

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 1:30 p.m. on February 12, 2004, in Room 526-S of the Capitol.

All members were present except:

Representative Brenda Landwehr- excused
Representative Sue Storm- excused
Representative Joe McLeland - excused

Committee staff present:

Dr. William Wolff, Legislative Research Department
Renaë Jefferies, Office of Revisor of Statutes
Gary Deeter, Secretary

Conferees appearing before the committee:

Theresa Nuckolls, Assistant Attorney General
Representative Jene Vickrey
Rod Bremby, Secretary, Kansas Department of Health and Environment
Jane O'Bryan, Member, Board of Adult Care Home Administrators
Lou Esplund, Chair, Board of Adult Care Home Administrators
Dawn Veh, Vice President, Health Services, Wesley Towers, Hutchinson
Debra Zehr, Vice President, Kansas Association of Homes and Services for the Aging

Others attending:

See Attached List.

The Chair welcomed Theresa Nuckolls, Assistant Attorney General, who briefed the Committee on the Open Meetings Act. (Attachment 1) She reviewed the statutes, which state that all meetings of elected officials in Kansas must be conducted openly. (K.S.A 75-4317 et seq) She then outlined what constituted a meeting:

- A gathering, assembly, telephone call, or other interactive means of communication, which includes e-mails, notes, instant messaging. She said if members have a discussion, the law applies. If communication is only one-way and not interactive, the law does not apply.
- To be a meeting, there must be a majority of a quorum: take the total members, divide twice by 2, rounding up each time.
- The discussion must be in relation to the affairs of the body. A meeting for purely social purposes where no discussion involves the purpose of the body does not constitute a meeting.

Ms. Nuckolls commented that the appearance of impropriety is not a violation. She said that discussions between two members is not a violation, but serial conversations are a violation, noting that the means of

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communication is not the issue.

The Chair thanked Ms. Nuckolls, then turned the meeting over to Representatives Roger Reitz and R. J. Wilson, who chaired hearings on two bills.

Representative Reitz opened the hearing on **HB 2634**, testing for West Nile virus in humans. The chair reviewed the history of reporting of the virus in Kansas, noting that reporting varies from state to state, depending on the symptoms are categorized. He said the one unique symptom of the West Nile virus is flaccid paralysis. Commenting on the bill, he stated that an issue of public concern is requiring a laboratory to run a specific test based on certain symptoms.

Representative Vickrey testified about the experience of one of his constituents, who, when requesting a West Nile test from the Kansas Department of Health and Environment, was refused the test because her husband's symptoms did not meet the criteria for the test. The Chair noted that there is no treatment for West Nile, but it is important to know that it might be some other disease which could be treated.

Rod Bremby, Secretary, Kansas Department of Health and Environment, said KDHE is required to run a test to confirm West Nile virus whenever it is requested by a physician. (Attachment 2) He said there are several types of tests for West Nile with concomitant variation in costs. He estimated an additional cost to the agency of \$164,000 if the bill passes. He also noted that private laboratories are available to conduct such tests, obviating the need for this legislation. In comparing reporting variations among states, he said Colorado includes a wider array of symptoms than other states and therefore has the appearance of a much higher incidence of the virus.

Answering questions, Mr. Bremby said that testing for West Nile virus can be done by a physician or local clinic, and that sending the sample to KDHE would delay the diagnosis by several days, noting that a physician would be expected to treat the patient from his or her own evaluation rather than waiting for a report from KDHE. He replied that KDHE is usually not the first line of defense for infectious diseases unless the presenting symptoms or substances are unique or unusual.

Dr. Gail Hansen, Acting State Epidemiologist, said KDHE is sometimes the first to conduct a test and sometimes acts as a confirmation of a private laboratory's test. She said a physician's first choice should be to send the sample to a private lab, and, for certain symptoms, also send another sample to the KDHE laboratory for confirmation. She said the Centers for Disease Control (CDC) have specific criteria for West Nile; if the symptoms do not meet the criteria, KDHE will not conduct a test.

Answering further questions, Dr. Duane Bowling, a KDHE chemist, said a West Nile test takes 2-3 days. He said KDHE's lab functions not to make an initial diagnosis, but to ensure that a private laboratory's test result is accurate. He said KDHE reports to the CDC on West Nile only if the more severe symptoms (encephalitis, meningitis) are present.

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Representative Reitz closed the hearing on **HB 2634**.

Representative Wilson opened the hearing on **HB 2716**, which changes the requirements for adult care home administrators. He stated that because of the limited time and because some conferees had come from a distance, the Committee would not follow a strict proponent/opponent sequence.

Jane O'Bryan, Member, Board of Adult Care Home Administrators (BACHA), testified as an opponent of the bill. (Attachment 3) As an experienced, licensed, long-term care nursing facilitator, she said the bill would reduce the flexibility of the Board to carry out its responsibilities and place undue restrictions on administrators to serve as preceptors. Noting that fewer individuals have been seeking licensing as care-home administrators, she said the bill would further restrict candidates for care-home administrator. Answering a question, Ms. O'Bryan said she would prefer that training not be mandated.

Lou Esplund, Chair, Board of Adult Care Home Administrators, spoke in opposition to the bill. (Attachment 4) She said she had been an administrator in Kansas for 28 years, noting that the Board sets the standards for long-term care administrators and that the Board sees the bill as a roadblock for finding administrators. She commented that since a preceptor volunteers his or her time, a bill which adds further requirements for preceptors will cause fewer administrators to volunteer. She summarized her comments by saying that the bill presents more barriers than it does incentives in finding capable administrators. Answering a question, she said the licensing test for prospective administrators is based on the national board requirements and that the test is continually updated. She said that adding a 480-hour requirement narrows the focus of requirements; she would prefer a candidate take be free to take courses in areas of their preference.

Dawn Veh, Vice President, Health Services for Wesley Towers, Hutchinson, spoke as a proponent for the bill. (Attachment 5) She said the goal of the bill is to create training for long-term care administrators that will lead to a customer-focused outcome. She noted the decline in the number of licensed administrators in Kansas, saying that the proposed 480-hour practicum required by the bill is based on the National Association of Boards of Examiners' Domains of Practice for the Long-Term Care Administrator. She said that the 10-hour preceptor training assures quality care for Kansas seniors.

Answering questions, Ms. Veh said the bill will reverse the declining numbers of adult care-home administrators by providing better training and a consistent college curriculum, both which will help administrators become more successful, noting that quality, not numbers, is the issue. She replied that BACHA has not updated the standards since 1972.

Not appearing, but providing written testimony, were the following:

Deanne Bacco, Executive Director, Kansas Advocates for Better Care, a proponent. (Attachment 6)
Debra Zehr, Vice President, Kansas Association of Homes and Service for the Aging, a proponent. (Attachment 7)

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The Chair closed the hearing on **HB 2716**

Staff Bill Wolff briefed the Committee on **HB 2698**, a bill licensing radiologic technologists. He said the bill sets forth a registration act within a licensure act, including the registration of x-ray technicians as well as licensing for radiologic technologists. He noted that in the extensive definitions of what radiologic technologists can do, the x-ray technicians are defined by what they cannot do, suggesting they be defined by what they are allowed to do, further noting that the term "limited radiology," referring to x-ray technicians, is not defined in the bill. He also identified several redundancies and semantic problems and circumlocutions.

Dr. Wolff said the bill is a classic licensure act with a prescribed scope of practice and a statement of who can do these things and what they are to be called. He said the bill allows the Board of Healing Arts to issue a temporary license, to permit an applicant to take a different examination, or, under certain circumstances, to waive the examination. He noted that the bill allows all present radiologic technologists to be automatically included as licensed if they hold a current registration; likewise x-ray technicians are automatically included as registered until January, 2005, noting that the title of X-ray technician is protected by the bill.

The meeting was adjourned at 3:09 p.m. The next meeting is scheduled for Monday, February 16, 2004.

