Approved: March 11, 2004
Date

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 p.m. on February 17, 2004 in Room 519-S of the Capitol.

All members were present.

Committee staff present:
Martha Dorsey, Legislative Research Department
Mike Heim Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Maureen Stinson, Committee Secretary

Conferees appearing before the committee:
Rep. Brenda Landwehr, Kansas House
Rep. Tom Sawyer, Kansas House
Doug Anstaett, Kansas Press Association
Marjorie Blaufuss, Kansas National Education Association
Jim Edwards, Kansas Association of School Boards
Rep. Carol Beggs, Kansas House
Marilyn Nichols, Kansas Register of Deeds
Justin Dragosani-Brantingham

Others attending:
See Attached List.

The Chairman opened the hearing on:

HB 2767 open meetings: time to pursue penalties extended to 180 days

Rep. Landwehr testified in support of the bill. She provided no written testimony. She said the bill which amends the Kansas Open Meetings Act (KOMA) extends the time period from 10 to 180 days for the Attorney General or a county or district attorney to bring an action in court to void any binding action taken by the public body or agency taken in violation of KOMA.

Rep. Tom Sawyer testified in support of the bill (Attachment 1). He said that under the current law which requires that any challenge by made within 10 days of the meeting in which the violation occurred, a "catch 22" situation is created, making it almost impossible for a suit to be filed in cases where a governing body hid their actions from the public.

Doug Anstaett, Kansas Press Association appeared in support of the bill. He provided no written testimony.

Marjorie Blaufuss, Kansas National Education Association, testified in support of the bill (Attachment 2). She said that the purpose of the Kansas Open Meetings Act is to ensure that governmental affairs and the transaction of governmental business are conducted in the open allowing the public an opportunity to participate in the process.

Jim Edwards, Governmental Relations Specialist, Kansas Association of School Boards, appeared in opposition to the bill (Attachment 3). He noted the following reasons for their opposition:

- Innocent third parties would be penalized rather than those violating the statute;
- Most providing services, undertaking construction projects or contracting for sales of items would be unwilling to do anything until the 6-month deadline passes;
- The added costs for these delays hurt both sides in the contract, and in the end, the patrons of the district.

The Chairman closed the hearing on: **HB 2767**

HB 2600 counties, sale or disposition of county property

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE at 3:30 p.m. on February 17, 2004 in Room 519-S of the Capitol.

Rep. Lane made a motion for the favorable passage of **HB 2600**. Rep. Reitz seconded the motion. The motion carried.

HB 2605 Topeka and Shawnee county public library; detachment of certain territory

Rep. Lane made a motion for the favorable passage of **HB 2605.** Rep. Huy seconded the motion. Rep. Yonally made a motion to amend **HB 2605** to include the provision that the Legislature shall not meet past midnight at any time during the Legislative Session. Chairman Vickrey ruled the motion by Rep. Yonally to be not germane to the bill. The vote was taken on the original motion by Rep. Lane for the favorable passage of **HB 2605**. The motion carried.

HB 2654 Annexation by cities, election; extension of municipal services required; procedure to deannex

Rep. Toelkes made a motion to amend **HB 2654** as per the balloon amendment (Attachment 4). Rep. Gilbert seconded the motion. The motion to amend the bill carried. Rep. Lane made a motion for the favorable passage of HB 2654 as amended. Rep. Toelkes seconded the motion. The motion failed.

The Chairman opened the hearing on:

HB 2758 open records act; exemptions; military discharge forms

Rep. Beggs testified in support of the bill. He provided no written testimony. Rep. Beggs said he was appearing also as the Legislative Liaison for the Retiree Counsel of Ft. Riley. He said the bill would amend the Kansas Open Records Act (KORA) to add an exception from the openness requirement for military discharge papers. He stated that the bill is needed to protect the privacy of veterans, e.g., their social security numbers and other personal information when they voluntarily file discharge papers (DD Form 214) with the Register of Deeds.

Marilyn Nichols, Kansas Register of Deeds Association, testified in support of the bill (Attachment 5). She explained that the Register of Deeds is responsible for the recording of various instruments concerning real estate transactions for each respective county. She said that requests made for copies of DD 214's are sometimes made by various persons or by certain entities that assists the veteran or are family members. She requested an amendment clarifying that certain persons would have access to the information.

Doug Anstaett, Kansas Press Association, testified in opposition to the bill (Attachment 6). He said that there is no public purpose to file a veteran's DD Form 214 with the Register of Deeds. He stated that the bill would require the register of deeds to mix public and private records in the same office and to close a portion of those records to the public.

Justin Dragosani-Brantingham testified in opposition to the bill (Attachment 7). He said that the solution is not a restriction of the document, but redaction of the Social Security number by the Register of Deeds. He explained that the Register of Deeds can already charge a reasonable fee for this service under the Kansas Open Records Act. He said that the language of this bill would allow complete closure of a record that has never been legally restricted in Register of Deeds offices.

Written testimony in opposition to the bill was submitted by:

- Jane Kelsey (Attachment 8)
- John Lewis (Attachment 9)

The Chairman closed the hearing on: **HB 2758**

The meeting was adjourned at 5:15 p.m.

