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 31, 2007 in Room 231-N of the Capitol.

All members were present except:
Representative Virginia Beamer- excused
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:
Rep. Bill Otto
Doug Anstaett
Rich Gannon
Sandy Jacquot
Donna Whiteman
Randall Allen
Diane Gjerstad
Chad Austin
Jerry Slaughter
Harriet Lange

Others attending:
See attached list.

Bill Requests

Rep. Burgess requested three committee bills concerning elections. The Committee approved the requests.

HB 2054 Open meetings law; recording executive sessions

Chairman Burgess opened the hearing on **HB 2054**.

Rep. Otto testified in support of the bill (Attachment 1).

Doug Anstaett, Kansas Press Association, testified in support of the bill (Attachment 2).

Richard Gannon, Kansas Press Association, testified in support of the bill (Attachment 3).

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

Donna Whiteman, Kansas Association of School Boards, testified in opposition to the bill (Attachment 5).

Randall Allen, Kansas Association of Counties, testified in opposition to the bill (Attachment 6).

Diane Gjerstad, Wichita Public Schools, testified in opposition to the bill (Attachment 7).

Chad Austin, Kansas Hospital Association, testified in opposition to the bill (Attachment 8). He presented the testimony of Deborah Stern, Kansas Hospital Association.

Written testimony in opposition to the bill was submitted by Andy Schlapp, Sedgwick County (Attachment 9).

Written testimony in opposition to the bill was submitted by Eric Sartorius, City of Overland Park

MINUTES OF THE House Elections and Governmental Organization Committee at 3:30 P.M. on January 31, 2007 in Room 231-N of the Capitol.

(Attachment 10).

Jerry Slaughter, Kansas Medical Society, testified neutral to the bill (Attachment 11).

Chairman Burgess closed the hearing on **HB 2054**.

HB 2085 Open meetings; recording of executive sessions

Chairman Burgess opened the hearing on **HB 2085**.

Doug Anstaett, Kansas Press Association, testified in support of the bill (Attachment 12).

Harriet Lange, Kansas Association of Broadcasters, testified in support of the bill (Attachment 13).

Sandy Jacquot, League of Kansas Municipalities, testified in opposition to the bill (Attachment 14).

Donna Whiteman, Kansas Association of School Boards, testified in opposition to the bill (Attachment 15).

Randall Allen, Kansas Association of Counties, testified in opposition to the bill (Attachment 16).

Diane Gjerstad, Wichita Public Schools, testified in opposition to the bill (Attachment 17).

Chad Austin, Kansas Hospital Association, testified in opposition to the bill (Attachment 18). He presented the testimony of Deborah Stern, Kansas Hospital Association.

Written testimony in opposition to the bill was submitted by Andy Schlapp, Sedgwick County (Attachment 19).

Written testimony in opposition to the bill was submitted by Eric Sartorius, City of Overland Park (Attachment 20).

Jerry Slaughter, Kansas Medical Society, testified neutral to the bill (Attachment 21).

Chairman Burgess closed the hearing on **HB 2085**.

The meeting was adjourned.

The next meeting is scheduled for Thursday, February 1, 2007.

House Elections and
Governmental Organization Committee

Date 1-31-2007

Name	Representing
Richard Gannon	KPA
Diane Gjerstad	Wichita Public Schools
Chad Austin	KHA
Doug Anstaett	KPA
Sandra Jacquot	LKM
Randall Allen	Kansas Association of Counties
Harriet Lange	Ks Assn of Broadcasters
Matt Bryant	Co-Lin Corp
Susan Ross	KACCT
Mark Tallman	KASB
Doug Smith	Pinegar Smith & Associates
Andy Schlapp	Sedgwick County
[illegible]	LGR
[illegible]	KASB
JERRY SLAUGHTER	KNEA
DAN MORIN	KS Medical Society

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

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BILL OTTO

HB 2054

HB 2054 allows any member of any public board to ask that an executive session be taped and sealed. It is similar to a measure last year but exempts attorney/client privilege.

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. 31, 2007

To: Rep. Mike Burgess, chairman of the House Committee on Elections and Governmental Organization, and committee members

From: Doug Anstaett, executive director, Kansas Press Association

Re: HB 2085

Thank you, Mr. Chairman, and members of the committee, for this opportunity to once again state my support for a bill that will increase the public's trust in the governing process in Kansas.