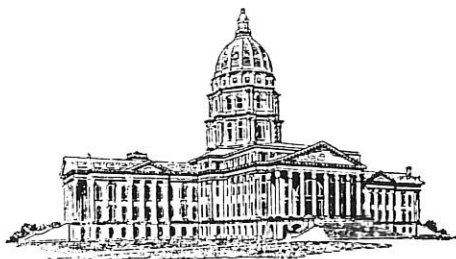
**HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
GUEST LIST**

DATE: FEBRUARY 12 2004

NAME	REPRESENTING
Lon A. England	BACHA
Joyce Barr	BACHA
Bernard Barr	
[Signature]	KPAT
Brenda Nesbitt	KDHE
Steve Dwin	KDHE
Michelle Peterson	Ks. Governmental Consulting
Exp Seebet	Ken Law KSM
Theresa Ward Nien	AG - on KOMA issue
Maude Rhoden	KDHE/BACHA
Heather Grace	Dumron & Associates
Sally L. Enloe	U.S. Fed
Larry & Charlotte Linn	Visa/NKFS, NAYS, KS
Jane O'Bannon	BACHA
Christa Frazier	Labette County FFA
Jennifer Mathes	Labette County FFB
Jill Banzet	Labette County Farm Bureau Ag. Ambass.
Hilary Bosson	Labette County Farm Bureau Ag. Ambass.
Judy Keller	American Lung Assn.

STATE OF KANSAS

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TOPEKA

HOUSE OF REPRESENTATIVES

COMMITTEE ASSIGNMENTS
Chairman:
HEALTH AND HUMAN SERVICES
Member
EDUCATION
Member
JOINT COMMITTEE ON
INFORMATION TECHNOLOGY
jmorrison@ink.org
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February 3, 2004

Ms. Theresa Marcel Nuckolls
Assistant Attorney General
120 SW 10th
Topeka, KS 66612

Dear Ms. Nuckolls:

I would very much appreciate your presenting to my paperless Health and Human Services Committee an overview of KOMA Thursday afternoon February 12th at 1:30. I expect about 15 minutes or so for your speaking and then another 15 or more minutes for questions from members. The room where we meet (526-S) has live video and audio 24 hours a day, seven days a week.

My concern is primarily in two areas: what a majority of a quorum means to my 21 member committee (6 as we have discussed but the committee need to hear that from a person in a position of authority other than the Chairman); and when a meeting ends. I have seen members remain after a meeting is adjourned and a majority of a quorum would continue to discuss legislation relating to the committee that should in my opinion be in an open meeting (they simply "forgot" the room was live.) I believe that the meeting that had just been adjourned actually was continued because the subject of their discussion was the subject of the hearing so "when does a meeting end?"

It is simply my desire to make clear that much of our past discussion has possibly been in violation of the open meetings and I want this committee to avoid the very appearance of such an impropriety.

Our use of Instant Messaging has made this issue seem "different" to many people and has brought up questions of how such messages relate to an open meeting. We (you and I) have already discussed that, but it would be good to have the committee hear that the means (telephone, notes, email, serial communication etc) is not what counts but the number of persons involved and the content of their discussion.

Sincerely,

A handwritten signature in cursive script that reads "Jim Morrison". The signature is written in dark ink and is positioned above the printed name.

Jim Morrison

Attachment 1
HHS 2-12-04

Kansas Open Meetings Act (KOMA)

Prepared by **Phill Kline, Attorney General**
and
Theresa Marcel Nuckolls, Assistant Attorney General

Revision date: July 2003

I. PURPOSE AND CONSTRUCTION

- A. It is the public policy of Kansas that meetings be open to the public because "a representative government is dependent upon an informed electorate . . ." K.S.A. 75-4317
- B. The act is interpreted liberally and exceptions narrowly construed to carry out the purpose of the law. *Memorial Hospital Ass'n, Inc. v. Knutson*, 239 Kan. 663, 669 (1986)

II. BODIES SUBJECT TO THE KOMA

- A. Is the group subject to the KOMA?--two concurrent requirements: K.S.A. 75-4318
 - 1. All legislative and administrative bodies, state agencies, and political and taxing subdivisions
 - 2. Which receive or expend and are supported in whole or in part by public funds.
- B. Specific Bodies Subject to the KOMA:
 - 1. Political and Taxing Subdivisions include: cities, counties, townships (AG Opin. No. 81-288); school districts, community colleges (AG Opin. No. 81-258); watershed districts (AG Opin. No. 85-161); rural water districts (AG Opin. No. 88-97 and 89-91); drainage districts (AG Opin. No. 90-69); local historic preservation committees administering K.S.A. 75-2724 (AG Opin. No. 99-22).
 - 2. State Agencies and Boards, unless otherwise provided by statute.
- C. Subordinate Groups Subject to the KOMA--All subordinate groups, such as boards, commissions, authorities, councils, committees, subcommittees are covered by act if:
 - 1. the subordinate group meets funding test if the parent or controlling body meets funding test, *State ex rel., Murray v. Palmgren*, 231 Kan. 524 (1982), and
 - 2. appointed by parent body to weigh options, discuss alternatives, present recommendations or a plan of action.
 - a. It is the nature of the group, not its designation, which determines if it is subject to the KOMA. AG Opin. No. 86-92. *See also* AG Opin. No. 80-21; 77-53; 76-140; 76-122; 73-235; 86-38.
 - 3. Examples--School District Advisory Board (AG Opin. No. 84-81); Fire District Advisory Board (AG Opin. No. 86-84); Mayor's commission subject to KOMA as it is subordinate to the city's governing body (AG Opin. No. 88-25); appointed grievance committees, created by a city to hear employee grievances (AG Opin. No. 91-31); DUR Board under SRS (AG Opin. No. 93-41); Parental boards under Rec. Commission (AG Opin. No. 93-73); House and senate conference committees (AG Opin. No. 93-113).
- D. Joint Boards Subject to the KOMA if boards composed of members of different governmental bodies and:
 - 1. Appointed by official action (AG Opin. No. 86-48); *or*
 - 2. A majority of a quorum of one or more governing bodies is present AG Opin. No. 84-103 *See also* AG Opin. No.91-150.
- E. Non-profit corporations may be subject to the KOMA
 - 1. Receives or expends public funds;
 - 2. Is subject to control of governmental unit(s); and

3. Acts as a governmental agency in providing services or has independent authority to make governmental decisions
 - a. Nonprofit Corps Subject to KOMA: Area agencies on aging (AG Opin. No. 79-219); Economic Opportunity Foundation, Inc. (AG Opin. No. 84-10); McPherson Co. Diversified Services, Inc. (AG Opin. No. 79-284); Three Rivers, Inc. (AG Opin. No. 87-143); Cowley County Diversified Services (AG Opin. No. 87-188); HELP, Inc. (AG Opin. No. 88-27)
 - b. Not subject to KOMA: Private nursing homes (AG Opin. No. 79-221); KU and WSU Endowment Associations (AG Opins. No. 80-239, 82-172); Planned Parenthood (AG Opin. No. 81-253); Hutchinson Cosmospere (AG Opin. No. 82-256); Electric Cooperative (AG Opin. No. 85-175); *Memorial Hospital v. Knutson*, 239 Kan. 663 (1986); Parsons Chamber of Commerce (AG Opin. No. 89-149); K-10 Corridor Development, Inc. (AG Opin. No. 94-42); Koch Commission (AG Opin. No. 94-55); Kansas Venture Capital, Inc. (AG Opin. No. 94-107); Mid-America Commercialization, Inc. (AG Opin. No. 94-99); Consensus Estimating Group -- with staff from state agencies (AG Opin. No. 94-93); Prairie Village Economic Development Commission (AG Opin. No. 99-64), Hesston Area Senior Center (AG Opin. No. 01-02).

