

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Barbara P. Allen at 1:30 p.m. on January 30, 2003 in Room 245-N of the Capitol.

All members were present except: Senator Gooch - excused
Senator Gilstrap - excused

Committee staff present: Ken Wilke, Revisor of Statutes
Mike Heim, Legislative Research
Dennis Hodgins, Legislative Research
Nancy Kirkwood, Committee Secretary

Conferees appearing before the committee: Senator Schodorf
Jim Bloom, Editor and Publisher; Hutchinson News
Will Kennedy, Executive Dir.; Topeka Capital Journal
Richard Brack, Managing Editor, Lawrence Journal World
Harriet Lang, President & Executive, Kansas Association of
Broadcasters
Don Moler, League of Municipalities
Jim Edwards, Kansas Association of School Boards

Others attending: see attached list

Introduction of bills

Chairperson Allen brought the committee's attention to a letter from City of Hutchinson requesting legislation to amend KSA12-6a01. This would allow the total cost of any improvement to be paid by one entity in spite of the fact that property within the benefit district normally would be liable and assessed, for the cost of the improvement. Senator Huelskamp made a motion to introduce a bill to amend KSA 12-6a01, seconded by Senator Jackson, and the motion carried. (Attachment 1)

Senator Hueslkamp made a request for a bill regarding townships to donate land for cemetery purposes to the county. Senator Huelskamp made a motion to introduce the legislation, seconded by Senator O'Connor, and the motion carried (Attachment 2).

Chairperson informed the committee the deadline for requesting a committee bill would be February 5, 2003.

Hearing on SB 76 - concerning public meetings

Chairperson Allen opened the hearing on **SB 76**, and recognized Mike Heim, Legislative Research, to give a brief overview of the open meetings act to the committee. The Chair requested Mike to furnish the committee with an explanation of the Open Meetings Act.

Senator Schodorf presented testimony in support of **SB 76**. Senator Schodorf stated this legislation would guarantee any transition task forces or advisory boards would be open to the people (Attachment 3).

Jim Bloom, a proponent of **SB 76**, supported the bill with his testimony to the committee (Attachment 4).

Testimony in support of **SB 76** was given by Will Kennedy. Mr. Kennedy believes open meetings bring in more people, consequently more ideas and more discussion of those ideas (Attachment 5).

Richard Brack spoke in support of **SB 76**. Richard stated he is in favor of the bill because, as a newspaper editor, he believe in the public's right to know what business their elected officials are conducting (Attachment 6).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT at on January 30, 2003 in Room 245-N of the Capitol.

Harriet Lang appeared before the committee in support of **SB 76**. Ms Lang's testimony reflects the bill is a huge step in the right direction for open government, however would like to see amendments added (Attachment 7).

Jim Edwards, Governmental Relations Specialist, appeared on behalf of the Kansas Association of School Boards, neutral on **SB 76**. The testimony he presented had several items KASB felt needed to be addressed before passing this legislation (Attachment 8).

Don Moler, Executive Director, League of Kansas Municipalities, spoke in opposition of **SB 76**. The League is opposing Section 4, but believe that Section 3, 4, and 5 are unnecessary and unwarranted (Attachment 9).

Chairperson Allen ask Senator Schodorf to meet with the conferees that had questions and see if some of these issues could be resolved.

There being no others to testify on **SB 76**, the hearing was closed.

Adjournment

The meeting adjourned at 2:26 p.m. The next meeting is scheduled for Tuesday, February 4, 2003

City of Hutchinson

Pursuing Excellence In Public Service

P.O. Box 1567 / Hutchinson, KS 4-156

Telephone: (620) 694-2640

Office Of: Law

Bill Request.

January 21, 2003

*Intro
Bill*

Sen. David Kerr
State Capitol Building, Room 359-E
Topeka, KS 66612

Dear Dave:

This is a follow-up letter to our conversation after the REAP meeting in Wichita on January 6, 2003, when we discussed a City of Hutchinson proposal for legislative action. Specifically, we discussed the situation that occurred last year in Hutchinson when U.S.D. 308 wanted to pave a road that bordered the athletic fields north of 23rd and Severance. The school district was willing to pay for the entire cost of the project but because it did not own the land on both sides of the proposed improvement (the road,) the property owners on the other side of the road were required to be a part of the benefit district, assessed to pay the costs. State statutes do not allow any flexibility in this.