I'm going to take a slightly different approach today. Rather than simply regurgitate past testimony on this issue, which many of you have heard before, I want to ask you a simple question:

If public officials are breaking the law during an executive session, how in the world will citizens ever know about it? The meetings are closed. Because there is no available independent method of verification, any suspicions of illegality are consequently reduced to a "he said, she said" debate, such as this:

"Madame Chairman, I believe we just broke the law."

"No, we didn't. You can't prove it, anyway."

Our issue is as simple as that. There is no way under current law to raise the level of public trust in the process, or to force public officials to comply.

Today, our opponents will argue that "most" public officials work hard to do what's right, some of them for little or no pay. We agree. But this bill isn't aimed at "most" public officials. It's aimed at those who break their vow to uphold the law. It's aimed at those who deliberately break the Kansas Open Meetings act, simply because they can.

Is tape recording of executive sessions the right answer? We think it is. Tape recording would provide cover for the innocent and a fairly effective deterrent for the guilty. The innocent could, if the need arose, use the tape to substantiate that what they had done was legally permissible. The guilty, if they knew what was good for them, would simply get back to the legally protected topic of discussion.

We don't claim to have cornered the market on all wisdom at the KPA. If tape recording is not the solution, then why won't our perennial opponents step forward and suggest a reasonable, verifiable way to ensure that executive sessions proceed according to the law, rather than line up against "our" solution?

Under KOMA, public officials are allowed 14 different reasons to legally close a meeting to discuss official business, including such subjects as personnel matters, pending legal matters, preliminary discussions about the purchase of real estate and security matters.

We are willing to allow closed sessions for those purposes. But we draw the line right there.

Talking Points to Consider

• Kansas law says it is "against the public policy of this state for any public meeting to be adjourned to another time or place in order to subvert the policy of open public meetings." Discussions that stray outside the law are in fact illegal, yet the public is denied knowledge of the illegality by the very nature of executive sessions.

• Recording would only occur if a member of a public body believes the discussion did not fall within the exceptions in the Kansas Open Meetings Act or within the motion made to justify the executive session.

• The more likely effect of this legislation will be to bring an end to any discussion that is illegal under KOMA. If no illegal discussion takes place, these tape recordings would never be heard by the public.

• We know most board members are conscientious and want to do the right thing. This legislation protects them because it would also create a record that could be used to counter false claims by the public about the legality of a closed session.

• This legislation is not designed to "chill" discussions in executive session, but to keep those discussions within the 14 exceptions included in KOMA.

• In the rare times it would be used, a tape would provide clear evidence that the law was being obeyed — or violated. The evidence would be provided by the members themselves in their own words, making it impossible for someone with a grudge to make a baseless charge.

• Rather than discourage good people from seeking office, tape recorded executive sessions also would provide assurance that their words or actions could not be twisted or misrepresented by their political opponents.

• A court will provide the insulation necessary to ferret out the responsible protests from the irresponsible claims. The bill says the court "shall weigh" any prejudicial effects to the public interest that might result from the public disclosure of the content of the meeting.

• Executive sessions by their very nature breed suspicion. Why not allow the public some semblance of security that what is being discussed is protected by the exceptions in KOMA?

• There are many board, commission and council members who are frustrated by these illegal discussions but have no recourse but to leave a meeting. Let's give them another tool to keep discussions within the exceptions approved in KOMA.

• We've seen at the national level, under both Democratic and Republican administrations, how "trust me" government doesn't work. Former President Ronald Reagan had it right: "Trust, but verify."

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: June 12, 2006 3:03:58 PM CDT
To: sentinel@kspress.com

PATRICK HENRY ONCE SAID THAT LIBERTY IS NEVER SECURE AS LONG AS GOVERNMENT DOES BUSINESS IN SECRET.

Unfortunately, events do occur in Kansas that our Founding Fathers would deem unacceptable. So, from time to time, you will be receiving "The Liberty Sentinel," which is an article about open government that may be of interest to you. If you have questions regarding the following information, please contact the contributing newspaper or The Kansas Press Association at www.kspress.com.