F. Bodies and Meetings not Subject to KOMA:

1. Staff meetings
2. Judicial agencies and bodies (AG Opin. No. 82-254)
3. Bodies exercising quasi-judicial functions -- K.S.A. 75-4318(a).
 - a. Quasi-judicial is defined as "a term applied to the action, discretion, etc. of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature." Blacks Law Dictionary 1121 (5th ed. 1979).
 - b. Example: Zoning boards (AG Opin. No. 78-13), city grievance panels (AG Opin. No. 91-31); hearing panels.
 - c. Only quasi-judicial deliberations may be closed--binding action must be in open meeting. AG Opins. No. 91-31; 84-50; 79-225.
4. Private Organizations. Example: Private/parochial schools (AG Opin. No. 81-94); Nursing homes (AG Opin. No. 79-221).
5. Hospital board discussions regarding risk management and peer review laws exempted from open meeting discussion AG Opin. No. 89-42.
6. Meetings of legislature if house or senate rules so provide K.S.A. 75-4318(a)
7. Precinct committees. AG Opin. No. 94-157

III. MEETING--If a body is subject to the KOMA, the KOMA applies *only* when the body has a meeting as defined by the statutes.

- A. A Meeting is (1) A gathering, assembly, telephone call or any other means of interactive communication; (2) by a majority of a quorum of the membership of an agency or body; (3) for the purpose of discussing the business or affairs of the body. K.S.A. 75-4317a
- B. Gathering, Assembly, Telephone Call or other means of Interactive Communication
 1. Prerarrangement was required prior to 1994, and the statute did not mention telephone calls. In *State v. Seward Co.* 254 Kan. 446 (1994), the Kansas Supreme Court held that phone calls between a majority of a quorum of county commissioners discussing business was not subject to the KOMA because the calls were not prerarranged and the members were not in each other's physical presence. The legislature reacted to this case by deleting the requirement of prerarrangement and adding to the definition "telephone call or any other

means of interactive communication".

2. Informal discussions before, after, or during recesses of a public meeting are held to be subject to the act. *Coggins v. Public Employee Relations Board*, 2 Kan. App. 2d 416, 423, rev. denied 225 Kan. 843 (1978)
3. Title of the gathering--e.g. work sessions-- is irrelevant if the three requirements of a meeting are met. AG Opins. No. 80-197; 90-47.
4. Serial communications between a majority of a quorum of a public body, the purpose of which is to discuss a common topic of business or affairs of that body by the members, constitutes a meeting. Such communications may occur through calling trees, e-mail or an agent of the body. See Attorney General Opinion 98-26, 98-49. See also Attorney General Opinion 95-13.

C. Majority of a Quorum

1. "Quorum" means a simple majority of the membership of a body; the number greater than one-half of the total (unless otherwise provided by statute). AG Opins. No. 83-6; 91-73; 93-140; 96-32
2. "A majority" is the number greater than one-half of a quorum; it is the smallest number that can take action on behalf of a body. AG Opin. Nos. 86-110; 93-140. *See also* AG Opins. No. 81-26 and 91-73.
3. Examples: A quorum of a seven member body is four, and a majority of that quorum is three. A quorum of a five member body is three, and a majority of that quorum is two. (Conventional wisdom is that a majority of a quorum can never be one.)
4. A county commission may by Home Rule powers raise its quorum to a number greater than a majority of its members. *State ex rel. Stephan v. Board of Sedgwick County Comm'rs*, 244 Kan. 536 (1989). Cities also have home rule authority to increase their quorum by charter ordinance. See AG Opin. Nos. 87-45, 83-74. Bodies without home rule authority cannot alter common law rules determining a quorum and may not alter it without specific authority. *See also* AG Opin. Nos. 83-174 (change by Airport Authority not authorized); 93-140 (change by Rec. Comm. not authorized); AG Opin. No. 96-32 (change by state Dental Board not authorized)
5. In mayor-council form of government, the mayor is not included as a member of the body. AG Opin. No. 86-110.

D. For the Purpose of Discussing the Business or Affairs of the Body.

1. Binding action or voting is not necessary; discussion is what triggers KOMA. AG Opin. No. 79-200.
2. "Meeting" includes all gatherings at all stages of the decision-making process. *Coggins v. Public Employees Relations Board*, 2 Kan. App. 2d at 423
3. Social gatherings are not necessarily subject to the KOMA; if there is no discussion of the business of the body, one element of a meeting is "missing."
4. Retreats and meetings held in private clubs are probably prohibited, especially if site makes it impossible for public to attend without cost. AG Opins. No. 82-133; 80-148
5. Members attending a conference where items of general interest are discussed (such as convention of League of Municipalities) are not in violation of the KOMA, as long as the specific business of a body is not discussed. AG Opin. No. 82-133.
6. Marriage between two members of a five member city council of a third class city does not violate the KOMA, but they should not discuss city business outside open meeting. AG Opin. No. 87-45

IV. NOTICE OF MEETINGS--K.S.A. 75-4318

- A. Notice of meetings must be requested before the public body is required to provide it. K.S.A. 75-4318

1. Notice must be given to any person or organization requesting it. AG Opin. No. 86-133. Residence of the requestor is irrelevant. AG Opin. No. 81-137
 2. Notice request expires at the end of fiscal year; request must be renewed. Must first notify of expiration before terminating notice. K.S.A. 75-4318(b)(3)
 3. Presiding officer has duty to provide notice, but that duty may be delegated.
- B. Form of Request and Notice
1. Oral request is valid (but prosecution is difficult if not honored). AG Opin. Nos. 81-15; 81-22; 86-133.
 2. Notice given can be written or oral, but must be made individually to the person requesting it. Posting or publication in newspaper is insufficient.
 3. A single notice can suffice for regularly scheduled meetings. Must notify of any special meetings. AG Opin. No. 83-173
 4. No fee for notice can be charged. AG Opin. Nos. 81-137; 82-141
 5. Petitions for notice may be submitted by groups of people, but notice need only be provided to one person on the list. K.S.A. 75-4318(b)(1). AG Opin. No. 86-133
 6. No time limit is imposed for receipt of notice prior to meeting. Notice must be given in a "reasonable time," reasonableness depending on the circumstances. AG Opin. No. 81-15
 7. Contrary to popular belief, the KOMA does *not* require notice of meetings to be published in a paper.
 8. To establish a violation for failure to provide notice of a meeting there must have been a prior request for notice. A pattern of providing courtesy notice does not create a duty to provide it.
 9. A body cannot opt out of KOMA's requirements.
- C. Agendas
1. The KOMA does not require that an agenda be created.
 - a. If a body chooses to create an agenda, that agenda should include topics planned for discussion. *Stevens v. City of Hutchinson*, 11 Kan. App.2d 290, 293 (1986)
 - b. Agenda may be amended. *U.S.D. 407 v. Fisk*, 232 Kan. 820 (1983).
 2. If agendas exist, copies must be made available to those who request them. The agenda does not have to be mailed out and can simply be provided by placing the agendas in a public place. K.S.A. 75-4318(d); AG Opin. Nos. 79-218; 81-15; 86-133
- D. Minutes
1. Except for recording motions for executive session, the KOMA does not require minutes. (Local bylaws, ordinances, or policies may.)

V. OPEN MEETINGS AND EXECUTIVE SESSIONS

A. Open Meetings

1. K.S.A. 75-4318 requires open meetings when a body is subject to the act.
 - a. Any person may attend open meetings. AG Opin. No. 80-43
 - b. The KOMA does not require that the public be allowed to speak or to have an item placed on the agenda (but check local ordinances and policies. K.S.A. 21-4101 prohibits disorderly conduct or disturbing a lawful meeting and provides for criminal prosecution).
2. Secret ballots not allowed, K.S.A. 75-4318(a). The public must be able to ascertain how each member voted. AG Opin. Nos. 86-176; 79-167; 81-106; 65-167; 93-55
3. Subject to reasonable rules, cameras and recording devices *must* be allowed at open meetings. K.S.A. 75-4318(e)
4. The KOMA does not dictate the location of the meeting, the size of the room, or other accommodation type considerations. The key to determining whether a meeting is "open" is whether it is accessible to the public. AG Opin. Nos. 86-153; 79-253; 82-133; 80-148

