

Approved: 2-3-99
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairman Senator Janice Hardenburger at 1:30 p.m. on January 26, 1999 in Room 529-S of the Capitol.

All members were present except: Senator Petty

Committee staff present: Dennis Hodgins, Legislative Research Department
Mike Heim, Legislative Research Department
Ken Wilke, Revisor of Statutes
Graceanna Wood, Committee Secretary

Conferees appearing before the committee: Don Moler, General Council, League of Ks. Municipalities
John W. Koepke, Exec. Dir., Ks. Assn. of School Boards
Harriet Lange, Pres. & Exec. Dir., Ks. Assn. Broadcasters

Others attending: See attached list

Chairman Hardenburger opened the meeting by asking for approval of the minutes for January 19, 20 and 21st.

Senator Huelskamp moved that the minutes be approved as written, seconded by Senator Becker. Motion Carried.

Chairman Hardenburger asked for introduction of bills. Senator Huelskamp requested a bill asking for a clarification in statute insofar as corporations appearing in small claims court with an attorney.

Mike Heim, Legislative Research briefed the Committee on Kansas Open Meeting Act. (Attachment #1)

The Committee discussed secret balloting in connection with the provisions of the Open Meeting Act..

Chairman Hardenburger opened hearings on **SB 62—concerning authorized subjects for discussion in closed or executive meetings**. This bill was requested by Senator Bond and dealt with matters of security in buildings or facilities.

Don Moler, General Counsel, League of Kansas Municipalities, testified in support of **SB 62**, and suggested two amendments. The first would be to allow executive session to discuss appointees to non elected boards and commissions and the second would allow for discussions in executive session concerning the sale of public property. (Attachment #2)

The Committee discussed allowing appointees to non elected boards and commissions, also the sale of public property.

John Koepke, Executive Director of the Kansas Association of School Boards, gave testimony in support of **SB-62**, informing the Committee that the Kansas Association of School Boards members have spent a considerable amount of time reviewing and addressing issues related to school safety and security. He suggested the two amendments by Don Moler be placed in a separate bill so as not to jeopardize **SB 62**, as introduced. (Attachment #3)

Senator Becker moved that a bill be introduced allowing the discussion of appointees to non elected boards and commissions in executive sessions and allow for discussions in executive session concerning sale of public property, seconded by Senator Gooch. Motion carried.

Harriet Lange, President and Executive Director of Kansas Association of Broadcasters testified as an opponent to the bill. She said that news directors of radio and television stations are concerned that the bill gives another excuse for local public bodies to meet in secret without informing the media. (Attachment #4) (Attachment #5) (Attachment #6) (Attachment #7) (Attachment #8)

CONTINUATION PAGE

The Committee discussed security matters in regard to closed meetings.

Chairman Hardenburger closed hearings on **SB 62** and advised the Committee that action could occur tomorrow.

Meeting was adjourned at 2:25 p.m. Next meeting scheduled for January 27, 1999.

ELECTIONS & LOCAL GOVERNMENT COMMITTEE GUEST LIST

DATE: January 26, 1999

NAME	REPRESENTING
Andy Abernethy	citizen
Lynn Reif	KPRB
Mark Ohlmeier	Leadership Emporia / KVOE
Leland E. Rolfs	KS Dept. of Agriculture
Jim Sims	KyAtty Gen's office
Debra Keating	SOS
STEVE KEAVONE	KS PRESS ASSOC.
Janet Chubb	SOS
David FURNAS	KS Press
John Keegan	KASB
Kelly Kuitala	City of Overland Park
Don Mal	League of KS Municipalities
Maria Paton	Johnson County
Marci Less	Sedgewick County

KANSAS OPEN MEETING ACT

75-4317. Open meetings declared policy of state. (a) In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public.

Declaration of policy

(b) It is declared hereby to be against the public policy of this state for any such meeting to be adjourned to another time or place in order to subvert the policy of open public meetings as pronounced in subsection (a).

75-4317a. Meeting defined. (a) As used in this act, "meeting" means any gathering, assembly, telephone call or any other means of interactive communication 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.

