Approved: March 28, 2007
Date

MINUTES OF THE HOUSE ELECTIONS AND GOVERNMENTAL ORGANIZATION COMMITTEE

The meeting was called to order by Chairman Mike Burgess at 3:30 P.M. on January 30, 2007 in Room 231-N of the Capitol.

All members were present except:
Representative Mike Peterson- excused

Committee staff present:
Martha Dorsey, Legislative Research Department
Matt Spurgin, Legislative Research Department
Mike Heim, Revisor of Statutes Office
Maureen Stinson, Committee Assistant

Conferees appearing before the committee:
Doug Anstaett
Harriet Lange
Paul Morrison
Kim Winn
Eric Sartorius
Donna Whiteman

Others attending:
See attached list.

Bill Requests

Chairman Burgess requested a committee bill concerning elections.

Rep. Horst requested a bill concerning county appraiser terminations.

Rep. Otto requested a committee bill concerning eminent domain.

The Committee approved the requests.

HB 2084 Open meetings; serial meetings of less than a quorum

Chairman Burgess opened the hearing on **HB 2084**.

Doug Anstaett, Kansas Press Association, testified in support of the bill (Attachment 1).

Harriet Lange, Kansas Association of Broadcasters, testified in support of the bill (Attachment 2).

Paul Morrison, Kansas Attorney General, testified in support of the bill (Attachment 3).

Kim Winn, League of Kansas Municipalities, testified in opposition to the bill (Attachment 4).

Eric Sartorius, City of Overland Park, testified in opposition to the bill (Attachment 5).

Donna Whiteman, Kansas Association of School Boards, testified in opposition to the bill (Attachment 6).

Written testimony in opposition to the bill was submitted by Diane Gjerstad, Wichita Public School (Attachment 7).

Chairman Burgess closed the hearing on **HB 2084**.

Chairman Burgess appointed a sub-committee on **HB 2079**. Rep. Otto will serve as chair of the sub-committee. Rep. Horst and Rep. Lane are asked to serve on the sub-committee.

MINUTES OF THE House Elections and Governmental Organization Committee at 3:30 P.M. on January 30, 2007 in Room 231-N of the Capitol.

The meeting was adjourned.

The next meeting is scheduled for Wednesday, January 31, 2007.

House Elections and
Governmental Organization Committee

Date 1-30-07

Name	Representing
Diane Gjerstad	Wichita Public Schools
Kaaie Duncan	KASB
Doug Mustaedt	KPA
Matt Bryant	Center Group
[illegible]	CURB
Christy Campbell	L.G.R.
Erik Sartorius	City of Overland Park
Bud Burke	City of Olathe
Kim Winn	LPM
Hank Lacy	Ks Assn of Broadcasters
Paul Morrison	Attorney General
Bob Vancrum	USD 229
Richard Gannon	KPA
Gayle Shaw	KACCT
Andy Schlapp	Sedgwick County
Brad Bryant	Sec. of State
Martin Hawver	Hawver's Capitol Report

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

Jan. 30, 2007

To: Mike Burgess, chair, and members of the House Elections and Governmental Organization Committee

From: Doug Anstaett, executive director, Kansas Press Association

Re: HB 2084

Chairman Burgess and committee members:

Thank you for the opportunity to speak in support of HB 2084, which attempts to close a significant loophole in the law regarding what constitutes a public meeting in the state of Kansas.

In 1998, former Kansas Attorney General Carla Stovall was asked to render an opinion about whether the following scenarios violated the Kansas Open Meeting Act. This is quoting directly from her opinion (the entire opinion has been copied for your review):

"The serial communications you ask about lack a majority of a quorum at any given time, but ultimately involve a majority of a quorum. One example is a calling tree: A public board needs to discuss an issue that the members believe is too sensitive to be discussed in public, but for which there is no statutory authority for an executive session. The chair proposes each of the members telephone the others, one by one, to discuss their opinions on the issue. If the board has six or more members, a majority of a quorum is at least three. A calling tree would involve no more than two board members speaking to one another at the same time. The chair would then call each of the members to 'survey' their opinions. A formal vote would be taken at the next open meeting.