5. Telephone conference calls are allowed if the requirements of the act are met (*i.e.* notice and free access). AG Opin. Nos. 81-268; 80-173; 80-159
- B. Executive Session K.S.A. 75-4319
1. Executive sessions are permitted for specified purposes, but first the body must convene an open meeting before public body can recess into executive session. K.S.A. 75-4319(a); AG Opin. No. 81-22.
 2. Binding action may *not* be taken in executive session. (K.S.A. 75-4319(c); AG Opin. No. 91-31) Reaching a consensus in executive session is permitted. *O'Hair v. U.S.D. No. 300*, 15 Kan. App. 2d 52 (1991). A "consensus," however, may constitute binding action and violate KOMA if a body fails to follow up with a formal open vote on a decision which would normally require a vote. *City of Topeka v. Watertower Place Development Group*, 265 Kan. 148 (1998).
 3. The decision to hold executive session is discretionary; the KOMA never requires an executive session. (Other laws or policies need to be considered, however.)
 4. Procedure--KSA 75-4319(a) requires a specific procedure which must be followed in order to go into executive session:
 - a. Formal motion, seconded, and carried
 - b. Motion must contain statement of (1) Justification for closure; (2) Subject(s) to be discussed; and (3) Time and place open meeting will resume.
 - c. Example: "Madam Chairman, I move we recess into executive session to discuss disciplinary action against a student in order to protect the privacy of the parties involved. We will reconvene the open meeting in the conference room at 8:30 p.m."
 - d. Motion for executive session should contain subject *and* justification statement, which are not the same thing. AG Opin. Nos. 91-78; 86-33. *But see State v. U.S.D.A. 305*, 13 Kan. App.2d 117 (1988) The subject is the subject listed in K.S.A. 75-4319 (b). The justification is an explanation of what is to be discussed (without revealing confidential information.)
 - e. Executive session motions must be recorded in minutes. K.S.A. 75-4319(a) KOMA does not require other information to be recorded. Other minutes for open or executive sessions are discretionary, unless some other law requires them. AG Opin. No. 90-47
 5. Subjects which may be discussed in an executive session:
 - a. Personnel matters of non-elected personnel
 1. To discuss an individual, not groups. AG Opin. Nos. 81-39; 88-25; 80-102. *But see* 13 Kan.App.2d 117 (1988) The purpose of this exception is to protect the privacy interests of individuals. Discussions of consolidation of departments or overall salary structure is not a proper topic.
 2. "Personnel" means employees of the public agency. AG Opin. No. 87-10
 - a. Personnel does *not* include appointments to boards or committees. AG Opin. No. 87-10
 - b. Personnel does *not* include independent contractors. AG Opin. No. 87-169
 - c. The KOMA does not give the employee a right to be present in the executive session or to force an open session. (Other laws or contracts may, however.)
 - d. This exception may be used to discuss applicants for employment. AG Opin. No. 96-61
 - b. Consultation with the body's attorney
 1. This is for attorney/client privilege so all elements of privilege must be present:
 - a. the body's attorney must be present;
 - b. the communication must be privileged, and

- c. no other third parties may be present. AG Opin. Nos. 78-202; 80-43; 82-130; 82-176; 82-247; 92-56; Privileged communication is defined at K.S.A. 60-426; Pickering v. Hollabaugh, 194 Kan. 804 (1965)
 - 2. Cannot be used to discuss letter received from attorney if the attorney is not present. AG Opin. No. 86-162
 - c. Employer-employee negotiations
 - 1. Public bodies can meet in executive session to discuss conduct or status of negotiations, with or without the authorized representative who is actually doing the bargaining. AG Opin. No. 79-125
 - 2. Public bodies cannot have executive session under this exception when meeting with employees. AG Opin. No. 80-43
 - 3. School Boards--special rules: K.S.A. 72-5423(b). AG Opin. No. 92-51.
 - d. Confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorship.
 - 1. Economic development groups. AG Opin. No. 88-148
 - 2. Must be for data truly confidential in nature. *See* K.S.A. 60-3320; ***Southwestern Bell Telephone Co v. KCC***, 6 Kan.App.2d 444, 457 (1980), *rev. den.* 230 Kan. 819 (1981); ***All West Pet Supply v. Hill's Pet Products***, 840 F.Supp. 1433, 1437 (Kan. 1993.)
 - e. Matters affecting a student, patient, or resident of public institutions
 - 1. Must concern a particular person (not students in general).
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 - 3. Inmates as residents of institutions, *see* AG Opin. No. 80-102.
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 - 1. Acquisition only, not sale of property which must be discussed in open meeting. AG Opin. No. 87-91
 - 2. This exception can be used only when the primary focus of the discussion is real property; negotiating strategy alone is insufficient. AG Opin. No. 89-92.
 - g. Security of a public body or agency, public building or facility or the information system of a public body or agency, if open discussion would jeopardize security.
6. Who can be present in an executive session-- Only the members of a public body have the right to attend executive session. AG Opin. No. 86-14
- a. Mere observers may not attend. Inclusion of general observers means the meeting should be open to all members of the public. AG Opin. Nos. 82-176; 86-143; 92-56.
 - b. Persons who aid the body in its discussions may be discretionarily admitted. AG Opin. No. 91-31
 - c. Johnson County school district; members of advisory boards have no right to attend. AG Opin. No. 86-143
 - d. County clerk has no right to attend executive sessions. AG Opin. No. 87-170
 - e. Non-clients cannot attend executive sessions for attorney-client privileged communication. AG Opin. No. 82-247

VI. ENFORCEMENT OF THE KOMA

- A. K.S.A. 75-4320 - civil, not criminal, penalties
 - 1. Fines - up to \$500 for each violation as determined by the district court - but only if action brought by attorney general or county or district attorney.
 - a. Statute appears to mean that this is \$500 per body member against the member individually.
 - b. Courts generally do not award significant fines.
 - 2. Voiding action

- a. Binding action taken at a meeting not in "substantial compliance" with KOMA may be voided by court.
 - b. Action must be brought by county/district attorney or the attorney general. **Stoldt v. City of Toronto**, 234 Kan. 957 (1984)
 - c. Action to void must be filed within 10 days of the alleged violation/meeting.
3. Injunction, mandamus, declaratory judgment
 - a. Can be brought by any person or by Attorney General or District/County Attorney. **Stoldt**, 234 Kan. at 963.
 4. Technical violations. The court will not void any action and will overlook technical violations of the law if the spirit of the law has been met, there has been a good-faith effort to comply, there was substantial compliance with the KOMA, no one was prejudiced, and the public's right to know had not been effectively denied. **Stevens v. Board of Reno County Comm'rs**, 10 Kan.App.2d at 526.
- B. Procedure
1. County/district attorney and attorney general have concurrent jurisdiction to investigate or bring an action. K.S.A. 75-4320
 - a. Policy of attorney general's office to first refer an alleged violation to the county/district attorney, the local law enforcement officer for the state. The decision to investigate or prosecute is discretionary on the part of the prosecutor.
 - b. County/district attorney and attorney general can issue investigative subpoenas. K.S.A. 75-4320b.
 - c. If an individual wishes to bring a possible KOMA violation to the Attorney General's attention, the Attorney General's office traditionally asks that a complaint be submitted in writing, with as much supporting documentation (*i.e.* minutes) as possible.
 2. Private individuals have the right to bring suit for injunction or mandamus.
 3. Burden of Proof: Plaintiff has the initial burden to show a *prima facie* case. Burden then shifts to the defendant to justify its actions. K.S.A. 75-4320a(b)
 4. Plaintiff may receive court costs if violation established. Defendant may receive costs only if action was frivolous. K.S.A. 75-4320a(c) and (d)
 5. No requirement of specific intent to violate the law. "Knowing" violation occurs when there is purposeful commission of the prohibited acts. **Palmgren**, 231 Kan. at 536-37
 6. Venue is proper in the county where the action occurred. K.S.A. 75-4320a(a)
 7. Courts are to give KOMA cases precedence. K.S.A. 75-4320a(e)
- C. Other Consequences
1. Violation of the KOMA can be grounds for ouster from office pursuant to K.S.A. 60-1205; AG Opin. No. 80-168 This is a separate action which must be filed by a public prosecutor
 2. Alleged violation of the KOMA can be grounds for recall. **Unger v. Horn**, 240 Kan. 740 (1987); K.S.A. 25-4301 *et seq*
 3. Ouster or recall not automatic - these actions must be pursued separately.