The Liberty Sentinel
FORT SCOTT BUSINESSMEN SAY CITY VIOLATED KOMA
(Fort Scott Tribune) Two local business owners say Fort Scott city officials violated the Kansas Open Meetings Act when they met to tour a building without notifying the public. Thom Prue and Mike Lancaster filed documents last month with the Bourbon County Attorney and Kansas Attorney General's Office alleging the violation. A group of city staff and commissioners toured the Newman Young Clinic in Fort Scott April 11 to examine the building. The owners of the clinic had offered the building to the city for use as a city facility.

"The press should have been notified prior to the walk-through and the public notified," said Fort Scott City Manager Richard Nienstedt in a statement released after the tour. "That was inadvertently not done and was an oversight by city staff."

In his statement, Nienstedt said there was no talk during the tour about acquisition or modification of the building. However, Prue and Lancaster contend in their complaint that one commissioner said at a public meeting April 19 that discussion of the potential use of the building had taken place during the tour. Lancaster said the experience of current commissioners and staff should have taught them the ins and outs of KOMA.

Bourbon County Attorney Terri Johnson said the investigation was under way. She said she could not comment on details of the complaint. The investigation is expected to be completed by the end of May.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

Submitted by:
Richard Gannon, KS. Press Assoc.
Topeka, KS.

House Elections & Gov. Org.
Date: 1-31-2007
Attachment # 3

June 15, 2004

PATRICK HENRY ONCE SAID THAT LIBERTY IS NEVER SECURE AS LONG AS GOVERNMENT DOES BUSINESS IN SECRET.

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The Liberty Sentinel

FORMER FRANKLIN COUNTY EMPLOYEE GETS $150 BILL FOR RECORDS REQUEST

(Ottawa Herald) A former county employee who clashed with Franklin County Clerk Shari Perry said she's been told she'll have to pay $153.95 to see copies of county records. Perry said the bill presented to Becky Ortega, former county human resources director who requested the records, is legitimate.

Ortega said she asked Perry to see copies of bills from the county's accounting firm and county counselor for the first two months of this year. The charges included $2.75 for copies and $151.20 for legal review. The invoices were turned over to the county counselor to ensure nothing in them violated attorney-client privilege, Perry said.

However, Ortega said that last year, those who supported Perry during a series of disputes involving the county commission had no problem getting copies of county bills and documents from Perry – in some cases exposing the county to legal liability. Ortega said she decided to file her request after another former county employee had difficulty getting documents relating to the county's pay plan from Perry's office.

Under the Kansas Open Meetings Act, agencies may charge reasonable fees for copies, including the cost of staff time. But Ortega says the county did not charge $120 per hour for open records requests until she made her request.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

6/21/04

PATRICK HENRY ONCE SAID THAT LIBERTY IS NEVER SECURE AS LONG AS GOVERNMENT DOES BUSINESS IN SECRET.

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The Liberty Sentinel

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. One way the law is broken is by a "gathering of majority of a quorum." Quorum for the parks board is six members. However, Mike Merriam, an attorney for the Kansas Press Association, said that a series of meetings – regardless of the number of board members present – to discuss business would constitute "serial meetings," which two opinions rendered by the Attorney General in 1998 declare illegal. He added that e-mail discussions could be a form of serial meetings.

Carpenter also told board members that bylaws allow the group to meet in closed session to discuss the policy. Merriam said the Open Meetings Act contradicts that statement. Carpenter said his boss – Unified Government Legal Director Hall Walker – told him to make these recommendations to the board.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: June 23, 2006 10:04:08 AM CDT
To: <nschings@kspress.com>
Reply-To: rgannon@kspress.com

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The Liberty Sentinel
WICHITA BOARD CLOSES MEETING TO PUBLIC
(Wichita Eagle) A Wichita official told Old Cowtown Museum board members last month that they needed to develop a plan to eliminate an estimated $300,000 shortfall for this year and a projected $345,000 shortfall for 2007. The board then closed its meeting to the public to discuss a consultant's study that in March recommended either selling Cowtown or spending between $5 million and $16 million to preserve its buildings and artifacts. Board members voted to go into the closed session with their attorney and did not offer any further reasons for closing the meeting. The board's decision to close the meeting was objected to by Timothy Rogers, an assistant managing editor of The Wichita Eagle. Rogers hand-delivered a letter - written by The Eagle's attorney, Lyndon Vix - to the Cowtown board chair.