"Such serial communications can take other forms. For instance, groups of less than a majority of a quorum may gather at different locations and discuss the issue before the board. A staff person not subject to KOMA circulates between the groups letting each know the content of the discussions of the other groups until a consensus is formed.

"Such serial communications could also occur through e-mail. One member e-mails another, who adds to the e-mail and sends it along to the next ..."

So what did she decide? Stovall wrote: *"In summary, a series of meetings each of which involves less than a majority of a quorum of a public body, but collectively totaling a majority of a quorum, at which there is a common topic of discussion of the business or affairs of that body constitutes a meeting for purposes of the KOMA."*

We believe that our democracy demands that the public be actively involved in debating the issues of the day and that pre-arranged, pre-argued and prejudged decisions made in the proverbial smoke-filled rooms be prohibited.

Our ability to communicate electronically has mushroomed since the Stovall opinion of 1998. There has been a proliferation of high-tech innovations ranging from text messaging to podcasting to instant paging to real-time online chatting that have made it easier to communicate 24/7/365 with anyone. It has gotten so bad that the city

House Elections & Gov. Org.
Date: 1-30-2007
Attachment # 1

attorney of Topeka recently admonished members of the Topeka City Council about the propriety of e-mailing each other during — yes, during — city council meetings. He said it likely constituted a violation of KOMA.

We think the absence of a statutory remedy in light of the 1998 opinion has led to a proliferation of serial discussions under a number of guises, including but not limited to a perceived need to "educate" elected and appointed officials in the days leading up to a public meeting. We're all for education, but we're adamantly opposed to what so often happens in these cases: secret, behind-the-scenes consensus building.

Whether you call them "serial meetings," "sequential meetings" or "circular meetings," these surreptitious gatherings of a majority of a quorum of public councils, commissions, advisory boards and other elected and appointed officials, too often have what we believe to be a sinister purpose: to shut the public out of the important process of building the case for a particular public policy decision.

If education truly is the need, our solution is simple: If a city manager, superintendent, county manager or any other appointed or elected person wishes to educate his board or council members, the information should also be shared immediately with the public, so citizens can also be aware of the pros and cons on every public issue and can form their own opinions about the merits of particular arguments on those issues.

And if you don't think this an issue out in the state, here's what a Wyandotte County newspaper reported recently:

Attorney urges Wyandotte Board to skirt the law
(Wyandotte West) A legal adviser for the Wyandotte County Parks Board recommended last month that its members violate open meetings laws while formulating a park evaluation policy.

Unified Government attorney Ryan Carpenter asked board members to consider e-mail discussion, meeting in groups of three — just one member short of violating the Kansas Open Meetings Act — or closing a future meeting to the public while developing consensus on the policy.

Board chairman Phil Thomas rebuffed those suggestions, scheduling a regular discussion and vote for the next meeting on May 10.

Carpenter told board members his recommendations would not violate the Open Meetings Act. He described meeting in groups of three as permissible.

That kind of flagrant abuse is more prevalent than one might think. We had two similar situations, one in Mitchell County, and the one I've already referred to in Topeka.

In Mitchell County, the county attorney essentially washed his hands of complicity because of what he believed were repeated violations of KOMA by the county commission there. Here's how his actions were reported in the Beloit Call:

County Attorney (Jess) Hoeme stated that he has attempted to explain KOMA to the commission on several occasions. He said that he has swept under the rug too many violations, and would not be doing his job if he did not address the issue.

KOMA is quite explicit in this regard. It says: "It is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public."

It could not be clearer. We believe these kinds of back-door communications will not stop without a clear, statutory prohibition written into KOMA.