The next scheduled meeting is February 19, 2004.

HOUSE LOCAL GOVERNMENT

DATE 2-17-04

NAME	REPRESENTING
Charlotte Shawver	Ks Register of Deeds
Vicki Blickenstaff	KS. Register of Deeds
Marilyn Nichols	Register of Deeds Assoc
Marjie Blankfuss	KS Nat. Ed. Assoc.
Tom Lawyer	KS. House
Jim Edwards	KASB
Richard Vannoy	KPA
Doug Anstaett	KPA
Danielle Noe	Johnson County
Erik Sartorius	City of Overland Park

TESTIMONY IN SUPPORT OF HB 2767
State Representative Tom Sawyer
February 17, 2004

Thank you for the opportunity to testify in support of HB 2767.

HB 2767 is a simple bill. It would extend the time that prosecutors have to file suit to overturn actions taken in meetings that violate the Kansas Open Meetings Act to 180 days.

Current law requires that any challenge be made within 10 days of the meeting in which the violation occurred.

This creates a "catch 22" situation, making it almost impossible for a suit to be filed in cases where a governing body hid their actions from the public.

I was not aware of this "catch 22" until late last May when reading a newspaper article about actions taken by the Wichita City Council.

On April 1 last year the Wichita City Council voted to give then City Manager Chris Cherches about $72,500 plus extended benefits if the incoming city council voted to fire him. The vote was taken on Election Day and occurred in the lobby of the council's office suite after a closed session to discuss the plan.

The topic was NOT listed on the meeting agenda and no members of the media or public were present. The new agreement between the Council and the former city manager was known only to a handful of City Hall insiders until late May when the story was uncovered by the local newspaper.

In August, the City Council admitted to a violation of the Kansas Open Meetings Act in a consent judgment with District Attorney Nola Foulston.

But the DA could NOT go to court to try and overturn the action taken on Cherches' contract because it had not been discovered with the very limited 10-day period allowed by law.

While it is too late to do anything about this particular incident, HB 2767 would eliminate this "catch 22" for any future violations of the Kansas Open Meetings Act.

House Local Government
Date: 2-17-04
Attachment # 1

KANSAS NATIONAL EDUCATION ASSOCIATION / 715 SW 10TH AVENUE / TOPEKA, KANSAS 66612-1686

Marjorie A. Blaufuss Testimony
February 17, 2004

House Committee on Local Government
House Bill 2767

Mr. Chairman, Mr. Vice-Chairman, Members of the Committee:

My name is Marjorie Blaufuss and I am an attorney with the Kansas National Education Association. I am here to testify in support of **HB 2767**. Specifically, I am here to discuss a recent case that demonstrates a problem with the 10-day deadline in the current penalty provision of the Kansas Open Meetings Act. It is this provision that **HB 2767** seeks to amend. The case is *Krider v. Board of Trustees of Coffeyville Community College,* which was released by the Kansas Supreme Court on January 30, 2004. I have attached a copy of the case to my testimony for your information.

John Krider was a nontenured welding instructor at the Coffeyville Community College. Under the Teacher Continuing Contract Law, May 1st is the date by which a board must notify a teacher of nonrenewal or the teacher's employment contract continues through the next school year by operation of law. On May 1, 2002, Mr. Krider was given written notice by a college vice-president that the board was not going to renew his employment contract for the 2002-03 school year. Believing that the board of trustees had taken no action regarding his employment during any of its meetings, Mr. Krider filed an action in the district court asking the court to find that his employment contract had continued for the next school year.

In an affidavit filed with the district court on November 5, 2002, the college president testified that the board of trustees had met with him in executive session on April 15, 2002. The executive session had been convened for discussion of personnel matters. The president testified that, during the executive session, the board had directed him to provide notice of nonrenewal to Mr. Krider. The affidavit was Mr. Krider's first indication that the board had discussed his employment contract.

On appeal, the Kansas Supreme Court found that that the board had taken binding action in the April 15th executive session when it directed the college president to notify Mr. Krider of his nonrenewal. Because the action taken in executive session was a violation of the Open Meetings Act, it was voidable. However, the Supreme Court emphasized that under the Act, only the attorney general or the local county attorney could have filed to void the action—and that must have been done within 10 days of the meeting.

In Mr. Krider's case, there was no way that he could have persuaded the attorney general or county attorney to void the board's action within the statutory 10 days. The written notice of nonrenewal came on May 1st—16 days after the board's April 15th meeting. That the notice was based on board action taken in executive session was

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unknown to Mr. Krider until 204 days later when it was mentioned in the November 5th affidavit.

The purpose of the Kansas Open Meetings Act is to ensure that governmental affairs and the transaction of governmental business are conducted in the open allowing the public an opportunity to participate in the process. Under the Supreme Court's interpretation of the Open Meetings Act, someone like Mr. Krider has no recourse against a violation of the statute. The ruling in the *Krider* case demonstrates that—under the language of the current penalty provision with its 10-day deadline—the purpose of the Act can be easily defeated.