See Krasche

We propose that K.S.A. 12-6a01 et seq. be amended to allow the total cost of any improvement to be paid by one entity in spite of the fact that property within the benefit district normally would be liable, and assessed, for the cost of the improvement.

Sincerely,

Carolyn H. Patterson
City Attorney

Cc: Joe Palacios
Mike O'Neal
Janice L. Pauls
Mary Kauffman
Melvin Minor

*Gal 4?
12-6a01
-6a18*

*Senate Elec + Loc Gov
1-30-03
Attachments + 1*



recycled and recyclable

City Hall Fax 620-694-2673
Central Purchasing Fax 620-694-1971
Fire Fax 620-694-2875

Flood / Refuse Fax 620-694-2650
Inspection Fax 620-694-2691
Municipal Court Fax 620-694-2858

Police Fax 620-694-2859
Public Works Fax 620-694-1980
Waste Water Plant Fax 620-694-2604

SENATE BILL NO. _____

By Senator Huelskamp

AN ACT concerning certain counties; relating to donation of land for cemetery purposes; amending K.S.A. 19-3101 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 19-3101 is hereby amended to read as follows: 19-3101. The governing body of any city ~~of the third class having a population of not less than 1,500 nor more than 2,200 located in a county having a population of not less than 3,000 nor more than 4,500~~ is hereby authorized and empowered to donate and convey to the county any lands or property which it has acquired for cemetery purposes or which is now being used as a cemetery by such city. Such donation and conveyance shall be made by the passage of an ordinance by the governing body of such city. The board of county commissioners of any such county may accept such donation and conveyance by the adoption of a resolution by the board of county commissioners providing for such acceptance.

Sec. 2. K.S.A. 19-3101 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Senate Elec & Loc Gov
1-30-03
Attachment 2

STATE OF KANSAS

JEAN SCHODORF

SENATOR, 25TH DISTRICT
3039 BENJAMIN CT.
WICHITA, KS 67204
316-831-0229, FAX 316-838-8527

DURING SESSION
STATE CAPITOL—143-N
TOPEKA, KANSAS 66612-1504
HOT LINE 1-800-432-3924
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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
VICE CHAIRMAN: ARTS AND CULTURAL RESOURCES (JOINT)

MEMBER: EDUCATION
TRANSPORTATION
WAYS AND MEANS

HOME: jschodor@swbell.net
jschodor@aol.com
CAPITOL: schodorf@senate.state.ks.us

Thank you Madame chair and members of the committee.

I have been a strong proponent of the Open Meetings law for many years and believe that the public has the right as an informed electorate to be able to attend and hear the business of our government at the state and local level.

I also want to stress that my interest and concern for the Open Meetings law goes back many years—long before the BEST meetings, but they helped illustrate again the need for open meetings and they helped to illustrate an area where the law is silent.

The proposed legislation is in no way a criticism of our new governor. I want to compliment her for her first two weeks in office.

However the proposed legislation does bring any meetings of task forces, advisory committees or subcommittees of an incoming governor under the Open Meetings Law. Statute 75-4317 declares Open meetings as the policy of the state. It states, "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".

While there will not be an incoming governor for at least 4 to 8 years, this legislation will guarantee that when there is a new governor again, any transition task forces or advisory boards will be open to the people.

Let me give you a recent example.

Yesterday in a Ways and Means Subcommittee, we reviewed a recommendation made by a BEST team to cut some money, move positions and eliminate positions. However, the particular department affected didn't know the background or why there was this recommendation. Nor had they heard any of the reasons given by the other agency. We had difficulty getting all the necessary information because the discussion had been held in a closed meeting and the information wasn't available to us. If the meeting had been open, both agencies could have testified and more information would be known to all parties.

The BEST teams were well intended but the subject matter was of such importance and magnitude that its recommendations affected money, people, policy and should have been public.

Senate Elec & Loc Gov
1-30-03
Attachment 3

The second part of the bill is similar and pertains to city, county and school boards. After the election is certified, there is a transition time. This is a time for new officials to be oriented and trained to take office and learn as much as possible to be ready to take office. For the counties, the transition time is two months, one week for cities and three months for the school board.

