with an attorney general's opinion that social gatherings and travel do not come within the parameters of the KOMA. To explicitly state this exclusion in statute would be of great assistance to our members.

Similarly, we believe the language regarding subordinate groups would codify our long standing interpretation on this issue. We attempt to encourage our members to adhere diligently to the provisions of the Kansas Open Meetings Act. The amendments noted in S.B. 563 would assist us in this endeavor. Thank you for the opportunity to express our views on this issue and I would be happy to stand for any questions.



# League of Kansas Municipalities

LEGAL DEPARTMENT · 300 S.W. 8TH TOPEKA, KS 66603 · TELEPHONE (785) 354-9565 · FAX (785) 354-4186

## Legislative Testimony

**TO:** Senate Federal and State Affairs Committee

**FROM:** Don Moler, General Counsel

**RE:** Support for and Amendment of SB 563

**DATE:** February 12, 1998

First I would like to thank the Committee for allowing the League to appear today in support of SB 563. We are generally supportive of all of the clarifications made in the bill and we would like to ask the indulgence of the Committee in allowing us to suggest a few more amendments which we think will strengthen the law and make it more equitable for everyone.

Attached to this testimony is a copy of a balloon of SB 563 which indicates the changes suggested by the League. The first is found in Section 1 at (d) where we add the language "involving a majority of a quorum of a body or agency subject to this act." We applaud the efforts of the drafters to explicitly allow social gatherings and we would simply like to clarify that a bit further.

Our next two amendments come in K.S.A. 75-4319, which has been added in our balloon as Section 4. The first is found in subsection (b)(6) which would allow for executive sessions when governing bodies are discussing the disposition of real property. Current law allows for governing bodies to recess into executive session for purchasing real property but it does not allow for them to recess into executive session to dispose of real property.

The second change is found in subsection (b)(13) which would allow for governing bodies to recess into executive session for "matters relating to individuals under consideration for appointment to non-elected boards and commissions." These sections have also been part of the League's policy statement for many years and we believe them to be improvements to the current Open Meetings Act.

We have been supportive of the Act since its inception and believe that these changes do not harm its intent or application. We simply believe they will help to strengthen the Act and further the purposes for which it was originally intended.

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Attachment: # 6

SENATE BILL No. 563

By Committee on Federal and State Affairs

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6-2

9 AN ACT concerning certain public bodies and agencies; relating to open  
10 meetings; amending K.S.A. 75-4317, 75-4317a, and 75-4318 and re-  
11 pealing the existing sections.

and 75-4319

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 75-4317 is hereby amended to read as follows:  
15 75-4317. (a) *This act shall be known and may be cited as the Kansas open*  
16 *meetings act.*

17 (b) In recognition of the fact that a representative government is de-  
18 pendent upon an informed electorate *and that public access to the deci-*  
19 *sion-making process of government is an important part of an informed*  
20 *electorate, it is declared to be the policy of this state that meetings for*  
21 *the conduct of governmental affairs and the transaction of governmental*  
22 *business as defined in K.S.A. 75-4317a, and amendments thereto, be open*  
23 *to the public.*

24 (c) It is declared hereby to be against the public policy of this  
25 state for any such meeting to be adjourned to another time or place, *or*  
26 *other action taken, in order to subvert the policy of open public meetings*  
27 *as pronounced in subsection (a) giving public access to the decision-mak-*  
28 *ing process. This act shall be liberally construed to protect and encourage*  
29 *the public's right of access to the decision-making process of government*  
30 *through open public meetings.*

31 (d) *Nothing in this act shall be construed to prohibit social gatherings.*

involving a majority of a quorum of  
a body or agency subject to this act.

32 Sec. 2. K.S.A. 75-4317a is hereby amended to read as follows: 75-  
33 4317a. (a) As used in this act, *the Kansas open meetings act:*

34 (a) "Meeting" means any gathering, assembly, telephone call or any  
35 other means of interactive communication by a majority of a quorum of  
36 the membership of a body or agency subject to this act for the purpose  
37 of discussing, *conducting or transacting* the business or affairs of the body  
38 or agency.

39 (b) "Subordinate group" includes, but is not limited to, an entity,  
40 whether or not a corporation, which is created or incorporated by ordi-  
41 nance, statute, resolution or proclamation of a body or agency subject to  
42 this act or is created by an interlocal agreement of two or more bodies or  
43 agencies subject to this act pursuant to K.S.A. 12-2901, et seq., and

6-2

1 *amendments thereto.*

2 Sec. 3. K.S.A. 75-4318 is hereby amended to read as follows: 75-  
3 4318. (a) Except as otherwise provided by state or federal law or by rules  
4 of the house or senate, and except with respect to any impeachment  
5 inquiry or other impeachment matter referred to any committee of the  
6 house of representatives prior to the report of such committee to the full  
7 house of representatives, all meetings ~~for the conduct of the affairs of,~~  
8 ~~and the transaction of business by;~~ *by* all legislative and administrative  
9 bodies and agencies of the state and political and taxing subdivisions  
10 thereof, including boards, commissions, authorities, councils, committees,  
11 subcommittees and other subordinate groups thereof, receiving or ex-  
12 pending and supported in whole or in part by public funds shall be open  
13 to the public and no binding action by such ~~bodies~~ *body or agency* shall  
14 be by secret ballot, ~~but~~. Any administrative *body or agency subject to this*  
15 *act* that is authorized by law to exercise quasi-judicial functions shall not  
16 be required to have open meetings when such *body or agency* is delib-  
17 erating matters relating to a decision involving such quasi-judicial func-  
18 tions.