For this reason, I urge this committee to support **HB 2767's** amendments that extend the deadline for voiding an action taken in violation of the Open Meetings Act.

Thank you for giving me the opportunity to address you on this issue.

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 90,240

JOHN D. KRIDER,

Appellant,

v.

BOARD OF TRUSTEES OF

COFFEYVILLE COMMUNITY COLLEGE,

MONTGOMERY COUNTY, KANSAS,

Appellee.

SYLLABUS BY THE COURT

1. Under K.S.A. 72-5437(a) the board of trustees of a community college must serve a nontenured teacher with written notice of nonrenewal by May 1.

2. The vote of a board of trustees of a community college to provide the notice required by K.S.A. 72-5437(a) or to nonrenew a nontenured teacher's contract must be taken in a public meeting to avoid violation of the Kansas Open Meetings Act.

3. If a body subject to the Kansas Open Meetings Act violates the Act by taking binding action in executive session, the action is voidable.

4. Under the Kansas Open Meetings Act, only the attorney general or the district or county attorney where a violation has occurred may file an action within 10 days of the meeting to void the action that constituted the violation.

5. A private party challenging an action taken in violation of the Kansas Open Meetings Act has standing to sue only for injunction or mandamus, not to void the action.

Appeal from Montgomery district court; ROGER L. GOSSARD, judge. Opinion filed January 30, 2004. Affirmed.

David M. Schauner, of Kansas National Education Association, of Topeka, argued the cause, and *Marjorie A. Blaufuss,* of the same association, was with him on the briefs for appellant.

Teresa L. Sittenaur, of Fisher, Patterson, Sayler & Smith, L.L.P., of Topeka, argued the cause, and *J. Steven Pigg* and *Kristine A. Polansky*, of the same firm, were with her on the brief for appellee.

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The opinion of the court was delivered by

BEIER, J.: Plaintiff John D. Krider appeals the district court's summary judgment in favor of the defendant Board of Trustees of Coffeyville Community College (Board), contending the Board's violation of the Kansas Open Meetings Act, K.S.A. 75-4317 *et seq.*, voided a notice of nonrenewal of his teaching contract.

The legally relevant facts are undisputed.

Krider was a tenured welding instructor at the Southeast Kansas Area Vocational Technical School when the school merged with Coffeyville Community College in July 2001. After the merger, Krider's status changed to a first-year, nontenured employee of the college.

During an April 15, 2002, executive session of the college's Board of Trustees, the Board president recommended that Krider's contract not be renewed for the 2002-2003 academic year. As a result, Krider received a nonrenewal letter signed and delivered by the vice president for the college's technical division on May 1, 2002. In addition to telling Krider that his contract would not be renewed, the letter said: "This correspondence is your official notification of this fact and is given in accordance with K.S.A. 72-5437 and amendments thereto." The Board did not vote in open session not to renew Krider's contract until June 17, 2002.

On July 8, 2002, Krider filed this declaratory judgment action, asking the district court to rule that the Board failed to take the timely public action legally required to nonrenew his teaching contract. Krider continues to pursue this argument on appeal. In addition, he argues that a letter signed and delivered by the vice president of the technical division does not constitute service by the Board, as required by K.S.A. 72-5437(a).

K.S.A. 72-5437(a) states in pertinent part:

"All contracts of employment of teachers . . . shall be deemed to continue for the next succeeding school year unless written notice of termination or nonrenewal is served as provided in this subsection. Written notice to terminate a contract may be served by a board upon any teacher prior to the time the contract has been completed, and written notice of intention to nonrenew a contract shall be served by a board upon any teacher on or before May 1."

The relevant portions of the Kansas Open Meetings Act provide:

"(a) . . . [A]ll meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards . . . receiving or expending and supported in whole or in part by public funds shall be open to the public and no binding action by such bodies shall be by secret ballot." K.S.A. 2002 Supp. 75-4318.

"(a) Upon formal motion made, seconded and carried, all bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings. . . . Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

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

(1) Personnel matters of nonelected personnel;

. . . .

"(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act." K.S.A. 2002 Supp. 75-4319.

"(a) Any member of a body or agency subject to this act who knowingly violates any of the provisions of this act . . . shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney . . . . *In addition, any binding action which is taken at a meeting not in substantial compliance with the provisions of this act shall be voidable in any action brought by the attorney general or county or district attorney in the district court of the county in which the meeting was held within ten (10) days of the meeting*, and the court shall have jurisdiction to issue injunctions or writs of mandamus to enforce the provisions of this act." (Emphasis added.) K.S.A. 75-4320.

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

This appeal requires us to interpret these statutory provisions. Statutory interpretation raises issues of law, and our review is therefore unlimited. See *Williamson v. City of Hays*, 275 Kan. 300, 305, 64 P.3d 364 (2003).

"The fundamental rule of statutory construction to which all other rules are subordinate is that the intent of the legislature governs if that intent can be ascertained. The legislature is presumed to have expressed its intent through the language of the statutory scheme it enacted. When a statute is plain and unambiguous, the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be." *Williamson*, 275 Kan. at 305.

