

MINUTES OF THE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 P.M. on March 8, 2005 in Room 519-S of the Capitol.

All members were present except:

- Representative Frank Miller- excused
- Representative Oletha Faust-Goudeau- excused
- Representative Tom Sawyer- excused

Committee staff present:

- Mike Heim, Legislative Research Department
- Martha Dorsey, Legislative Research Department
- Norm Furse, Revisor of Statutes Office
- Theresa Kiernan, Revisor of Statutes Office
- Maureen Stinson, Committee Secretary

Conferees appearing before the committee:

- Sen. Jay Scott Emler
- Harriet Lange, Kansas Association of Broadcasters

Others attending:

See attached list.

Chairman Vickrey opened the hearing on:

SB 24 **Confidential security records or information, not subject to subpoena or discovery**

Sen. Jay Scott Emler, testified in support of the bill (Attachment 1). He said he was the immediate past chairman of the Joint Committee on Kansas Security. He explained that the bill was drafted at the request of the Joint Committee on Kansas Security.

Chairman Vickrey closed the hearing on **SB 24**.

Chairman Vickrey opened the hearing on:

SB 78 **Open records; exceptions; personnel records; reconciling conflicts in duplicate statutes**

Testimony in support of the bill was submitted by Ralph Gage, *Lawrence Journal-World*, was presented by Richard Gannon, Kansas Press Association (Attachment 2).

Harriet Lange, Kansas Press Association, submitted written testimony in support of the bill (Attachment 3).

Chairman Vickrey closed the hearing on **SB 78**.

Chairman Vickrey adjourned the meeting.

The next meeting is scheduled for Thursday, March 10, 2005.

House Governmental Organizations/Elections Committee
March 8, 2005
Senate Bill 24

Testimony of Jay Scott Emler
Past Chairman
Joint Committee on Kansas Security

Mr. Chairman and members of the House Governmental Organizations/Elections Committee, I appear in front of you today as the immediate past chairman of the Joint Committee on Kansas Security. It was the recommendation of that Committee that SB 24 be drafted and presented to the 2005 Legislature.

I will only focus on the parts of the bill that the Committee specifically recommended.

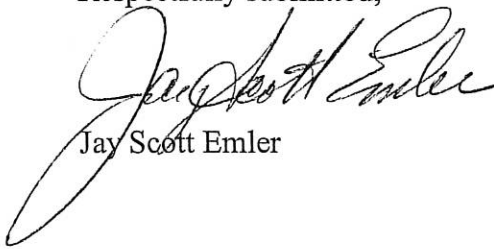
During the course of testimony in front of the Committee, conferees indicated that fully eighty-five percent (85%) of the infrastructure in the United States is privately owned. Many conferees also indicated a reluctance on the part of private companies to divulge sensitive security information because public agencies could not maintain the secrecy of the information. In order to address the concerns of both private industry and those charged with maintaining security, the Committee first recommended amending Section 1 (a) (45), formerly (42). That section is found on page 6, lines 33 through 43 and page 7, lines 1 through 3 of the bill.

The next three changes requested by the Committee are basically the same. The first is found on page 8, lines 22 through 25. Similar language is found starting on page 9 at line 19, and on page 10 at line 41. Basically, the request is to protect any records or information provided to the public agency by exempting such records or information from subpoena, discovery or demand in any

administrative, criminal or civil action. It is important to note that the only information that is exempt is that which is in the files of the public agency. Company records in their own right are not exempted by these changes.

This has been a brief review of the Security Committee concerns, but I will be happy to stand for questions.

Respectfully submitted,

A handwritten signature in cursive script, reading "Jay Scott Emler". The signature is written in black ink and is positioned above the printed name.

Jay Scott Emler



Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

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March 8, 2005

Rep. Jene Vickrey, Chairman
House Committee on Governmental Organization and Elections

Chairman Vickrey, Committee Members:

My name is Ralph Gage. I am chief operating officer of the World Company of Lawrence, and general manager of the Lawrence Journal-World newspaper.

I appreciate the opportunity to speak today in support of Senate Bill 78, and particularly in support of the change in Section 1, Paragraph 4, clarifying that employment contracts and agreements are not exempt from the Kansas Open Records Act.