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Kansas Open Meetings Act (KOMA)

Prepared by **Phill Kline, Attorney General**
and
Theresa Marcel Nuckolls, Assistant Attorney General

Revision date: July 2003

I. PURPOSE AND CONSTRUCTION

- A. It is the public policy of Kansas that meetings be open to the public because "a representative government is dependent upon an informed electorate . . ." K.S.A. 75-4317
- B. The act is interpreted liberally and exceptions narrowly construed to carry out the purpose of the law. *Memorial Hospital Ass'n, Inc. v. Knutson*, 239 Kan. 663, 669 (1986)

II. BODIES SUBJECT TO THE KOMA

- A. Is the group subject to the KOMA?--two concurrent requirements: K.S.A. 75-4318
 1. All legislative and administrative bodies, state agencies, and political and taxing subdivisions
 2. Which receive or expend and are supported in whole or in part by public funds.
- B. Specific Bodies Subject to the KOMA:
 1. Political and Taxing Subdivisions include: cities, counties, townships (AG Opin. No. 81-288); school districts, community colleges (AG Opin. No. 81-258); watershed districts (AG Opin. No. 85-161); rural water districts (AG Opin. No. 88-97 and 89-91); drainage districts (AG Opin. No. 90-69); local historic preservation committees administering K.S.A. 75-2724 (AG Opin. No. 99-22).
 2. State Agencies and Boards, unless otherwise provided by statute.
- C. Subordinate Groups Subject to the KOMA--All subordinate groups, such as boards, commissions, authorities, councils, committees, subcommittees are covered by act if:
 1. the subordinate group meets funding test if the parent or controlling body meets funding test, *State ex rel., Murray v. Palmgren*, 231 Kan. 524 (1982), and
 2. appointed by parent body to weigh options, discuss alternatives, present recommendations or a plan of action.
 - a. It is the nature of the group, not its designation, which determines if it is subject to the KOMA. AG Opin. No. 86-92. *See also* AG Opin. No. 80-21; 77-53; 76-140; 76-122; 73-235; 86-38.
 3. Examples--School District Advisory Board (AG Opin. No. 84-81); Fire District Advisory Board (AG Opin. No. 86-84); Mayor's commission subject to KOMA as it is subordinate to the city's governing body (AG Opin. No. 88-25); appointed grievance committees, created by a city to hear employee grievances (AG Opin. No. 91-31); DUR Board under SRS (AG Opin. No. 93-41); Parental boards under Rec. Commission (AG Opin. No. 93-73); House and senate conference committees (AG Opin. No. 93-113).
- D. Joint Boards Subject to the KOMA if boards composed of members of different governmental bodies and:
 1. Appointed by official action (AG Opin. No. 86-48); *or*
 2. A majority of a quorum of one or more governing bodies is present AG Opin. No. 84-103
See also AG Opin. No.91-150.
- E. Non-profit corporations may be subject to the KOMA
 1. Receives or expends public funds;
 2. Is subject to control of governmental unit(s); and

3. Acts as a governmental agency in providing services or has independent authority to make governmental decisions
 - a. Nonprofit Corps Subject to KOMA: Area agencies on aging (AG Opin. No. 79-219); Economic Opportunity Foundation, Inc. (AG Opin. No. 84-10); McPherson Co. Diversified Services, Inc. (AG Opin. No. 79-284); Three Rivers, Inc. (AG Opin. No. 87-143); Cowley County Diversified Services (AG Opin. No. 87-188); HELP, Inc. (AG Opin. No. 88-27)
 - b. Not subject to KOMA: Private nursing homes (AG Opin. No. 79-221); KU and WSU Endowment Associations (AG Opins. No. 80-239, 82-172); Planned Parenthood (AG Opin. No. 81-253); Hutchinson Cosmosphere (AG Opin. No. 82-256); Electric Cooperative (AG Opin. No. 85-175); *Memorial Hospital v. Knutson*, 239 Kan. 663 (1986); Parsons Chamber of Commerce (AG Opin. No. 89-149); K-10 Corridor Development, Inc. (AG Opin. No. 94-42); Koch Commission (AG Opin. No. 94-55); Kansas Venture Capital, Inc. (AG Opin. No. 94-107); Mid-America Commercialization, Inc. (AG Opin. No. 94-99); Consensus Estimating Group -- with staff from state agencies (AG Opin. No. 94-93); Prairie Village Economic Development Commission (AG Opin. No. 99-64), Hesston Area Senior Center (AG Opin. No. 01-02).

F. Bodies and Meetings not Subject to KOMA:

1. Staff meetings
2. Judicial agencies and bodies (AG Opin. No. 82-254)
3. Bodies exercising quasi-judicial functions -- K.S.A. 75-4318(a).
 - a. Quasi-judicial is defined as "a term applied to the action, discretion, etc. of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature." Blacks Law Dictionary 1121 (5th ed. 1979).
 - b. Example: Zoning boards (AG Opin. No. 78-13), city grievance panels (AG Opin. No. 91-31); hearing panels.
 - c. Only quasi-judicial deliberations may be closed--binding action must be in open meeting. AG Opins. No. 91-31; 84-50; 79-225.
4. Private Organizations. Example: Private/parochial schools (AG Opin. No. 81-94); Nursing homes (AG Opin. No. 79-221).
5. Hospital board discussions regarding risk management and peer review laws exempted from open meeting discussion AG Opin. No. 89-42.
6. Meetings of legislature if house or senate rules so provide K.S.A. 75-4318(a)
7. Precinct committees. AG Opin. No. 94-157

III. MEETING--If a body is subject to the KOMA, the KOMA applies *only* when the body has a meeting as defined by the statutes.

- A. A Meeting is (1) A gathering, assembly, telephone call or any other means of interactive communication; (2) by a majority of a quorum of the membership of an agency or body; (3) for the purpose of discussing the business or affairs of the body. K.S.A. 75-4317a
- B. Gathering, Assembly, Telephone Call or other means of Interactive Communication
 1. Prearrangement was required prior to 1994, and the statute did not mention telephone calls. In *State v. Seward Co.* 254 Kan. 446 (1994), the Kansas Supreme Court held that phone calls between a majority of a quorum of county commissioners discussing business was not subject to the KOMA because the calls were not prearranged and the members were not in each other's physical presence. The legislature reacted to this case by deleting the requirement of prearrangement and adding to the definition "telephone call or any other

means of interactive communication".

2. Informal discussions before, after, or during recesses of a public meeting are held to be subject to the act. *Coggins v. Public Employee Relations Board*, 2 Kan. App. 2d 416, 423, rev. denied 225 Kan. 843 (1978)
3. Title of the gathering--e.g. work sessions-- is irrelevant if the three requirements of a meeting are met. AG Opins. No. 80-197; 90-47.
4. Serial communications between a majority of a quorum of a public body, the purpose of which is to discuss a common topic of business or affairs of that body by the members, constitutes a meeting. Such communications may occur through calling trees, e-mail or an agent of the body. See Attorney General Opinion 98-26, 98-49. See also Attorney General Opinion 95-13.

C. Majority of a Quorum

1. "Quorum" means a simple majority of the membership of a body; the number greater than one-half of the total (unless otherwise provided by statute). AG Opins. No. 83-6; 91-73; 93-140; 96-32
2. "A majority" is the number greater than one-half of a quorum; it is the smallest number that can take action on behalf of a body. AG Opin. Nos. 86-110; 93-140. *See also* AG Opins. No. 81-26 and 91-73.
3. Examples: A quorum of a seven member body is four, and a majority of that quorum is three. A quorum of a five member body is three, and a majority of that quorum is two. (Conventional wisdom is that a majority of a quorum can never be one.)
4. A county commission may by Home Rule powers raise its quorum to a number greater than a majority of its members. *State ex rel. Stephan v. Board of Sedgwick County Comm'rs*, 244 Kan. 536 (1989). Cities also have home rule authority to increase their quorum by charter ordinance. See AG Opin. Nos. 87-45, 83-74. Bodies without home rule authority cannot alter common law rules determining a quorum and may not alter it without specific authority. *See also* AG Opin. Nos. 83-174 (change by Airport Authority not authorized); 93-140 (change by Rec. Comm. not authorized); AG Opin. No. 96-32 (change by state Dental Board not authorized)
5. In mayor-council form of government, the mayor is not included as a member of the body. AG Opin. No. 86-110.