"The purpose of the [teachers'] continuing contract law," of which K.S.A. 72-5437(a) is a part, "is to eliminate uncertainty and possible controversy regarding the future status of a teacher and a school with respect to the teacher's continued employment." *In re Due Process Hearing of McReynolds*, 273 Kan. 514, Syl. ¶ 1, 44 P.3d 391 (2002). The statutory "scheme promotes stability in the state's schools and affords a time when teachers and schools may match needs." *McReynolds*, 273 Kan. at 520. It enables schools to search for new teachers while teachers are seeking employment from schools. 273 Kan. at 520.

This policy is satisfied when a teacher receives unambiguous notification of nonrenewal by the May 1 deadline. Any language in a timely written notice that fairly and reasonably may be understood to mean that a school's governing body is nonrenewing a teacher's contract is sufficient. See *Krahl v. Unified School District*, 212 Kan. 146, Syl. ¶ 3, 509 P.2d 1146 (1973) (interpreting companion statute, K.S.A. 72-5411).

There is no dispute in this case that Krider received a clear and unconditional notice before the statutory deadline passed. Further, we are not persuaded that a letter signed and delivered by a college

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vice president at the direction of a Board of Trustees does not qualify as service of notice by the Board itself. The letter delivered to Krider specifically stated that it was meant to be understood as the notice from the Board that is required by K.S.A. 72-5437, and we have previously held that a letter from a school superintendent was legally sufficient. See *Krahl,* 212 Kan. 146, Syl. ¶ 4. The chairman or president or another member of the Board need not sign or personally deliver the written notice required by the statute.

Krider's Open Meetings Act argument also will not get him the reinstatement and back pay that he seeks. Although the undisputed facts support his characterization of the Board's action as a violation of the Act, he seeks unavailable remedies.

We stated our interpretation of the statutory contours of a private party's standing to sue and the limited remedies he or she may seek for violation of the Open Meetings Act in *Stoldt v. City of Toronto*, 234 Kan. 957, 678 P.2d 153 (1984).

In *Stoldt*, the City Council of Toronto fired the plaintiff from his night watchman position, even though his job status had not been listed on a public agenda and the Council's vote appeared to have been prearranged in a private setting. We held:

"Private parties, as well as the attorney general, district attorneys and county attorneys, have standing under the Kansas Open Meetings Act, K.S.A. 75-4317 *et seq.*, to seek injunctive and mandamus relief. Only the attorney general, district attorneys and county attorneys, however, may seek voidance of governmental action based on violations of the act." 234 Kan. 957, Syl. ¶ 1.

We further explained:

"[The Act], while authorizing suits brought by the attorney general, county and district attorneys for violations, does not preclude private party actions. The policy of the act as stated in K.S.A. 75-4317 also supports members of the general public having standing to sue thereunder.

. . . .

"[The Act] provides for civil penalties up to $500 and voidance of binding actions taken during a meeting in violation of the act. However, these remedies are available only to the attorney general and county and district attorneys. [The Act] also provides for injunctive and mandamus relief by the court to enforce the act. See K.S.A. 75-4320(a). Standing to seek these remedies is not limited. We therefore, conclude injunctive and mandamus relief is available to private parties as well as to public prosecutors.

"In this case Officer Stoldt seeks voidance of the city council's action, reinstatement, and monetary damages. He does not seek an injunction or a writ of mandamus. While appellant has standing to raise the issue of violation of [the Act], none of the remedies he seeks is available to a private individual. . . . [Earlier cases involving private parties raising other issues did not reach the remedies point and are not] precedent for a private party having standing to void governmental action for a . . . violation [of the Act].

"Rather, we construe [the Act] to authorize no one other than the attorney general, district attorneys or county attorneys to seek voidance of governmental action based on violations of the act. It is with good reason the legislature would so restrict the act. Voidance of governmental action, be it

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administrative or legislative, is a drastic remedy. The threat of it would be very unsettling. The restriction on the remedy provides governmental stability. A private person who feels aggrieved must first convince a prosecutor of the merits of his cause within ten days of the . . . violation and get the prosecutor to seek voidance to undo the governmental acts. See K.S.A. 75-4320(a). It would be most difficult for government to function if every person was vested with the remedy of voiding governmental action for a violation . . . . Such actions, even though possibly ultimately unsuccessful, would unreasonably tie up government. We hold an individual who seeks to enforce [the Act] through private litigation has only the remedies of mandamus and injunction, both of which have prospective application." 234 Kan. at 962-63.

We echoed *Stoldt*'s analysis in 1998 in *City of Topeka v. Watertower Place Dev. Group*, 265 Kan. 148, 959 P.2d 894 (1998). In that case, we first observed that Watertower Place Development Group (Watertower) correctly asserted that the City had violated the Open Meetings Act by terminating the parties' contract during an executive session of the City Council. The issue thus became whether the City's employment of an unlawful procedure authorized the court to void the action in a lawsuit by Watertower. 265 Kan. at 156-57.