Meeting defined

75-4318. Meetings of state and subdivisions open to public; exceptions; secret ballots; notice; agenda, cameras, photographic lights, recording devices. (a) Except as otherwise provided by state or federal law or by rules of the house or senate, and except with respect to any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives, all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds shall be open to the public and no binding action by such bodies shall be by secret ballot, but any administrative body that is authorized by law to exercise quasi-judicial functions shall not be required to have open meetings when such body is deliberating matters relating to a decision involving such quasi-judicial functions.

What meetings are open

(b) Notice of the date, time and place of any regular or special meeting of a public body designated hereinabove shall be furnished to any person requesting such notice, except that:

No binding action by secret ballot

Notice of meetings to be furnished

Senate Elections & Local Government
Attachment: # 1-1
Date: 1-26-99

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

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

(3) the public body may require that a request to receive notice must be submitted again to the body prior to the commencement of any subsequent fiscal year of the body during which the person wishes to continue receiving notice, but, prior to discontinuing notice to any person, the public body must notify the person that notice will be discontinued unless the person resubmits a request to receive notice.

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

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

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

75-4319. Closed or executive meetings; conditions; authorized subjects for discussion; binding action prohibited. (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.

Agenda to be made available

Use of cameras and recorders permitted

Closed or executive meetings

Required procedures

(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 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 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. 1997 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.

Permitted subjects for closed meeting

Personnel

Attorney-client

Employee negotiations

Trade secrets

Student, patient or resident of public institution

Preliminary real estate acquisition

Kansas Racing Commission

Child in need of care child abuse

State Child Death Review Board

Workers Compensation Advisory Board

Medicaid Drug Utilization Review Board

Tribal gaming compact

(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.

No binding action

75-4320. Penalties. (a) Any member of a body or agency subject to this act who knowingly violates any of the provisions of this act or who intentionally fails to furnish information as required by subsection (b) of K.S.A. 75-4318 shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney, in a sum set by the court of not to exceed five hundred dollars (\$500) for each violation. In addition, any binding action which is taken at a meeting not in substantial compliance with the provisions of this act shall be voidable in any action brought by the attorney general or county or district attorney in the district court of the county in which the meeting was held within ten (10) days of the meeting, and the court shall have jurisdiction to issue injunctions or writs of mandamus to enforce the provisions of this act.

Penalties for violation

Not to exceed \$500 civil penalty

Action voidable by Attorney General or county or district attorney

(b) Civil penalties sued for and recovered hereunder by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered hereunder by a county or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

75-4320a. Enforcement of act by district courts; burden of proof; court costs; precedence of cases. (a) The district court of any county in which a meeting is held shall have jurisdiction to enforce the purposes of K.S.A. 75-4318 and 75-4319, and amendments thereto, with respect to such meeting, by injunction, mandamus or other appropriate order, on application of any person.

Enforcement in district court

Injunction, mandamus, other

(b) In any action hereunder, the burden of proof shall be on the public body or agency to sustain its action.

Burden of proof on governing body

(c) In any action hereunder, the court may award court costs to the person seeking to enforce the provisions of K.S.A. 75-4318 or 75-4319, and amendments thereto, if the court finds that the provisions of those statutes were violated. The award shall be assessed against the public agency or body responsible for the violation.

Court may award costs to person seeking to enforce law

(d) In any action hereunder in which the defendant is the prevailing party, the court may award to the defendant court costs if the court finds that the plaintiff maintained the action frivolously, not in good faith or without a reasonable basis in factor law.

Costs may be awarded to defendant for frivolous suits

(e) Except as otherwise provided by law, proceedings arising under this section shall take precedence over all other cases and shall be assigned for hearing and trial at the earliest practicable date.

(f) As used in this section, "meeting" has the meaning provided by K.S.A. 75-4317a and amendments thereto.



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 Elections & Local Government Committee

FROM: Don Moler, General Counsel

RE: Support for SB 62

DATE: January 26, 1999

First I would like to thank the Committee for allowing the League to testify today on SB 62. As you all know, the League has taken a strong interest in the Open Meetings Act over the years and today is no exception. We are here today to support SB 62 and suggests two additional amendments which we believe will improve the Open Meetings Act.