During that time, the incoming official is exposed to much more detail than the public in terms of issues, procedures, policies and upcoming business. In some instances they attend executive sessions and yet during that time, they are not bound by the Open Meetings Law. And thus, could meet in secret with incoming or present members in a majority of a quorum without having to have a public meeting. While no votes can be taken during the transition phase, plans for the future can be implemented when they finally take office. Ninety-nine percent of newly elected officials would not do that, but some times, emotions run high, issues are controversial and there is this possibility and currently it is legal.

In closing, I believe this legislation will fill the void in the law, and better serve the public for open government. I bring this bill forward to be able to discuss the issue and look forward to the discussion.

Thank you Madame Chair and Committee.

THE HUTCHINSON NEWS

James E. Bloom
Editor-Publisher
P.O. Box 190
300 W. Second
Hutchinson, Kansas 67504-0190
Voice: 620-694-5757
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Jan. 30, 2003

Senate Elections and Local Government Committee:

My name is Jim Bloom. I am editor-publisher of The Hutchinson News. Thank you for the opportunity to testify today in favor of Senate Bill 76, which I view as a good faith effort to strengthen the Kansas Open Meetings Act. I favor clarifying the law and making it crystal clear to elected officials that they should conduct the public's business out in the open.

But I worry that one judge's inability to read the plain language of existing law (no wonder Kansas has adopted sentencing guidelines) has left us no option but to go down the road of urging your committee and the full Legislature to name specific entities and officials subject to the Open Meetings Act.

This entity-by-entity listing could create innumerable problems. The bill, for example, makes no mention of community college trustee boards, groundwater district boards or a myriad of other unique local and regional government boards that might exist in parts of the state (for example, Riley County's law enforcement agency board) or develop somewhere in the future.

Local leaders in my own county have initiated discussions of a countywide law enforcement agency. The effort, studied twice before, faces a range of obstacles, including seeking enabling legislation approved by the Legislature, and no one knows exactly what form the new entity might take. But, if a countywide law enforcement agency were to develop under a separate government board, I would hope that the language in the Kansas Open Meetings Act could be inclusive enough to make that new Reno County board subject to the act, too.

Before the Sebelius gubernatorial transition team decided to stretch the law beyond its breaking point, the Open Meetings Act served Kansans well.

Its preamble makes a simple, yet strong declaration, that as a matter of state policy, "meetings for the conduct of government affairs and the transaction of governmental business" shall be open to the public. That alone should suffice.

Its mention of public funding – specifically, that meetings for the conduct of business by bodies "receiving or expending and supported in whole or in part by public funds" shall be open – has provided umbrella coverage that has helped resolve many disputes.

Its limited but growing list of exemptions, set at six when I worked as a reporter at The Salina Journal and later at The Olathe Daily News but expanded over the last 23 years to 14, allows for government boards to strive to maintain confidentiality in sensitive situations.

In conclusion, I'm all for strengthening the Kansas Open Meetings Act. While I worry that any effort to make provisions for an entity-by-entity listing could create unforeseen problems, I certainly favor making it crystal clear that, as a matter of public policy in the state, elected officials must conduct the public's business in the open.

Senate Elec + Loc Gov
1-30-03
Attachment 4

Good afternoon. My name is Will Kennedy and I am the executive editor of The Topeka Capital-Journal. I appreciate the opportunity to briefly speak with the committee regarding Senate Bill 76.

If approved and enacted, Senate Bill 76 will fill a critical need: It will close a gaping loophole in the Kansas Open Meetings Act. The bill broadens the language of KOMA, which some think is necessary following recent events. Exceptions to KOMA should, indeed, be rare.

The laws and principles of open government go back to the founders of our nation. These laws are part of what has made our country great.

While some think that closed meetings encourage participants to speak more openly, we believe open meetings bring in more people, consequently more ideas and more discussion of those ideas. The ideas immediately are in the public domain where they can be scrutinized and maybe improved.

One of America's great newspaper chains has a motto it prints on the editorial page of its newspapers. That motto is: "Give light, and the people will find their own way."