Noting that the attorney general had rebuffed Watertower's request for the attorney general to sue because the request came later than the 10-day deadline, we held Watertower was thereafter "precluded from seeking the voidance" of the Council's action. Notwithstanding the violation of the Open Meetings Act, Watertower was powerless to reverse the substance of the City Council's decision. 265 Kan. at 157 (citing *Stoldt*, 234 Kan. 957, Syl. ¶ 1).

Like Stoldt and Watertower, Krider seeks to reverse the substance of the Board's decision in his case, *i.e.*, to void its service of notice of nonrenewal of his contract. Under the Open Meetings Act and our prior decisions, this is not possible. When the Board violated the Open Meetings Act, its action was voidable for 10 days. See Annot., 38 A.L.R.3d 1070, § 7[b] (recognizing *Stoldt*'s holding). Krider could have persuaded the attorney general or the district or county attorney for Coffeyville to file an action to void the notice. He had no power to seek that remedy himself. He had standing to sue only for an injunction or writ of mandamus. He did not. Now it is too late.

We are mindful of the Open Meetings Act's explicit underlying policy to ensure that meetings "for the conduct of governmental affairs and the transaction of governmental business" are open to the public and of its explicit disapproval of the adjournment of such meetings "to another time or place in order to subvert" this policy. K.S.A. 2002 Supp. 75-4317. However, the Act also explicitly sets limits on the remedies available for a violation and the persons who may seek them. The rationale for such limitations is as valid today as it was when *Stoldt* was written in 1984.

Affirmed.

END

KANSAS ASSOCIATION OF SCHOOL BOARDS

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

Testimony on **HB 2767**
before the
House Local Government Committee

by

Jim Edwards, Governmental Relations Specialist
Kansas Association of School Boards

February 17, 2004

Mr. Chairman and members of the Committee:

I appreciate the opportunity to appear before you today to express KASB's opposition to **HB 2767**, a measure which would extend, from the current 10 days up to 180 days, the deadline for voiding action(s) for violations of the Kansas Open Meeting Act (KOMA).

This opposition must not be viewed as an attempt to circumvent the law as we, as an organization, spend many hours working with local boards to help ensure that they comply with KOMA statute. Our opposition to the proposed amendments is due to the following reasons:

1. Innocent third parties would be penalized rather than those violating the statute;
2. Most providing services, undertaking construction projects or contracting for sales of items would be unwilling to do anything until the 6-month deadline passes; and,
3. The added costs for these delays hurts both sides in the contract, and in the end, the patrons of the district.

Thank you for the opportunity to appear on **HB 2767** and I would stand for questions.

Session of 2004

HOUSE BILL No. 2654

By Representatives Toelkes, DeCastro, Huy, Rehorn and Thimesch

1-29

AN ACT concerning cities; relating to annexation; amending K.S.A. 12-520, ~~12-531 and 12-532~~ and repealing the existing sections.

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

New Section 1. ~~No~~ Except as provided otherwise provided, no land shall be annexed pursuant to K.S.A. 12-520, and amendments thereto, unless the question of such annexation has been submitted to and approved by at least ~~60%~~ 51% of the qualified electors of the area proposed to be annexed voting at an election called and held thereon. Such election shall be called and held in the manner provided for question submitted elections.

Sec. 2. K.S.A. 12-520 is hereby amended to read as follows: 12-520. (a) *Subject to the provisions of section 1, and amendments thereto, and* except as hereinafter provided, the governing body of any city, by ordinance, may annex land to such city if any one or more of the following conditions exist:

(1) The land is platted, and some part of the land adjoins the city.

(2) The land is owned by or held in trust for the city or any agency thereof.

(3) The land adjoins the city and is owned by or held in trust for any governmental unit other than another city, except that no city may annex land owned by a county which has primary use as a county-owned and operated airport, or other aviation related activity or which has primary use as a county owned and operated zoological facility, recreation park or exhibition and sports facility without the express permission of the board of county commissioners of the county.

(4) The land lies within or mainly within the city and has a common perimeter with the city boundary line of more than 50%.

(5) The land if annexed will make the city boundary line straight or harmonious and some part thereof adjoins the city, except no land in excess of 21 acres shall be annexed for this purpose.

(6) The tract is so situated that ⅔ of any boundary line adjoins the city, except no tract in excess of 21 acres shall be annexed under this condition.

(7) The land adjoins the city and a written petition for or consent to annexation is filed with the city by the owner. The provisions of section 1, and amendments thereto, shall not apply to the annexation of land pursuant to this paragraph.

House Local Government
Date: 2-17-04
Attachment # 4

Submitted by:
Rep. Toelkes

(b) No portion of any unplatted tract of land devoted to agricultural use of 21 acres or more shall be annexed by any city under the authority of this section without the written consent of the owner thereof.

(c) No city may annex, pursuant to this section, any improvement district incorporated and organized pursuant to K.S.A 19-2753 *et seq.*, and amendments thereto, or any land within such improvement district. The provisions of this subsection shall apply to such improvement districts for which the petition for incorporation and organization was presented on or before January 1, 1987.