The ability to maintain safety in public buildings, and for public officials and functions, is a key element in maintaining a free society. There may be no area in which the need for private communication among and between elected public officials may be more significant than in the area of emergency or security information regarding the security of a public body, agency, building, or facility. As such, we wholeheartedly support the amendment to the Open Meetings Act contained in SB 62.

Since we are discussing the executive session provisions of the Open Meetings Act, we would like to suggest two further amendments to K.S.A. 75-4319. (The first would be to allow the discussion of appointees to nonelected boards and commissions in executive session. (The second would be to allow for discussions in executive session concerning the sale of public property. We would urge the committee to give serious consideration to our proposed amendments as we believe they will improve the KOMA. We believe both of these amendments are well within the spirit of the act and provide greater flexibility for the locally elected representatives of the people.

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

Senate Elections & Local Government

Attachment: # 2-1

Date: 1-26-99

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony on Senate Bill No. 62
before the
Senate Elections and Local Government Committee

by
John W. Koepke
Executive Director
Kansas Association of School Boards
January 26, 1999

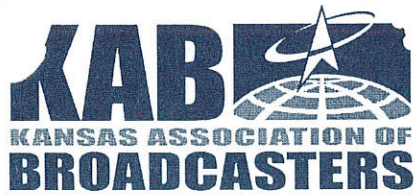
Madame Chair and Members of the Committee, we appreciate the opportunity to appear before you on behalf of the member boards of education of the Kansas Association of School Boards to express our support for SB 62. While our members have not had the opportunity to formally express their opinion on this specific measure, they have spent a considerable amount of time in the past year reviewing and addressing issues related to school safety and security. A resolution encouraging school districts to adopt crisis management plans has been introduced in the Kansas House of Representatives. It would seem reasonable to insure that those parts of such a plan designed to deter or identify intruders not be made public knowledge.

Passage of this measure would allow the governing body of the school district to be briefed on security arrangements without jeopardizing the integrity of those arrangements. We would urge the committee to give favorable consideration to this measure and I would be happy to answer any questions.

Senate Elections & Local Government

Attachment: # 3-1

Date: 1-26-99



1916 SW Sieben Ct, Topeka KS 66611-1656
(785) 235-1307 * FAX (785) 233-3052
Web site: *www.kab.net* * E-mail: *harriet@kab.net*

Senate Committee on Elections and Local Government
Tuesday, January 26, 1999
Regarding SB 62

Madam Chair and members of the Committee, I am Harriet Lange, president and executive director of Kansas Association of Broadcasters. We serve a membership of free, over-the-air radio and television stations in Kansas. We appreciate the opportunity to appear on SB 62.

I have talked with a few news directors of member stations from around the state, and asked them to provide me with comments on SB 62. These are included.

The concerns expressed question that there is a demonstrated need to give another exemption or excuse for local public bodies to meet in secret with a potential for abuse. To some, the proposed amendment appears to be overkill by extending the exemption to local units of government.

Thank you for your consideration.

Senate Elections & Local Government
Attachment: # 4-1
Date: 1-26-99



P.O. Box 119 • Topeka, Kansas 66601 • (785) 272-3456

January 26, 1999

TO: SENATE COMMITTEE ON ELECTIONS

FROM: SALLY BALTES
NEWS DIRECTOR

A handwritten signature in cursive script that reads 'Sally Baltès'.

I am expressing my opposition to Senate Bill No. 62, regarding K.S.A. 75-4319, Article 13.

Any time the news media are restricted from covering a public meeting, there is an opportunity for governmental abuse. Certainly we understand the rationale for needing to keep specifics of security plans, etc. "secure." I think the media can be trusted not to report anything that would jeopardize such security. It would never be our intent to disclose information that would put individuals in danger.

When you weigh placing restrictions on the media covering public meetings against the small possibility of a breach of security, I think the better public policy is to keep public meetings open.