D. For the Purpose of Discussing the Business or Affairs of the Body.

1. Binding action or voting is not necessary; discussion is what triggers KOMA. AG Opin. No. 79-200.
2. "Meeting" includes all gatherings at all stages of the decision-making process. *Coggins v. Public Employees Relations Board*, 2 Kan. App. 2d at 423
3. Social gatherings are not necessarily subject to the KOMA; if there is no discussion of the business of the body, one element of a meeting is "missing."
4. Retreats and meetings held in private clubs are probably prohibited, especially if site makes it impossible for public to attend without cost. AG Opins. No. 82-133; 80-148
5. Members attending a conference where items of general interest are discussed (such as convention of League of Municipalities) are not in violation of the KOMA, as long as the specific business of a body is not discussed. AG Opin. No. 82-133.
6. Marriage between two members of a five member city council of a third class city does not violate the KOMA, but they should not discuss city business outside open meeting. AG Opin. No. 87-45

IV. NOTICE OF MEETINGS--K.S.A. 75-4318

- A. Notice of meetings must be requested before the public body is required to provide it. K.S.A. 75-4318

1. Notice must be given to any person or organization requesting it. AG Opin. No. 86-133. Residence of the requestor is irrelevant. AG Opin. No. 81-137
 2. Notice request expires at the end of fiscal year; request must be renewed. Must first notify of expiration before terminating notice. K.S.A. 75-4318(b)(3)
 3. Presiding officer has duty to provide notice, but that duty may be delegated.
- B. Form of Request and Notice
1. Oral request is valid (but prosecution is difficult if not honored). AG Opin. Nos. 81-15; 81-22; 86-133.
 2. Notice given can be written or oral, but must be made individually to the person requesting it. Posting or publication in newspaper is insufficient.
 3. A single notice can suffice for regularly scheduled meetings. Must notify of any special meetings. AG Opin. No. 83-173
 4. No fee for notice can be charged. AG Opin. Nos. 81-137; 82-141
 5. Petitions for notice may be submitted by groups of people, but notice need only be provided to one person on the list. K.S.A. 75-4318(b)(1). AG Opin. No. 86-133
 6. No time limit is imposed for receipt of notice prior to meeting. Notice must be given in a "reasonable time," reasonableness depending on the circumstances. AG Opin. No. 81-15
 7. Contrary to popular belief, the KOMA does *not* require notice of meetings to be published in a paper.
 8. To establish a violation for failure to provide notice of a meeting there must have been a prior request for notice. A pattern of providing courtesy notice does not create a duty to provide it.
 9. A body cannot opt out of KOMA's requirements.
- C. Agendas
1. The KOMA does not require that an agenda be created.
 - a. If a body chooses to create an agenda, that agenda should include topics planned for discussion. *Stevens v. City of Hutchinson*, 11 Kan. App.2d 290, 293 (1986)
 - b. Agenda may be amended. *U.S.D. 407 v. Fisk*, 232 Kan. 820 (1983).
 2. If agendas exist, copies must be made available to those who request them. The agenda does not have to be mailed out and can simply be provided by placing the agendas in a public place. K.S.A. 75-4318(d); AG Opin. Nos. 79-218; 81-15; 86-133
- D. Minutes
1. Except for recording motions for executive session, the KOMA does not require minutes. (Local bylaws, ordinances, or policies may.)

V. OPEN MEETINGS AND EXECUTIVE SESSIONS

A. Open Meetings

1. K.S.A. 75-4318 requires open meetings when a body is subject to the act.
 - a. Any person may attend open meetings. AG Opin. No. 80-43
 - b. The KOMA does not require that the public be allowed to speak or to have an item placed on the agenda (but check local ordinances and policies. K.S.A. 21-4101 prohibits disorderly conduct or disturbing a lawful meeting and provides for criminal prosecution).
2. Secret ballots not allowed, K.S.A. 75-4318(a). The public must be able to ascertain how each member voted. AG Opin. Nos. 86-176; 79-167; 81-106; 65-167; 93-55
3. Subject to reasonable rules, cameras and recording devices *must* be allowed at open meetings. K.S.A. 75-4318(e)
4. The KOMA does not dictate the location of the meeting, the size of the room, or other accommodation type considerations. The key to determining whether a meeting is "open" is whether it is accessible to the public. AG Opin. Nos. 86-153; 79-253; 82-133; 80-148

5. Telephone conference calls are allowed if the requirements of the act are met (*i.e.* notice and free access). AG Opin. Nos. 81-268; 80-173; 80-159
- B. Executive Session K.S.A. 75-4319
1. Executive sessions are permitted for specified purposes, but first the body must convene an open meeting before public body can recess into executive session. K.S.A. 75-4319(a); AG Opin. No. 81-22.
 2. Binding action may *not* be taken in executive session. (K.S.A. 75-4319(c); AG Opin. No. 91-31) Reaching a consensus in executive session is permitted. *O'Hair v. U.S.D. No. 300*, 15 Kan. App. 2d 52 (1991). A "consensus," however, may constitute binding action and violate KOMA if a body fails to follow up with a formal open vote on a decision which would normally require a vote. *City of Topeka v. Watertower Place Development Group*, 265 Kan. 148 (1998).
 3. The decision to hold executive session is discretionary; the KOMA never requires an executive session. (Other laws or policies need to be considered, however.)
 4. Procedure--KSA 75-4319(a) requires a specific procedure which must be followed in order to go into executive session:
 - a. Formal motion, seconded, and carried
 - b. Motion must contain statement of (1) Justification for closure; (2) Subject(s) to be discussed; and (3) Time and place open meeting will resume.
 - c. Example: "Madam Chairman, I move we recess into executive session to discuss disciplinary action against a student in order to protect the privacy of the parties involved. We will reconvene the open meeting in the conference room at 8:30 p.m."
 - d. Motion for executive session should contain subject *and* justification statement, which are not the same thing. AG Opin. Nos. 91-78; 86-33. *But see State v. U.S.D.A. 305*, 13 Kan. App.2d 117 (1988) The subject is the subject listed in K.S.A. 75-4319 (b). The justification is an explanation of what is to be discussed (without revealing confidential information.)
 - e. Executive session motions must be recorded in minutes. K.S.A. 75-4319(a) KOMA does not require other information to be recorded. Other minutes for open or executive sessions are discretionary, unless some other law requires them. AG Opin. No. 90-47
 5. Subjects which may be discussed in an executive session:
 - a. Personnel matters of non-elected personnel
 1. To discuss an individual, not groups. AG Opin. Nos. 81-39; 88-25; 80-102. *But see* 13 Kan.App.2d 117 (1988) The purpose of this exception is to protect the privacy interests of individuals. Discussions of consolidation of departments or overall salary structure is not a proper topic.
 2. "Personnel" means employees of the public agency. AG Opin. No. 87-10
 - a. Personnel does *not* include appointments to boards or committees. AG Opin. No. 87-10
 - b. Personnel does *not* include independent contractors. AG Opin. No. 87-169
 - c. The KOMA does not give the employee a right to be present in the executive session or to force an open session. (Other laws or contracts may, however.)
 - d. This exception may be used to discuss applicants for employment. AG Opin. No. 96-61
 - b. Consultation with the body's attorney
 1. This is for attorney/client privilege so all elements of privilege must be present:
 - a. the body's attorney must be present;
 - b. the communication must be privileged, and

- c. no other third parties may be present. AG Opin. Nos. 78-202; 80-43; 82-130; 82-176; 82-247; 92-56; Privileged communication is defined at K.S.A. 60-426; *Pickering v. Hollabaugh*, 194 Kan. 804 (1965)
 - 2. Cannot be used to discuss letter received from attorney if the attorney is not present. AG Opin. No. 86-162
 - c. Employer-employee negotiations
 - 1. Public bodies can meet in executive session to discuss conduct or status of negotiations, with or without the authorized representative who is actually doing the bargaining. AG Opin. No. 79-125
 - 2. Public bodies cannot have executive session under this exception when meeting with employees. AG Opin. No. 80-43
 - 3. School Boards--special rules: K.S.A. 72-5423(b). AG Opin. No. 92-51.
 - d. Confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorship.
 - 1. Economic development groups. AG Opin. No. 88-148
 - 2. Must be for data truly confidential in nature. *See* K.S.A. 60-3320; *Southwestern Bell Telephone Co v. KCC*, 6 Kan.App.2d 444, 457 (1980), *rev. den.* 230 Kan. 819 (1981); *All West Pet Supply v. Hill's Pet Products*, 840 F.Supp. 1433, 1437 (Kan. 1993.)
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A. K.S.A. 75-4320 - civil, not criminal, penalties

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- b. Action must be brought by county/district attorney or the attorney general. **Stoldt v. City of Toronto**, 234 Kan. 957 (1984)
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4. Technical violations. The court will not void any action and will overlook technical violations of the law if the spirit of the law has been met, there has been a good-faith effort to comply, there was substantial compliance with the KOMA, no one was prejudiced, and the public's right to know had not been effectively denied. **Stevens v. Board of Reno County Comm'rs**, 10 Kan.App.2d at 526.