(d) Subject to the provisions of this section and subsection (e) of K.S.A. 12-520a, and amendments thereto, a city may annex, pursuant to this section, any fire district or any land within such fire district.

(e) Whenever any city annexes any land under the authority of paragraph 2 of subsection (a) which does not adjoin the city, tracts of land adjoining the land so annexed shall not be deemed to be adjoining the city for the purpose of annexation under the authority of this section until the adjoining land or the land so annexed adjoins the remainder of the city by reason of the annexation of the intervening territory.

(f) No city may annex the right-of-way of any highway under the authority of this section unless at the time of the annexation the abutting property upon one or both sides thereof is already within the city or is annexed to the city in the same proceeding.

(g) The governing body of any city by one ordinance may annex one or more separate tracts or lands each of which conforms to any one or more of the foregoing conditions. The invalidity of the annexation of any tract or land in one ordinance shall not affect the validity of the remaining tracts or lands which are annexed by the ordinance and which conform to any one or more of the foregoing conditions.

(h) Any owner of land annexed by a city under the authority of this section, within 30 days next following the publication of the ordinance annexing the land, may maintain an action in the district court of the county in which the land is located challenging the authority of the city to annex the land and the regularity of the proceedings had in connection therewith.

Sec. 3. K.S.A. 12-531 is hereby amended to read as follows: 12-531. (a) ~~Five years~~ *One year* following the annexation of any land pursuant to K.S.A. 12-520 or 12-521, and amendments thereto, or, where there has been litigation relating to the annexation, ~~five years~~ *one year* following the conclusion of such litigation, the board of county commissioners shall call a hearing to consider whether the city has provided the municipal services as provided in the timetable set forth in the plan in accordance with K.S.A. 12-520b or 12-521, and amendments thereto. The board of county commissioners shall schedule the matter for public hearing and

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shall give notice of the date, hour and place of the hearing to: (1) The city; and (2) any landowner in the area subject to the service extension plan.

(b) At the hearing, the board shall hear testimony as to the city's extension of municipal services, or lack thereof, from the city and the landowner. After the hearing, the board shall make a finding as to whether or not the city has provided services in accordance with its service extension plan. If the board finds that the city has not provided services as provided in its service extension plan, the board shall notify the city and the landowner that such property may be deannexed, as provided in K.S.A. 12-532, if the services are not provided within ~~2 1/2 years~~ *one year* of the date of the board's findings.

Sec. 4. K.S.A. 12-532 is hereby amended to read as follows: 12-532. (a) If, within ~~2 1/2 years~~ *one year* following the conclusion of the hearing required by K.S.A. 12-531, or, where there has been litigation relating to the hearing, ~~2 1/2 years~~ *one year* following the conclusion of such litigation, the city has not provided the municipal services as provided in the timetable set forth in the plan prepared in accordance with K.S.A. 12-520b or 12-521, and amendments thereto, the owner of such land may petition the board of county commissioners to exclude such land from the boundaries of the city. Within 10 days after receipt of the petition, the board shall schedule the matter for public hearing and shall give notice of the date, hour and place of the hearing to: (1) The owner; (2) the city; (3) the township into which the property, if deannexed, would be placed; and (4) the governing body of any fire district, sewer district, water district or other special district governments which have jurisdiction over territory adjacent to the area sought to be deannexed. The notice shall be sent by certified mail no less than 21 days before the date of the hearing.

(b) At the hearing, the board shall hear testimony as to the city's extension of municipal services, or lack thereof, from both the owner and representatives of the city. Except as provided by subsection (e), if the board finds after the hearing that the city has failed to provide the municipal services in accordance with the plan and consistent with the timetable therein, the board may enter an order excluding the land from the boundaries of the city. Any such order shall take effect in the same manner as provided in K.S.A. 12-523, and amendments thereto, for the effective date of annexation ordinances. Such land shall not be annexed again for one year from the effective date of the order without the written consent of the owner of the land.

(c) The county clerk shall certify a copy of the order to the register of deeds of the county. The register of deeds shall record the order in the deed records of the county, and, at the expense of the owner, the

register of deeds also shall record the order of exclusion on the margin of the recorded plat of such land, giving reference thereon to the page and book of records where the order is recorded in the register's office.

(d) Except as provided by this subsection, after the effective date of the order to exclude the land from the city, such land shall not be liable for any general taxes imposed by the city. Such land shall remain liable, however, for any taxes or special assessments levied by the city as are necessary to pay its proportionate share of the interest on and principal of such bonds or other indebtedness incurred by the city for improvements to the land which were approved by the city before the date on which the owner or owners filed a petition for the exclusion of the land from the city.

(e) The board shall not order exclusion of any land if:

(1) The service extension plan conditions the extension of certain improvements or services on the filing of a legally sufficient petition by the owners of the land for the creation of an improvement district and to levy special assessments therein to pay a portion of the costs of such improvements, and a sufficient petition has not been filed;

(2) since the annexation, the governing body of the city initiated the creation of an improvement or benefit district affecting such land to levy special assessments thereon to pay a portion of the costs of certain municipal improvements, and the formation of the district was blocked by the filing of a sufficient protest petition by some or all of the owners of any land in the proposed district;

(3) the exclusion would result in the land being completely surrounded by other tracts of land located within the city's boundaries; or

(4) the board finds the exclusion of the land would have an adverse impact on the health, safety and welfare of the residents of the city or such land.