Therefore, we urge you to support the codification of Attorney General Stovall's 1998 opinion, No. 98-26, that such meetings are contrary to KOMA, they are contrary to the concept of open and honest government and that they should be banned in favor of sunshine, citizen participation and good government. The language we've proposed isn't perfect, but it's a start. We're willing to make it better by working with all interested parties who want to promote better government in Kansas. Thank you.

KAB
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Testimony – HB 2084
Before House Committee on Elections and Governmental Organization
January 30, 2007
By Harriet Lange, President
Kansas Association of Broadcasters

Mr. Chairman, Members of the Committee, I am Harriet Lange with the Kansas Association of Broadcasters. Our membership is comprised of free-over-the-air radio and television stations which serve Kansas. We appreciate the opportunity to appear before you today in support of HB 2084.

The bill would prohibit serial meetings. It closes a loop hole which allows public officials to meet in secret in groups of fewer than a majority of a quorum to discuss public business – with the intent of circumventing Kansas Open Meetings Law. With serial meetings, public officials may make public policy in small groups and take action in public without the benefit of public scrutiny or input. The bill does NOT prohibit public officials from getting together outside of a public meeting. They just can't discuss public business when they do.

An informed citizenry through public access is the cornerstone of our form of government. Openness in government at all levels has been declared the policy of this state. We believe the majority of public officials in Kansas do comply with the letter of the law as well as the spirit of the Kansas open meetings law. HB 2084 will clarify that when public officials discuss public business, they must do so in full view of the public.

We urge your favorable consideration of HB 2084.

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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House Elections & Governmental Organization Committee
HB 2084
Attorney General Paul Morrison
January 30, 2007

Mr. Chairman and members of the committee, thank you for allowing me to testify today.

I am here to testify in support of the concept of banning serial meetings designed to circumvent the Kansas Open Meetings Act (KOMA). While I believe that House Bill 2084 is a positive first step towards this goal, the bill language requires further thought and consideration. I am committed to investing the resources of the Attorney General's Office to improve the language in HB 2084.

Openness in government is essential to the democratic process. The Kansas Open Meetings Act is a law that provides the public with access to the discussions of public bodies that they may not otherwise have. Members of these bodies secretly meeting in successive order in order to circumvent this law should be treated as a violation of KOMA.

Former Attorney General Carla Stovall issued an opinion on this topic with which I wholeheartedly agree. General Stovall conclusively stated, "a series of meetings each of which involves less than a majority of a quorum of a public body, but collectively totaling a majority of a quorum, at which there is a common topic of discussion of the business or affairs of that body constitutes a meeting for purposes of the KOMA."

I believe that a statutory reinforcement of this opinion is warranted. However, it is of paramount importance that the bill language is drafted deliberately and take into account all of the possible implications of a new law. I recommend allowing my office the time to propose modifying language to HB 2084 that would take specific concerns under consideration.

Thank you for your time and I look forward to answering any questions.

April 20, 1998

ATTORNEY GENERAL OPINION NO. **98-26**

Robert Claus
Montgomery County Attorney
Judicial Center, 300 East Main
Independence, Kansas 67301

Re:
State Departments; Public Officers and Employees--Public Officers and Employees; Open Public Meetings--Meeting Defined; "Calling Trees"

Synopsis:
A series of meetings, each of which involves less than a majority of a quorum of a public body, but collectively totaling a majority of a quorum, at which there is a common topic of discussion of the business or affairs of that body constitutes a meeting for purposes of the Kansas Open Meetings Act. Cited herein: K.S.A. 75-4317; 75-4317a; 75-4318.

Dear Mr. Claus:

You seek our opinion regarding application of the Kansas Open Meetings Act (KOMA), K.S.A. 75-4317 *et seq.*, to serial communications between members of a public body covered by the KOMA, when such communications are discussions of the business or affairs of the body.

The serial communications you ask about lack a majority of a quorum at any given time, but ultimately involve a majority of a quorum. One example is a calling tree: A public board needs to discuss an issue that the members believe is too sensitive to be discussed in public, but for which there is no statutory authority for an executive session. The chair proposes each of the members telephone the others, one by one, to discuss their opinions on the issue. If the board has six or more members, a majority of a quorum is at least three. A calling tree would involve no more than two board members speaking to one another at the same time. The chair would then call each of the members to "survey" their opinions. A formal vote would be taken at the next open meeting.