Senate Elections & Local Government

Attachment: # 5-1

Date: 1-26-99

Chris Kelly, News Director
KKOW AM/FM
1162 East Highway 126
Pittsburg, KS 66762

January 26, 1998

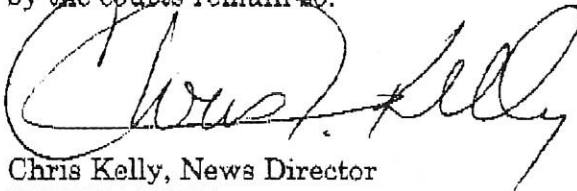
To Whom It May Concern:

KKOW News sees no obvious need to amend KSA 75-4319 in order to allow emergency or security matters of a public body or agency to be included as an "executive session" privilege. KKOW News has had a less than satisfactory experience regarding a local public board's compliance with Sec. 1 of the existing act. These lapses in complying with the "letter of the law" in Sec. 1 have involved ignorance of the statute more than deliberate subterfuge of the closed meeting privilege.

Given the complex language of the proposed amendment, and what appears to be a lack of knowledge of the law, KKOW News feels the added text will serve only to further confuse, and lead to abuse, accidental or intentional, of the act.

KKOW News sees the proposed amendment creating a problem in covering meetings, actions and procedures of public bodies or agencies, particularly rural water districts and rural cooperative electric and fuel utilities. Isn't emergency or security information already being addressed in operations manuals of these public agencies? Aren't building or facility security policies presently covered in a manner that does not jeopardize their security?

Crawford County recently built a new jail facility, with disclosure of plans and lockdown systems explained in the building's drawings. To date, no county official feels the facility has been compromised, and those incarcerated by the courts remain so.



Chris Kelly, News Director
KKOW AM/FM

Senate Elections & Local Government

Attachment: # 6-1

Date: 1-26-99

KFDI

1070 AM COUNTRY 101.3 FM

P.O. Box 1402 • 4200 N. Old Lawrence Rd • Wichita, Kansas 67201 • (316) 838-9141 • Fax (316) 838-3607

January 26, 1999

Harriet Lange
Kansas Association of Broadcasters
Topeka, Kansas

Dear Harriet;

The addition of section 13 in Senate Bill 62 concerns me. It refers to emergency or security information. Each Spring KFDI AM/FM airs information about tornado safety. Many of the reports describe plans for city, county or state employees on where to go should there be a tornado warning. Several times we've aired news stories describing what these employees should do in a certain building in Wichita. (e.g. what elevators to take, what steps to take, etc.) This building emergency information is vital for us to continue to provide the public service KFDI is known for.

The words "procedures of a public body or agency" are too encompassing. I could see a small town city council or other such organization use this section to keep the news media away. I am sure the author(s) of this section did not have that in mind. But I think it could lead to trouble. I would re-word the section to focus it more on power generation, water and communications, etc.

Sincerely,

Dan Dillon
News Director

KFDI AM/FM Wichita, KS	KTTS AM/FM Springfield, MO	WOW AM/FM Omaha, NE	KVCO AM/FM Tulsa, OK	KICT FM Wichita, KS	KCKI FM Tulsa, OK	KSPG FM Wichita, KS	KLTO FM Springfield, MO	KYQQ FM Wichita, KS	KLLS FM Wichita, KS
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Senate Elections & Local Government

Attachment: # 1-7

Date: 1-26-99



Senate Committee Members:

This letter is in response to the proposal to add a section to the Kansas Open Meetings Act. It's my understanding that there is a desire to allow executive sessions for matters concerning emergency or security information. When I saw the seven-line proposal, it struck me as overkill. Committee Members, as someone who must cover government on a local basis, I see more problems with the open meetings act on a local level. School Boards, City Commissions, County Commissions, and Boards of Trustees continue to hide behind it. Yes, I see the need for a section on security issues. However, I don't see the need for overstating it. By allowing Senate Bill 62 to pass, as is, it, once again, allows local government another option to discuss public issues behind closed doors. They already attempt to abuse the Open Meetings Act enough. This would only increase the problem.

In regards to the addition that you are proposing, here is one possible effect Senate Bill 62 could have on a local governing body.

"If this proposal passed, would a Board of Education, now, go behind closed doors to discuss the pros and cons for having surveillance cameras in their schools?" This is one issue that parents need to know about. After all, it does involve the safety of their children.

Senate Committee Members, I suggest you study this bill, thoroughly.

Joe Nicks
News Director
Seward County Broadcasting
Liberal, KS

Senate Elections & Local Government
Attachment: # 1-8
Date: 1-26-99