B. Procedure

1. County/district attorney and attorney general have concurrent jurisdiction to investigate or bring an action. K.S.A. 75-4320
 - a. Policy of attorney general's office to first refer an alleged violation to the county/district attorney, the local law enforcement officer for the state. The decision to investigate or prosecute is discretionary on the part of the prosecutor.
 - b. County/district attorney and attorney general can issue investigative subpoenas. K.S.A. 75-4320b.
 - c. If an individual wishes to bring a possible KOMA violation to the Attorney General's attention, the Attorney General's office traditionally asks that a complaint be submitted in writing, with as much supporting documentation (*i.e.* minutes) as possible.
2. Private individuals have the right to bring suit for injunction or mandamus.
3. Burden of Proof: Plaintiff has the initial burden to show a *prima facie* case. Burden then shifts to the defendant to justify its actions. K.S.A. 75-4320a(b)
4. Plaintiff may receive court costs if violation established. Defendant may receive costs only if action was frivolous. K.S.A. 75-4320a(c) and (d)
5. No requirement of specific intent to violate the law. "Knowing" violation occurs when there is purposeful commission of the prohibited acts. **Palmgren**, 231 Kan. at 536-37
6. Venue is proper in the county where the action occurred. K.S.A. 75-4320a(a)
7. Courts are to give KOMA cases precedence. K.S.A. 75-4320a(e)

C. Other Consequences

1. Violation of the KOMA can be grounds for ouster from office pursuant to K.S.A. 60-1205; AG Opin. No. 80-168 This is a separate action which must be filed by a public prosecutor
2. Alleged violation of the KOMA can be grounds for recall. **Unger v. Horn**, 240 Kan. 740 (1987); K.S.A. 25-4301 *et seq*
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Testimony on HB 2634
An Act Concerning West Nile Virus Testing
By
Roderick L. Bremby
Secretary
Kansas Department of Health and Environment
To
The House Health and Human Services Committee

February 12, 2004

My name is Roderick L. Bremby, Secretary of the Kansas Department of Health and Environment.

HB 2634 requires the Kansas Department of Health and Environment's (KDHE) laboratory to run a West Nile virus test whenever requested by a licensed physician.

Currently, this testing is performed by commercial laboratories for diagnostic purposes. The KDHE laboratory provides confirmatory testing, performs tests that are not readily available through commercial laboratories, or performs tests having results that could have important implications for public health. There are different types of tests that can be used for West Nile virus. Since West Nile virus is a relatively new disease, the accuracy, complexity, and cost of these tests vary considerably from test to test and from laboratory to laboratory.

The state laboratory can run an Enzyme Linked Immuno-absorption Assay (ELISA) a for West Nile virus, which is very accurate and validated by the Centers for Disease Control and Prevention. KDHE used these tests in the past year to confirm the most severe cases of the disease. In addition, this test is suitable to confirm the results of other less accurate tests available at commercial laboratories, but requires a significant amount of both labor and time. Even though KDHE has no way to know how many West Nile Virus tests were performed by commercial labs in the past year, based upon an estimate of 1,000 to 1,500 tests which could potentially be sent to the KDHE lab if this bill passes, a total cost \$160,000 per year would be needed for staff to follow up with clinicians, perform lab tests, and purchase laboratory supplies necessary to carry out the tests. There are currently no State laboratory fees associated with this test.

It seems that this cost coupled with the fact that private laboratories are available to perform tests indicate there is not need for this legislation. The KDHE laboratory will continue to perform tests to confirm the most severe forms of the disease.

I will now stand for your questions.

Attachment 2
HHS 2-12-04



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on Standards Established for
Licensure of Adult Care Home Administrators
House Bill No. 2716
to the
House Committee on Health and Human Services**

**Presented by
Jane O'Bryan, Member, Board of Adult Care Home Administrators
February 12, 2004**

Chairperson Morrison and members of the committee, I am pleased to have the opportunity to discuss the proposed amendments to the Kansas Adult Care Home Administrators licensing law.

House Bill 2716 amends K.S.A. 65-3501 which contains definitions related to licensure of adult care home administrators. The bill adds a definition for "preceptor" which would require adult care home administrators to complete a course of preceptor training before serving as a preceptor. The definition language for "preceptor" on page 2 of the bill, items (f) (1) and (2) is virtually the same language as in the definition of "preceptor" currently in regulation under K.A.R. 28-38-29 (I), with the exception of using the term "developmentally disabled" in lieu of "mentally retarded." Items (f) (3) and (4) on page 2 of the bill would expand the current definition by changing the minimum age for preceptors from 18 to 21 and adding a definition for "practicum." However, it appears that what is included under the definition of "practicum" does not actually define practicum but rather establishes the subject matter for practicum content. The bill also amends K.S.A. 65-3503 to require that all candidates must have training or experience *with a preceptor* to be eligible for licensure in Kansas and increases the maximum fee allowable to \$400 from \$200.

This bill would reduce the flexibility of the Board to carry out its charge in developing, imposing and enforcing standards for licensure as an adult care home administrator, and place undue restrictions on administrators to serve as preceptors. One of the important issues the Board has been grappling with in recent years is one that has also been noted on the national level, and that is the decreasing numbers of individuals seeking licensure as an administrator. The Board has considered, and will continue to consider, mechanisms to encourage more people to enter the field, and to ensure those who do enter have the necessary training and skills to be successful. However, it is the Board's

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position that imposing additional requirements for administrators to qualify as a preceptor will reduce the numbers of licensed administrators willing to devote the time and effort to mentor a candidate.

Equally as important, the requirement for training or experience *with a preceptor* will seriously restrict the numbers of candidates for reciprocity who would qualify for Kansas licensure. On January 17, 2003, the Board adopted a regulation which allows 40 hours, to a maximum of 240 hours, of credit toward the 480-hour practicum requirement for each year of experience as either an administrator of a licensed hospital who also served as the administrator of the hospital's long-term care unit, or for experience obtained as an administrator while licensed in another state. This bill would eliminate that allowance and restrict the candidates who would meet Kansas requirements.

There is a technical item to note. In the new language in Section 1, item (g), line 18, "secretary" should read "board."

On behalf of the Board of Adult Care Home Administrators, I respectfully request that House Bill 2716 not be passed by this committee.

Thank you again for the opportunity to appear before this committee. I will be happy to respond to any questions the committee may have on this topic.