Such serial communications can take other forms. For instance, groups of less than a majority of a quorum may gather at different locations and discuss the issue before the board. A staff person not subject to KOMA circulates between the groups letting each know the content of the discussions of the other groups until a consensus is formed.

Such serial communications could also occur through e-mail. One member e-mails another, who adds to the e-mail and sends it along to the next. The mail may pass in circles. Or, there may be a formal discussion board or LISTSERV (TM) set up where each member automatically receives messages posted by the others, and can comment on the messages. In this way the members can

exchange their thoughts on an issue without ever gathering or communicating in "real time."

The Legislature has declared open meetings to be the policy of the State:

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

In an action to enforce the KOMA, "the burden of proof shall be on the public body or agency to sustain its action." K.S.A. 75-4320a(b). The courts have said that the "KOMA is remedial in nature and therefore subject to broad construction in order to carry out the state legislative intent." *Memorial Hospital Ass'n, Inc. v. Knutson*, 239 Kan 663, 669 (1986).

If there is a meeting within the KOMA's definition, then the meeting must be open to the public and notice must be sent to those requesting it. K.S.A. 75-4318. The question is whether such a serial communication can constitute a meeting for purposes of the KOMA.

Prior to 1994, the KOMA defined a meeting as:

"[A]ny prearranged gathering or assembly by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency." K.S.A. 75-4317a (Ensley 1984).

In *State ex rel Stephan v. Board of County Com'rs of Seward County*, 254 Kan. 446 (1994), the Kansas Supreme Court held that a telephone call was not a meeting under this previous definition because physical presence was required for a meeting and because the call was not prearranged. *Id.* at 451. Shortly after this decision the Legislature amended K.S.A. 75-4317a to expand the definition of meeting, thus legislatively overruling *Seward County*:

"As used in this act, 'meeting' means any gathering, assembly, telephone call or any other means of interactive communication by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency." K.S.A. 75-4317a.

The bill, which became the current version of K.S.A. 75-4317a, passed the House by a vote of 111 to 8 and the Senate by a vote of 38 to 2. 1994 H.B. 2784; 1994 House Journal 1840; 1994 Senate Journal 1681.

By expressly including telephone calls and interactive communications it is clear that physical presence is no longer required for there to be a meeting. The purported justification given by public bodies for communications between a series of meetings of less than a majority of a quorum, such as calling trees, is that they do not occur in "real time." In other words, they argue that while everyone may ultimately exchange thoughts and opinions with everyone else, because they do not hear and respond immediately, there is no meeting.

We do not believe, however, that "real time" is a necessary condition for an interactive communication to constitute a meeting under K.S.A. 75-4317a. Webster's Third New International Dictionary Unabridged 1176 (Merriam-Webster, Inc. 1986) defines interact as "to act upon each other: have reciprocal effect or influence." Interactive is defined as "mutually or reciprocally active." The serial communications described above allow each board member to hear and comment on every other member's opinions and thoughts. We believe such serial communications are interactive because the communications are ultimately mutual. The process allows for thoughts to be shared in common. The serial communications are also reciprocal. The process allows thoughts to be transmitted back and forth. Government business is being discussed, and the intent of the KOMA is that such discussions be open to the public. "Public bodies cannot be allowed to do indirectly what the legislature has forbidden." *Memorial Hospital Ass'n, Inc. supra* at 671.

We are not alone in reaching this conclusion. Two states have statutes that expressly prohibit serial meetings. Texas' statute makes it a misdemeanor if a "member or group of members knowingly conspire to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations . . . ." Tex. Gov't Code Ann. § 551.143. Kentucky has a similar prohibition. *See*, Ky. Rev. Stat. Ann. § 61.810(2).