(f) Any owner or the city aggrieved by the decision of the board may appeal the decision to the district court in the manner provided in K.S.A. 19-223, and amendments thereto. Any city so appealing shall not be required to execute the bond prescribed therein.

Sec. 5. K.S.A. 12-520~~, 12-531 and 12-532~~ are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

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4-4

KANSAS REGISTER OF DEEDS ASSOCIATION

Marilyn L. Nichols
Shawnee County Register of Deeds
700 SE 7th Street, Room 108
Topeka, Kansas 66603-3932

TESTIMONY OF THE KANSAS REGISTER OF DEEDS ASSOCIATION
TO THE HOUSE LOCAL GOVERNMENT COMMITTEE
HB 2758

KANSAS OPEN RECORDS ACT

February 17, 2004

Representative Vickery (Chair) and Members of the Committee:

I am here today on behalf of the Kansas Register of Deeds Association. I thank you for the opportunity that allows me to offer this testimony during your decision making process.

Our understanding of the intent of this bill is to add Exemption No. (47) to the Kansas Open Records Act. Specifically, "Any information or material received by the register of deeds of a county from military discharge papers (DD Form 214) except to the military dischargee."

The Register of Deeds is a public office and is responsible for the recording of various instruments concerning real estate transactions for each respective county. Along with the real estate records we do file and preserve the Military Discharge papers for our veterans. K.S.A. 73-210 and K.S.A. 73-210(a) in part states, "Upon request of the person to whom such discharge was issued, his agent or relative, the register of deeds shall prepare and furnish certified copies of any such discharge or records of military service….." The requests made for copies of DD 214's are sometimes made by various persons or by certain entities that assists the veteran or are family members. While we support the proposal that closes these filings as "public records", we are concerned that these records would be inaccessible to those persons and entities with the legitimate right to the information for the benefit of the incapacitated or deceased veteran. We suggest that the DD 214 be treated similarly to a vital record that is kept at the state level of the Bureau of Vital Statistics. In that office the vital record such as a death certificate or marriage certificate, is obtained only after the applicant has filled out a request form and has shown a governmentally issued

photo ID. The reason for the information must be clearly stated on that form as well. If this bill is passed as written, not only will it be a first for our office to have a "closed record" there will be some practical application problems to overcome. There is no record at this time in the Register of Deeds Office that is closed to the public other than Certificates of Value that are presented with a deed that represents a sale of real estate.

The Kansas Register of Deeds Association supports the veterans right to privacy from public knowledge of their personal information including social security numbers and service numbers. We respectfully request that you pass HB 2758 with an amendment allowing certain other persons access to the record.

I thank you for your time and attention to this important matter and would be happy to stand for any questions from this distinguished committee.

Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

Feb. 17, 2004

To: Jene Vickrey, chairman, and members of the House Local Government Committee

From: Doug Anstaett, executive director, Kansas Press Association

Re: HB 2758, seeking an exemption for military discharge records

In 1999, newspapers joined together to test the effectiveness of the Kansas Open Records Act by making simultaneous and identical requests for records in a number of Kansas communities.

What those reporters discovered was disappointing, if not alarming, both for the public officials involved and for the press. The project helped to illustrate a number of serious weaknesses in the way public records are created, stored and accessed. Reporters encountered enormous inconsistencies in the way they were treated from jurisdiction to jurisdiction. It was not a pretty picture.

Partly because of the public embarrassment caused by that project, you and your colleagues ordered during the 2000 legislative session a complete review, one by one, of each of the exceptions in KORA. This year, right in the middle of this very important review, we have a number of requests for new exceptions to the Kansas Open Records Act on subjects ranging from security to sales tax and alcoholic beverage licenses to military discharge information.

This current request for closure is an interesting one because it involves the most public of all offices in each county in Kansas: the Register of Deeds office. This office exists for only one purpose: to collect, maintain and display public records for the people of Kansas, records that are vital to our private ownership system and provide information essential to the conduct of business in our communities.

At some point, the U.S. military started telling its dischargees that they should file their DD Form 214 papers with their local registers of deeds. That way, the dischargees were told, they would have quick access to their discharge papers and wouldn't have to wait on the military bureaucracy when they needed these documents to access benefits or programs that required this particular document.

The military, trying to help dischargees and at the same time to cover up their own horrible inefficiencies and bureaucratic bungling, found a way for those discharged from the armed forces to utilize local registers of deeds to provide a service they could not.

There is absolutely no public purpose in recording the DD Form 214. It is not intended to put the public on notice of anything. They are stored for the convenience of dischargees, not for the convenience of the public.

We oppose this bill because it would require Register of Deeds' offices in to do something they have never been asked to do before: to mix public and private records in the same office and to close a portion of those records to the public.

The solution is not another exemption to the Kansas Open Records Act. We've got too many of them already.