This proposed amendment would codify the finding of the Douglas County District Court in the case of the World Company v. University of Kansas, in which our company brought suit against the university and the Kansas University Athletic Corporation when the university and the athletic department refused to disclose the terms of employment of KU Athletic Director Lew Perkins.

This dispute over the records arose when, shortly after the university revealed that Mr. Perkins' base salary was to be \$420,000 per year, other sources not only in the community but around the state began to assert that the actual value of his employment agreement was considerably higher. In response to our company's KORA request, the university claimed the employment agreement was not subject to the act because it was a "personally identifiable" agreement.

The court's ruling, however, said in part that the state's policy of disclosure should not be limited by exempting any record identifying individuals by name. "Otherwise," wrote District Judge Jack Murphy, "any document with an employee's name on it—whether or not it reveals sensitive information—would fall under this exclusion..."

He said the documents in question "provide goals, incentives, and additions to Lew Perkins' base salary. These agreements address duties and responsibilities for both parties and constitute a significant part of Perkins' contract with KU. Since they provide obligations for two parties, the agreements are better defined as 'mutually identifiable' records rather than 'individually identifiable' records..."

"An expenditure of public funds through an employment contract cannot be considered exempt from the KORA," the ruling continued. "Were this true, all payment agreements

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not specifically included or designated as 'salary' would be exempt from public inspection. The public has a valid right to discover how a public institution spends its money. Nondisclosure in this case is exactly the type of situation the legislature intended to prevent with the passage of the KORA. Disclosure promotes accountability and deters official misconduct.... The public does have an interest in knowing the full compensation of a public employee or any individual paid with public funds."

Obviously we agree. The citizens of the state have the right to know how much their state officials are being paid, and by whom, and for what.

Our lawsuit, assisted by the Kansas Press Association and the Associated Press, pried loose the record. Afterward, even Mr. Perkins and Chancellor Robert Hemenway, who was blamed for the decision to oppose disclosure, said they had nothing to hide. The ruling was a victory for the Legislature, for the intended purpose of the act, and for the citizens of the state. We would urge you to codify it with the amended language drafted in SB78.

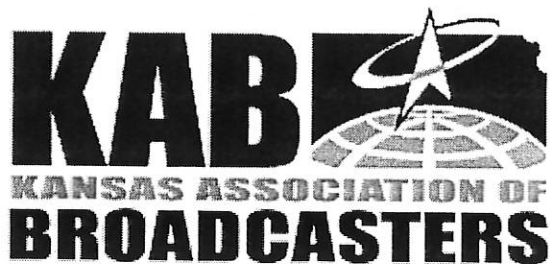
The court case represented a considerable expense to our company. Codifying the court ruling and clarifying the records definition may prevent the necessity of others having to decide whether such an expenditure is worthwhile to litigate against an agency funded by taxpayer dollars. Not every business could or would spend the money.

Further, I would encourage the committee to consider changing K.S.A. 45-222 (c), which requires a finding that the defendant acted in bad faith in order for even a successful plaintiff to be reimbursed the cost of litigation. If an agency that lost such a KORA ruling had to reimburse the successful plaintiff, the agencies just might think twice about refusing legitimate requests. As things stand now, there's virtually no penalty associated with refusing a request. It's not punishment when all that happens is that ultimately an agency discloses a public record that should have been revealed without litigation.

In summary, I would reiterate:

- Records that the court stressed were of genuine and legitimate public interest were withheld
- The cost of litigation to make them public is beyond the capability of most individuals and many businesses
- No one, athletic director or other, paid with public money should be able to hide from the citizens of the state the amount or source of the money, or the purposes for which he or she is being paid

Again, I urge you to write this clearly in the public law.



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Written Statement – SB 78
TO: House Committee on Governmental Organization and Elections
March 8, 2005
FROM: Harriet Lange, President
Kansas Association of Broadcasters

We comment only on the proposed amendment to Section 1: (a) subsection (4) relating to personnel records, and not the other amendments in the bill which are to reconcile bills which passed last year.

We support codifying in statute the recent court decision in the *Lawrence Journal-World v. University of Kansas* lawsuit over access to employment/compensation agreements. KU lost and so did Kansas taxpayers who had to foot the bill for litigating this case. It is our hope that this clarification in statute will deter future denials of access and the potential for costly litigation born not only by the public entity, but also by those who seek access to public records.

We urge your favorable consideration of SB 78.

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Date: 3-08-05

Attachment # 3