In other states without a specific prohibition on serial meetings, the courts that have considered this question have held those states' open meetings acts cover such sequential or circular series of meetings if the total number of participants is enough to trigger the act and there is a common topic of discussion concerning public business. *See Rehab Hosp. v. Delta-Hills Health Systems*, 678 S.W.2d 840 (Ark. 1985); *Stockton Newspapers v. Members of Redev. Agcy*, 214 Cal. Rptr. 561 (Cal. App. 3 Dist. 1985); *Blackford v. School Bd. of Orange Cty.*, 375 So. 2d 578 (Fla. App. 1979), *Booth Newspapers v. Wyoming City Council*, 425 N.W.2d 695 (Mich App. 1988); *Bd. of Trustees et. Al. v. Miss. Publishers Corp*, 478 So. 2d 269 (Miss 1985) .

In *State ex. rel. Cincinnati Post v. Cincinnati*, 668 N.E.2d 903 (Ohio 1996), the city manager on three different days called three series of back to back meetings with small groups of the council. (The size of an individual group was less than that required to trigger the Ohio open meetings act.) At these meetings the manager discussed the county's proposal for new stadiums. The court said,

"To find that Cincinnati's game of 'legislative musical chairs' is allowable under the Sunshine Law would be to ignore the legislative intent of the statute, disregard its evident purpose, and allow an absurd result.

"The statute requires that governmental bodies 'conduct all deliberations upon official business only in open meetings.' R.C. 121.22(A). Its very purpose is to prevent just the sort of activity that went on in this case -- elected officials meeting secretly to deliberate on public issues without accountability to the public.

. . .

"To rule in Cincinnati's favor would be to endorse the behavior undertaken by city council and

the city manager in this case and make it applicable to every city council meeting in Ohio. The statute that exists to shed light on deliberations of public bodies cannot be interpreted in a manner which would result in the public being left in the dark. The Ohio Sunshine Law cannot be circumvented by scheduling back-to-back meetings which, taken together, are attended by a majority of a public body." 686 N.E.2d at 906.

In a recent opinion, the North Dakota Attorney General reached a similar conclusion involving that state's open meetings act, which applies to meetings of a quorum of a governing body to transact business:

"[T]here is a threshold at which multiple conversations (in person or over the telephone) on a particular subject, each involving two or three Board members, collectively involve enough Board members (a quorum) that the conversations have the potential effect of forming consensus or furthering the Board's decision-making process on that subject. At the point the conversations on a particular subject collectively involve a quorum of the board, the 'quorum rule' is satisfied and the topic of discussion must be considered.

"[I]t is appropriate for a member who was absent from a meeting to contact the other members, if the conversations are limited to finding out what happened at the meeting. Similarly, it would be appropriate for the presiding officer of a governing body to contact the other members to determine which items to include on the agenda of the next meeting, as long as to conversations do not include information-gathering or discussion regarding the substance of the issues on the agenda. It is only when those meetings become steps in the decision-making process (information gathering, discussion, formulating or narrowing of opinions, or action) regarding public business that the open meetings law is triggered." N.D. Attorney General Opinion No. 98-0-05.

In summary, a series of meetings each of which involves less than a majority of a quorum of a public body, but collectively totaling a majority of a quorum, at which there is a common topic of discussion of the business or affairs of that body constitutes a meeting for purposes of the KOMA.

Very truly yours,

CARLA J. STOVALL
Attorney General of Kansas

Steve Phillips
Assistant Attorney General

CJS:JLM:SP:jm

LKM
League of Kansas Municipalities

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To: House Elections and Governmental Organization
From: Kimberly Winn, Director of Policy Development & Communications
Date: January 30, 2007
Re: Opposition to HB 2084

On behalf of the 576 member cities of the League of Kansas Municipalities (LKM), thank you for the opportunity to offer our comments regarding HB 2084. We have several concerns about this legislation.