The solution is for the military to improve its service to the very people who put their lives on the line for their country.

February 17, 2004

The Honorable Jene Vickrey, Chairperson
House Committee on Local Government
Statehouse, Room 115-S
Topeka, KS 66612

RE: HB 2758 proposed K.O.R.A. exemption restricting military discharge records in the Register of Deeds office

Representative Vickrey and members of the committee,

I strongly oppose this proposed exemption.

Kansas records are assumed open unless specifically closed for a very valid reason. I don't see how military discharge records that have been open since the late 1800s to today can suddenly warrant closure. Especially since they are filed VOLUNTARILY by veterans as "Miscellaneous Records" in the Registers of Deeds offices across the state. They serve as a useful and vital tool to prove military service, make available valued documents to family members and genealogists, and present ample material for researchers to explore.

What is the motive for closure of voluntarily submitted documents open to the public? The number one reason I can think of involves a modern day example: Social Security numbers on a DD-214 (military discharge record). Soldiers and sailors were assigned a service number until recently, when that number was replaced by their Social Security number. That number is on their DD-214s. That number is protected by federal law (see 5 U.S.C. 552a for one example).

The solution is NOT a restriction of the document, but redaction of the Social Security number by the Register of Deeds. A Register of Deeds can already charge a reasonable fee for this service under the Kansas Open Records Act.

Don't let redaction equal amplified restriction. The language of this bill would allow complete closure of a record that has never been legally restricted in Register of Deeds offices.

Thank you,

Justin Dragosani-Brantingham, M.A.
111 SW Taylor St.
Topeka, KS 66603

Written testimony on HB 2758 House Local Government
Opponent
Jane Kelsey
A concerned family and local history researcher
9626 NW 21st
P.O. Box 127
Silver Lake, KS 66539

Chairman Vickrey and members of the committee:

I wish to express my strong opposition to the addition of the language appearing in HB 2758, p. 6, section 47 on lines 22–24.

Military discharge information at the county register of deeds is collected voluntarily and has been for decades. This information has been a matter of public record and is useful to family genealogists and local historians. An example of the use of this record group is I met a lady at a genealogy workshop about two years ago. She told how after her father got Alzeheimer's they could not find his discharge papers needed to begin the process to apply for his VA benefits. She made a trip to her Dad's home county out in central Kansas. He had voluntarily registered his discharge when he came home from World War II. She was able to get the information from the county and get Dad his VA benefits.

As a local history researcher specializing in 3 SE Kansas counties, I have used these records to document military service. Under the open records law I pay fees for copy work and staff time needed to find the volumes. Why close these records to researchers?

Also, the proposed language closes the records to everyone except the veteran. If you do close the record group at the very least allow a legal guardian or conservator access to the records.

If this record group in a county court house is closed what will be next? How will it impact family and local history research done by Kansas taxpayers as a hobby? Will the access be slowly limited for other record groups in our Kansas county court houses?

I recommend the proposed language not be passed by your committee.

Thank you

Feb. 17, 2004

To: House Local Government Committee

From: John G. Lewis
20605 W. 96th St., Lenexa, KS 66220

Re: HB 2758

The intrinsic purpose of the Register of Deeds office is to place certain types of information on the public record. It is not for the filing of personal, confidential information. There are many other places for that. It would be unreasonable for me, for example, to file a record of my insurance policies, tax returns, school diplomas and family photos with the Register of Deeds.

For this same reason, it is inappropriate for personal military records to be filed with the Register of Deeds. To do so is to misuse that county office as a personal filing cabinet, because any document filed with the Register of Deeds should, by its very nature, be available to the public.

The very purpose of filing a document with the Register of Deeds is to place the document on the public record, and any person filing a document with the Register of Deeds knows that it will be open to the public. It is a voluntary action. No person is required by law to file any document with the Register of Deeds. Even land records, such as deeds and mortgages, are filed voluntarily.

I am a past president and current board member of the Kansas Sunshine Coalition for Open Government, and I'm sure that I speak for all friends of open government when I profess our unmitigated support of military veterans. My purpose in opposing this bill, however, is to merely urge a different practice, in the interest of public policy — specifically, that of discontinuing the practice of filing personal and confidential information with an office that is specifically chartered as a repository for public records.

Kansas statutes explicitly state that it shall be the public policy of this state to provide unfettered access to public records. The office of the Register of Deeds is, by its very nature, a custodian of public records. We should not change the very character of this office by treading down the dangerous road of making exceptions to public access. To do so is to corrupt the historical tradition and character of the Register of Deeds and, thereby, to set a precedent that could lead to further closure of other public records held by the Register of Deeds.

Instead, we should urge our honorable military veterans to store their discharge records in other, more secure places, just as they do with their other personal papers, or to simply request them from the military, itself. They should be informed that the price for storing them with the Register of Deeds is that they must be open to the public.

It is unnecessary and inappropriate to begin making exceptions to our public policy of openness merely for the convenience of using a public office as a personal filing cabinet. Such a practice places an additional burden on county budgets and administrative personnel, and runs counter to the very purpose of the Register of Deeds.