19 (b) Notice of the date, time and place of any regular or special meet-  
20 ing of a ~~public body designated hereinabove~~ *body or agency subject to*  
21 *this act* shall be furnished to any person requesting such notice, except  
22 that:

23 (1) If notice is requested by petition, the petition shall designate one  
24 person to receive notice on behalf of all persons named in the petition,  
25 and notice to such person shall constitute notice to all persons named in  
26 the petition;

27 (2) if notice is furnished to an executive officer of an employees' or-  
28 ganization or trade association, such notice shall be deemed to have been  
29 furnished to the entire membership of such organization or association;  
30 and

31 (3) the ~~public~~ *body or agency subject to this act* may require that  
32 a request to receive notice must be submitted again to the *body or agency*  
33 prior to the commencement of any subsequent fiscal year of the *body or*  
34 *agency* during which the person wishes to continue receiving notice, ~~but~~.  
35 Prior to discontinuing notice to any person, the ~~public body must~~ *body*  
36 *or agency shall* notify the person that notice will be discontinued unless  
37 the person resubmits a request to receive notice; and

38 (4) *when a proclamation declaring a state of disaster emergency has*  
39 *been issued pursuant to K.S.A. 48-924, and amendments thereto, and the*  
40 *state of disaster emergency has not been terminated, a body or agency*  
41 *subject to this act which has jurisdiction in an area or areas threatened*  
42 *or affected by the disaster, as stated in the proclamation, shall not be*  
43 *required to give the notice required by this section for meetings at which*

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1 only administrative actions are discussed or taken. Such administrative  
2 actions shall have been authorized by the disaster emergency plan adopted  
3 pursuant to K.S.A. 48-929 or 48-930, and amendments thereto.

4 (c) It shall be the duty of the presiding officer or other person calling  
5 the meeting, if the meeting is not called by the presiding officer, to furnish  
6 the notice required by subsection (b).

7 (d) Prior to any meeting hereinabove mentioned, any agenda relating  
8 to the business to be transacted at such meeting shall be made available  
9 to any person requesting said such agenda.

10 (e) The use of cameras, photographic lights and recording devices  
11 shall not be prohibited at any meeting mentioned by subsection (a), but  
12 such use shall be subject to reasonable rules designed to insure the or-  
13 derly conduct of the proceedings at such meeting.

14 ~~Sec. 5.~~ K.S.A. 75-4317, 75-4317a, ~~and 75-4318~~ are hereby repealed. and 75-4319  
15 ~~Sec. 6.~~ This act shall take effect and be in force from and after its  
16 publication in the statute book.

Sec. 4. K.S.A. 75-4319 is hereby amended to read as follows:  
75-4319.

(a) Upon formal motion made, seconded and carried, all bodies and agencies subject to this act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) No subjects shall be discussed at any closed or executive meeting, except the following:

- (1) Personnel matters of nonelected personnel;
- (2) consultation with an attorney for the

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body or agency which would be deemed privileged in the attorney-client relationship;

(3) matters relating to employer-employee negotiations whether or not in consultation with the representative or representatives of the body or agency;

(4) confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;

(5) matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;

(6) preliminary discussions relating to the acquisition *or disposition* of real property;

(7) matters permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804 and amendments thereto;

(8) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (a)(2)(J) of K.S.A. 38-1507 and amendments thereto or subsection (f) of K.S.A. 38-1508 and amendments thereto;

(9) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (j) of K.S.A. 22a-243 and amendments thereto;

(10) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (e) of K.S.A. 44-596 and amendments thereto;

(11) matters permitted to be discussed in a closed or executive meeting pursuant to subsection (g) of K.S.A. 1996 Supp. 39-7,119 and amendments thereto; and

(12) matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact, and

*(13) matters relating to individuals under consideration for appointment to non-elected boards and commissions.*

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

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**Kansas Association of Broadcasters**

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E-mail: kab@ink.org

TO: Senator Lana Oleen, Chairman  
Senate Committee on Federal and State Affairs  
Members of the Committee

February 12, 1998

FROM: Harriet Lange, President/Executive Director

RE: SB 563 / amendments to Kansas Open Meetings Act

Because a democracy functions best when the public has open access to its government, we support the language on page one, line 18 and 19 of SB 563, which specifically states the right to access to the "decision-making process"; and on line 28, that the law should be "liberally construed to protect and encourage the public's right of access . . ."

In regard to social gatherings (page 1, line 31): although there is nothing in the Kansas Open Meetings Act prohibiting elected officials from attending the same social gathering, this language should clarify any confusion that may exist among some local elected officials.

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. The KAB supports the provisions which define and bring these "subordinate groups" under the KOMA.

We do have some concerns with the provision on page 2, line 38, that would exempt from "notice" requirements, meetings held during a state of disaster emergency. At these times in particular, public bodies need to communicate with the public through the media. If accuracy in reporting is important during a disaster, it seems to us public bodies would welcome the presence of the media, not discourage it by lack of notification. Making public decisions during an emergency out of view of the public, further undermines the public's trust in their government.

The Kansas Association of Broadcasters serves a membership of radio and television stations in Kansas. We urge your favorable consideration of SB 563.

Sen. Federal & State Affairs Comm.

Date: 2-12-98

Attachment: #7