- **"Interactive."** As it is written, HB 2084 removes the word "interactive" from the definition of a "meeting." Meetings by their very nature are interactive. To remove this word from the definition seriously muddies the waters regarding the Kansas Open Meetings Act (KOMA). Under HB 2084, KOMA would apply to "any other means of communication." Therefore, a letter written from one councilmember to another would become a "meeting." This nonsensical result confuses KOMA with the Kansas Open Records Act (KORA). KORA deals specifically with certain forms of communications, including letters and notes, and HB 2084 would create a potential conflict between KOMA and KORA.

- **Serial Meeting**. The very concept of a "serial meeting" is not based in statutory or common law. While a previous Attorney General wrote an opinion where the concept of a "serial meeting" was discussed, we believe that the current law is clear and should not be amended. We further believe that the provisions of HB 2084 will create much confusion among the public officials that must apply the law. Under current law, three elements must be met in order for there to be a "meeting" under KOMA: 1) a majority of a quorum; 2) engaged in interactive communication; 3) discussing the business of the body. This is a standard which is easily explained and understood in most situations.

  Codifying the concept of a "serial meeting" could have dramatic consequences at both the local and state levels. For example, in a city Councilmember A could talk to Councilmember B, then Councilmember B could talk to Councilmember C. Under HB 2084, Councilmembers A and C are engaged in a "meeting," even though neither of them knew about it. There will be serious consequences at the state level as well. When the majority or minority whip goes person to person to determine where the votes stand on a bill, that could constitute a "serial meeting." In addition, when a committee secretary goes person to person to get signatures for a conference committee report, that could constitute a "serial meeting."

The current law provides a clear definition for public officials to follow. While application may be difficult in certain, narrow circumstances, we do not believe that a change in law is warranted at this time. For these reasons, we ask that you do not report HB 2084 favorably for passage. I would be happy to stand for questions at the appropriate time.

House Elections & Gov. Org.
Date: 1-30-2007
Attachment # 4

The City of Overland Park
KANSAS

submitted by: Eric Sartorius

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Testimony Before The
House Governmental Organization & Elections Committee
Regarding
House Bill 2084

January 30, 2007

The City of Overland Park appreciates the opportunity to appear before the committee and present testimony in opposition to House Bill 2084, which would alter the definition of a "meeting" as it applies to the Kansas Open Meetings Act.

The City believes the Kansas Open Meetings Act (KOMA) currently strikes a fair balance to create open and efficient government, and strongly supports retention of current exceptions to the act. House Bill 2084, while not altering any exceptions to KOMA, makes significant changes to the law that will have serious, adverse repercussions for cities and other governmental entities.

Adherence to the language concerning series of meetings will be difficult. In order to comply with this, elected bodies will be required to hold meetings virtually every time any communication occurs. In some instances, a majority of a quorum is comprised of as few as two elected officials. With this being the case, simple conversations made in passing could wind up producing a violation under HB 2084.

The legislature will be equally tested by HB 2084, maybe more so, unless it exempts itself from the law, as is currently allowed in statute. A series of meetings eventually equaling a majority of a quorum would seem to include having staff keep House or Senate members apprised of developments involving a conference committee to which they are a conferee. With that being the case, how will the legislature propose to adhere to House Bill 2084?

Another challenge within subsection (b) is the language speaking to instances where such meetings are "held for the purpose of avoiding" compliance with the Open Meetings Act. If this language were to become law, which would in turn make it known by elected officials, city managers, and city attorneys; could not it be argued that <u>every</u> instance of a series of meetings was done to avoid KOMA? By holding such meetings, no matter how innocuous the subject, the proponents' attorneys may argue that officials made a conscious decision to <u>not</u> hold a public meeting and were therefore seeking to <u>avoid</u> holding a public meeting. The proponents will likely say that this is an overreaction, and that they would never make such an argument based on the language in the bill. Such certainty is not apparent in the language of this bill, however.