Closed meetings of commissions, task forces and boards appointed by an incoming elected official do not provide light. These meetings are dark. The decision-making process is shielded by the closed door; the light is shuttered.

Residents of this city, county and state have a clear right to be informed about plans and proposals that could affect them. An informed electorate is an engaged electorate. There is nothing more basic and valued in our democracy.

I have been in the newspaper business for 28 years, working as an editor in Ohio, New York, Georgia and now, Kansas. During those years of experience, I have witnessed numerous attempts by different governmental bodies to diminish the intent of open meetings laws. What recently unfolded here in Kansas with the governor's Budget Efficiency Savings Teams clearly violates the spirit of KOMA. Judge Rosen, who actually ruled on the side of the governor, said as much. Citizens were not given the opportunity to participate or to be informed about what these task forces were discussing or deciding.

While many in the news industry are dismayed that an amendment is necessary to KOMA, we indeed feel privileged today to live in a society, in a state, where open debate is allowed. Debating this bill is exercising that privilege. Opening meetings set up by newly elected officials is exercising that privilege also.

Senate Bill 76 defines and adds to which meetings should be open.

Please consider passage of this important piece of legislation.

Thank you,



Will Kennedy
Executive editor,
The Topeka Capital-Journal

Senate Elec + Loc Gov
1-30-03
Attachments + 5

Before the Senate Committee on Elections and Local Government
Testimony of Richard Brack, Lawrence Journal-World

Jan. 30, 2003

Madam Chairman and members of the committee, my name is Richard Brack from Lawrence. I'm in favor of this bill because, as a newspaper editor, I strongly believe in the public's right to know what business their elected officials are conducting. As a Kansan, I know our state can do better than it has recently done in this regard.

Our nation and our state are founded on the premise of an open, accountable government of the people, by the people and for the people. Unfortunately, a loophole in our state law encourages some officeholders to forget that fact. This loophole must be closed, and Senate Bill 76 can help do that.

When candidates are elected, the nature of their responsibility to our society changes. Whether or not the technicality of being sworn in has occurred, in the mind of the electorate and in reality, that person is the voters' elected representative. The electorate has invested in that officeholder-elect a level of trust that policy decisions he or she makes — regardless whether such decisions are before or after officially taking office — will be in their best interest. How, if our state law allows such officeholders-elect to conduct hearings, discussions — even votes — in private, can Kansans know whether that is happening?

As you know, open meetings are the declared policy of our state. Here is what our law says: "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."

I don't believe — and I don't think you believe — the intent of our state open meetings law is to allow the sort of closed-door meetings we saw recently with the governor's Budget Efficiency Savings Teams. By clarifying the law with this amendment, such public deliberation and decision-making will be done where it should be: In public. This amendment only clarifies existing law.

Am I interested in closing this loophole because of my profession? Certainly. Is that the only reason? No. As a proud Kansan, I know our state can do better. My newspaper's readers and your constituents deserve better. Your approval of this bill can help make that happen.

Please consider passage of this important piece of legislation. Thank you for your consideration.

Senate Elec + Loc Gov
1-30-03

attachment 6



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Web site: www.kab.net * E-mail: harriet@kab.net

Testimony Before Senate Committee on Elections and Local Government
January 30, 2003
SB 76

Madam Chair and Members of the Committee, I am Harriet Lange with the Kansas Association of Broadcasters. KAB's membership is comprised of radio and television stations serving Kansas. We appreciate the opportunity to appear before you today on SB 76.

As one of the plaintiffs in *The Associated Press, et al v. Kathleen Sebelius and The Governor Elect Transition Office*, KAB appreciates this body's effort to clarify Kansas Open Meetings Act.

Unfortunately Judge Eric Rosen's opinion was that the transition office is not an agency of the state and therefore it and its advisory committees are not subject to KOMA. However, in his decision, Judge Rosen stated ". . . The time has long passed that critical public policy decisions can be formulated and based on privately held discussions and secret meetings that hold no one accountable. KOMA's purpose and design rests on the premise that the foundation of our government is dependent upon an informed electorate. When meetings that directly impact public policy of our state occur out of the public eye or ear, our democracy is put in jeopardy. Thus, had the Court been provided with a legal option to do so, it would have most certainly ordered the BEST team meetings open."