3. This bill would also negate previous legislation that has been passed that allows some credit toward the 480 hours by taking certain courses and by certain types of experience.
4. The BACHA board has the responsibility to create and develop educational standards for Kansas Administrators. It seems reasonable that before this type of legislation is passed, this board would have the opportunity to work with those wanting change and given a chance for their input. This board has a broad base and has always been very willing to hear concerns from administrators, professional organizations and citizens. Our board is composed of two administrators who have served many years in that capacity, we have a medical doctor, an attorney, a speech pathologist, an excellent consumer representative and an assisted living representative who is also holds an administrators license and teaches at the college level. We have two outstanding attorneys to guide us and we would like the opportunity to work on whatever problems there are in the AIT course of study.
5. I would agree that some students in this program have voiced concerns, but I feel we first need to work with the colleges and their coordinators to develop new procedures and program to meet these concerns.
6. With regard to moving the board from KDHE, at this time, I feel we have access to a competent, cooperative staff from that department that makes our job as committee members very enjoyable. Moving this board to another department was examined several years ago and there did not seem to be a good match. We looked particularly at Behavioral Sciences and Board of Healing Arts and neither board felt comfortable with the move. I would hope that this suggestion also be left for more study

In summary, being a preceptor, is a gift to a student and should be acknowledged as such. Mentoring is somewhat like a friendship, sometimes it works well and sometimes, it is just not a good match. I think this best be left to the choice of the AIT, the coordinator and the college involved. And I would encourage you to delay action on this measure and allow the BACHA Board to work out more meaningful solutions to the problems voiced in this bill. I sincerely thank you for allowing me to share my concerns with you.

Sincerely,

Lou A. Esplund, BACHA chairperson

From: "helen pitman" <h_pitman@hotmail.com>
To: <health@house.state.ks.us>, <garyd@house.state.ks.us>
Date: Wed, Feb 11, 2004 1:03 PM
Subject: house bill 2716 Lou A Esplund

Here is the comment sheet we visited about this morning. Please put me down to testify on February 12 at the committee meeting. If you have questions please contact me at 620 646 5215.

Ny home phone is 620 885 4330 and my e-mail is lougary@minneola.net, but I will not be able to read it until late tonight. Thank you for all your assistance.

Lou Esplund, Chairperson, BACHA

Choose now from 4 levels of MSN Hotmail Extra Storage - no more account overload! <http://click.atdmt.com/AVE/go/onm00200362ave/direct/01/>

CC: <mrhoden@kdhe.state.us>

Thursday, February 12, 2004

Testimony before the House Health & Human Services Committee on HB 2716 relating to the standards established for licensure; particularly the revision of the 480-hour training program and the addition of training for preceptors.

Chairman Morrison, Vice-Chair Long-Mast, Members of the Committee:

I am Dawn Veh, Vice President of Health Services for Wesley Towers, Hutchinson. I am a facilitator for a team of administrators and organizations that have come together to look at revisions to the 480-hour practicum for administrators-in-training for adult care homes and are in the process of developing a training process for the preceptors who are actually training the AIT's. Members of this team represent a diverse assemblage of persons interested in providing a curriculum to AIT's that will help them be successful in leading their facility teams and that will provide a long-term professional relationship for them while ensuring quality care for our seniors. Members of the team represent Kansas Health Care Association, Kansas Association of Homes & Services for the Aging, Kansas Adult Care Executives, American College of Health Care Administrators, Kansas Advocates for Better Care, and colleges within the state that offer the program.

Our main goal is to create training for the long-term care administrator that will lead to a customer-focused outcome. This can only be done through a complete training process that will train the trainer and will educate the trainee in a way that will help them to be successful. This success can lead to a consistent quality of care for all Kansas seniors.

Our interest and support of these changes come from a variety of directions:

- ◆ An increasing decline in the number of licensed administrators in Kansas – the number has declined by more than 50 each of the last two years; a trend that mirrors national statistics.
- ◆ Advancements in the field of long-term care; especially issues such as culture change and the increasing care needs of our frail elders.
- ◆ A subcommittee of the Board of Adult Care Home Administrators recommended that the AIT program be reviewed back in 2000.
- ◆ Kansas Adult Care Executives, as the primary organization for licensed administrators in Kansas, had already initiated a team to develop a preceptor training and to revise the 480-hour practicum.

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- ◆ Progressive administrators, including Monte Coffman of Windsor Place in Coffeyville, had asked for changes in the curriculum based on their own experiences.
- ◆ Comments from AIT's in a questionnaire distributed by Health Occupations Credentialing in 2001.

Several members of our team attended the BACHA meeting in September of last year and were told that the Board would review a proposal for revision as long as it was based on the Core of Knowledge per federal regulations.

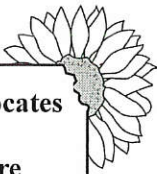
The revisions we will be proposing for the 480-hour practicum will be based on the National Association of Boards of Examiners' Domains of Practice for the Long-Term Care Administrator which are updated every 5 years. (NAB develops the federal test for adult care home administrators.) The number of hours is not changed; only the content of the practicum. We have reviewed the Domains of Practice and find them to be very comprehensive and include all topics addressed in the Core of Knowledge established in 1972. The Kansas administrators have a reputation for being leading edge, and by following these Domains of Practice that are updated on a regular basis we will be able to remain in the forefront of our residents' care needs.

The preceptor training that we will be proposing to add will be an initial ten-hour course, and then an 8-hour update every 5 years. We feel that by adding this training we can add some consistency to the knowledge base of our administrators. Also, many people do not feel competent to be a teacher without having an outline given to them; this would save them time in trying to develop their own and can help them feel more comfortable with the process knowing that the program is thorough. Administrators are required to have 50 hours of continuing education every two years and these hours would count toward the already required hours. In completing the update every 5 years the preceptor can be updated on any changes to the Domains of Practice that have occurred during that time, and can gain knowledge regarding any other events that are changing the face of our professional field.

We feel the declining number of licensed administrators in the State of Kansas is nearing crisis levels. Action is needed immediately to stem the tide of administrators leaving the field and to help those staying in the field have the greatest chance of success. The care of our Kansas seniors hangs in the balance as we try to get a handle on this current situation.

Our team wants to provide a thorough basic training to help ensure the success/survival of those entering the field of long-term care administration, as well as retaining the licensed administrators already in place. Those of us working on this project truly have a passion for the work we do and want to make sure the care of our residents is carried on.

Thank you for your time.



BOARD OF DIRECTORS

HB 2716

**concerning the board of adult care home administrators, relating to
standards established for licensure**

February 12, 2004

Honorable Chairman Morrison and
House Health and Human Services Committee Members:

Kansas Advocates for Better Care (KABC) supports HB 2716.

Nursing home administrators daily work through complex and grave situations that require exceptional professional abilities. KABC supports HB 2716 for these reasons

- it defines the qualifications of a “preceptor” (active mentor) much more stringently than before, which serves to improve the monitoring system for administrators
- it establishes a board approved course of preceptor training
- it redefines the basis of the “practicum” (topics of study) by administrators in training, using the principals from the national association of boards of examiners for adult care home administrators.

Enhancing the professional education and training requirements for licensed adult care home administrators is a step forward in the ability of Kansas to provide high quality persons to care for the frail adults who must reside in long-term health care homes.

KABC encourages the Committee to favorably pass HB 2716.

Thank you for this opportunity to promote quality long-term care.

Deanne Bacco, Executive Director



**To: The Honorable Jim Morrison, and Members,
House Health and Human Services Committee**
From: Debra Zehr, Vice President
Date: February 12, 2004
Re: House Bill 2716

The Kansas Association of Homes and Services for the Aging represents 160 not-for-profit long term care provider organizations serving 15,300 elder Kansans throughout the state. Thank you Mr. Chair, and Members of the Committee, for permitting us to offer written testimony on House Bill 2716.

Great adult care home administrators are worth their weight in gold. They lead their organizations toward the highest standard of care. They set the tone for management of the organization's greatest asset...its staff. They chart a course under precarious financial circumstances. They shepherd their organizations in an increasingly complex and onerous regulatory environment. And they do all of these things in changing times.

The nursing home of the past is passing out of existence. There is a movement going on in Kansas and around the country to transform nursing homes, from the traditional model where nursing homes ran more like an assembly line or a medical facility, into places of living and growing. These new models of care are rooted in these four pillars: 1) the elder is the decision-maker; 2) caregivers are empowered to be responsive to the elder and each other; 3) an atmosphere of home prevails, and; 4) the organization and its residents and staff are a vital and integral part of the community.

Our new long-term care leaders need to be immersed and trained in the principles and practice of these four pillars of transformation. We hope that House Bill 2716 will serve as a constructive step toward a reinvention of administrator training toward this end.

Thank you. I would be happy to answer questions.

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