The other key element of House Bill 2084 is the striking of the word "interactive" before "communication" in Section 1(a). Without interaction, how can a body be meeting to discuss "the business or affairs" of the body? Are we to believe that a city would need to announce a "meeting" to the public so that the mayor or city manager could send an e-mail alerting the city council to some current threat posed to the community? There are times where it makes sense for public officials to have a briefing or basic facts prior to information being shared with the public, as their constituents will often call them seeking answers. Under House Bill 2084, we may be left with telling our city council to subscribe to the list serve that sends news releases to the press.

"Government should be run more like a business" is an exclamation frequently heard from citizens, newspapers, and legislators alike. The advantage businesses have, however, is that the balance between public and private information tilts more toward the ability to conduct operations in a streamlined manner. They are required to produce some information for public consumption, and some have to have meetings where their shareholders can question them. The presumption for business, however, is that their dealings may be conducted in private and without notice.

For governments, that balance is rightly shifted the opposite direction. The vast majority of government business is conducted in broad daylight, with public comment and involvement encouraged and expected. For over thirty years, though, the Kansas Open Meetings Act has recognized that there are limited, legitimate instances where government entities should not be required to hold a public meeting. The City of Overland Park asks that you not do away with this current balance, and reject House Bill 2084.

KANSAS ASSOCIATION OF SCHOOL BOARDS

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Testimony on **HB 2084**
before the
House Elections & Governmental Organization
by

Donna L. Whiteman, Assistant Executive Director/Legal Services
Kansas Association of School Boards

January 30, 2007

Mr. Chair and Members of the Committee:

Thank you for the opportunity to speak in opposition to H.B. 2084.

Section I of this bill deletes the word "interactive" before communication. "Interactive" defines the type of communication that violates the Open Meetings Law. The term communication is defined as "the process by which information is exchanged between individuals through a common system of symbols, signs or behavior." *Merriam Webster Dictionary.* The word "interactive" is critical as it requires a discussion or an exchange of information in the form of a dialogue.

A review of the case of *State ex rel, Stephan v. Board of County Com'rs of Seward County*, 254 Kan. 446 (1994) and the 1994 legislative changes to KOMA may be helpful. Kansas Attorney General Opinion No. 98-26 stated, "By expressly including telephone calls and interactive communications, it is clear that physical presence is no longer required for there to be a meeting."

Subsection (b) of H.B. 2084 would make it more difficult for school board members to attend and share their individual opinions at community meetings, weddings, anniversary celebrations, chamber of commerce meetings and other meetings held to share information and develop cooperative efforts among local units of government.

Thank you for your consideration.

"Written Only"

WICHITA
PUBLIC SCHOOLS

House Elections and Governmental Organization
Representative Burgess, chair

January 30, 2007
Submitted by: Diane Gjerstad

Mr. Chairman, members of the Committee:

We rise in opposition to H.B. 2084 a bill which would prohibit school boards and other elected bodies from conducting business in a reasonable manner. This bill permits only less than a majority of a quorum to discuss a topic. Wichita has seven school board members, under this proposal only 2 people would be able to discuss an issue. The third call or conversation would be a violation. Here is an example of the impact, currently the Board president and vice president meet with the superintendent bi-weekly to develop the BOE meeting agenda. If H.B. 2084 passes, once the agenda is sent out, if any other Board member calls to ask a question about any issue on the agenda it would constitute a violation. The bill would prohibit a private citizen from calling a majority of a quorum of the Board to talk about a subject of concern to the citizen!!

There are three Attorney General's opinions dealing with the issue of serial meetings and communications (Op. No. 95-13, Op. No. 98-26, and Op. No. 98-49). All of these opinions indicate that serial meetings (or e-mails) with interactive communication is a violations of Kansas Open Meetings Act.

A proposed balloon was shared with us prior to this meeting by the proponents. We view the proposed balloon as more confusing than the original bill. The balloon would make an exception for "routine business". What is routine?? Would the explosion at Marshall Middle School be routine??

Governing bodies need the ability to have conversations about policy issues away from the board table – current law and Attorney General opinions provide safe guards for the public.

Thank you for your consideration of our views.