SB 76 is a huge step in the right direction for open government. However, in our opinion, it doesn't go quite far enough. It is our hope that amendments to the open meetings act would do three things: 1) extend KOMA to all newly elected public officials at all levels; 2) stipulate in statute that all governmental task forces, advisory committees and subcommittees, are subject to KOMA; and 3) extend KOMA to all task forces and advisory committees appointed by newly elected officials.

SB 76 would extend KOMA only to governors-elect, and city, county and school board officials. When your committee works SB 76, we encourage you to broaden its reach by bringing all newly elected public officials under KOMA.

Thank you for your consideration.

Senate Elec & Loc Gov
1-30-03
Attachment 7



Testimony on SB 76
before the
Elections and Local Government Committee

by

Jim Edwards, Governmental Relations Specialist
Kansas Association of School Boards

January 30, 2003

Madam Chair Allen and members of the Committee:

First, let me say that KASB is supportive of measures that lead to openness in local, state and national governmental processes. The measure, as you have it in front of you today, proposes to extend the provisions of the existing Kansas Open Meetings Act (KOMA) to a much broader group of persons. Included in this group would be persons who have been elected yet not officially sworn into office. As this proposed concept is a relatively new one, our Delegate Assembly has not had the opportunity to review it to determine KASB's support or opposition.

As the Committee begins its deliberations though there are several items that we feel need to be addressed. They include:

- Would these elected but non-seated persons be viewed as public officials for purposes of defense under the Kansas Tort Claims Act?
- Would these elected but non-seated persons be immune from liability as would be a public official?
- Would these elected but non-seated persons be covered by the unit of government's or school district's insurance?
- If they attend a board meeting and the sitting board violates the Kansas Open Meetings Act, would the elected but non-seated member also be guilty?
- As written, the Secretary of State would now be required to verify all local races rather than the county election official.

Senate Elec + Loc Gov
1-30-03

Attachment 8

- While the elected but non-seated members would be subject to the KOMA, they would not have any power to take official action.

I thank you for the opportunity to provide these questions to the Committee.



League of Kansas Municipalities

To: Senate Elections and Local Government Committee
From: Don Moler, Executive Director
Re: Opposition to Portions of SB 76
Date: January 30, 2003

First of all, thank you for allowing the League to appear today in opposition to a section of SB 76. The section we are opposing is Section 4, but we believe that Sections 3, 4, and 5 are unnecessary and unwarranted. It is clear that this legislation is directed at the power of an incoming Governor to create task forces, advisory committees or subcommittees of advisory committees, which would be subject to the KOMA. We are not commenting on those provisions and would urge the committee to limit the legislation to that specific issue.

Since we are unaware of any real or perceived problems at the local level with this issue, we believe sections 3, 4, and 5 to be unnecessary, unwarranted, and without merit. Despite the urging by some to include local governments in this issue, we would contend it is a state issue which should remain a state issue. Essentially the local provisions are "solutions" in search of a "problem".

Should the committee not wish to remove local governments from the legislation, we would urge the committee to at least clean up the language so as to not create a number of new problems. Problems with the language include: (1) As we understand it, no one is elected to anything locally in Kansas until the election is certified by the county board of canvassers. Thus the day after the election language is nonsensical in this context; (2) defining "member of a governing body" in this statute will create several conflicts and problems in interpreting other statutes. "Governing Body" is a term of art and law in Kansas. As a result, this new language could create problems with statutes in K.S.A. Chapters 12, 13, 14, and 15. Certainly we cannot have elected, but non-confirmed or qualified, "governing body members" counting toward the quorum requirements for cities in Kansas. This would be a nightmare and we would urge the committee to rethink this language.

Finally we would suggest that these provisions, as they would apply to local governments, violate the 1st Amendment to the United States Constitution. Would this mean that an elected city official could not meet in their living room with friends and neighbors to discuss the issues of the day? Would this limit or inhibit citizen groups from discussing city issues with their elected city officials. We think it would and that it is a bad idea all the way around. The scattergun approach to legislation is often a bad approach, and we would offer it is unnecessary, unwarranted, and unlawful in this instance.

Ultimately there is no need to include local government officials in this legislation.