"...We encourage the Board to conduct its business in open session as a matter of sound policy," Vix wrote. "Given the extent to which Cowtown relies upon tax funding, it would be inappropriate for the Board to engage in discussion and decision-making on important issues outside of public view."

About 60 percent of the museum's $1.4 million budget - or $834,000 - comes from city and county taxpayers. At least two board members said afterward they were not comfortable with the decision to close the meeting.

"I am very upset over them closing the meeting to the media to discuss a consultant's report paid for by taxpayers," said Sedgwick County Commission Chairman Ben Sciortino, a Cowtown board member who did not attend the meeting. "This is an organization that relies heavily on public dollars and yet they are saying they don't want the public in for something they paid for."

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: June 29, 2006 10:41:15 AM CDT
To: <rgannon@kspress.com>
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The Liberty Sentinel

LINN COUNTY RESIDENTS TO APPEAL RECALL PETITION IN COURT
(Linn County News) In response to Linn County Attorney John Sutherland's denial of an attempt to circulate a petition to recall Linn County Commissioner Larry Hall, residents Wes McClain, Keith Bloomfield and Sandra M. Goucher filed May 25 to appeal Sutherland's decision in district court.

Alfred Kolom, an attorney representing the plaintiffs, said if the judge rules in their favor, the goal would be to place the recall question on the general election ballot or, if necessary, on a special election ballot. The plaintiffs, who filed their original petition for recal April 1, allege Hall has violated the Kansas Open Mettings Act and spent funds prior to receiving commission approval in a public meeting.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: July 11, 2006 11:36:56 AM CDT
To: <rgannon@kspress.com>
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The Liberty Sentinel
POTTAWATOMIE COUNTY ATTORNEY REVIEWS KOMA WITH COMMISSION
(Wamego Times) Members of the Pottawatomie County Commission asked County Attorney Gary Conklin to review the requirements of the Kansas Open Meetings Act at a June 5 meeting. The request followed an allegation by Commissioner Barbara Kolde that the commission failed to give notice of a May 30 meeting between the commission and the Manhattan City Commission to discuss growth issues. Kolde attended the joint meeting, but said she sat in the audience.

Kolde, who contacted the Kansas Press Association about the alleged violation, said she did not intend to pursue a formal complaint over the allegation. Kolde said questions from her constituents prompted her to look into the matter.

"The whole key is whether public business is discussed," Conklin told the commission June 5. "Whether it's a work session or an informal gathering, if public business is discussed, it's a public meeting."

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

[On June 12 the Pottawatomie County Commission adopted a resolution stipulating that the notice of the date, time, and place of any regular or special meeting shall be furnished to anyone requesting it, as provided by the Kansas Open Meetings Act (KOMA). For efficiency, the notice will be provided by e-mail unless mail or telephone contact is requested specifically.]

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: July 19, 2006 10:24:45 AM CDT
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The Liberty Sentinel
STUDENTS SAY RETALIATION'S REASON TRUSTEES REJECTED SUMMER PAPERS
(Johnson County Sun) "Was it a complaint?" was the top story in the April 13, issue of The Campus Ledger, the student newspaper at Johnson County Community College. The story revealed a 2003 memo detailing college President Charles Carlsen's alleged unwelcome advances toward a female employee. He denied the allegation before resigning April 20. College trustees scrambled to do damage control by hiring legal and public relations advisers following the story. The Ledger in breaking the Carlsen story identified board President Elaine Perilla among a few people who knew about the harassment issue without notifying the entire board, which employed Carlsen.

Ledger staff members planned to continue covering the unusual events by publishing two summer issues. The paper ended the school year with a surplus of roughly $38,000; the highest estimated cost for publishing the issues is $12,600. College trustees denied permission for the staff to produce the summer issues, saying that to do so would set a precedent regarding expenses. Students said they suspect retaliation for the paper's aggressiveness in breaking the Carlsen story. Trustee Jon Stewart cast the lone vote to let the paper publish. He said this summer's campus news justified extra issues.

Ledger faculity adviser Anne Christiansen Bullers said, "This is not a budgetary issue, this is a First Amendment issue." Campus Ledger editor, Miguel Morales called at least some of the trustees' cost concerns a smoke screen. "It's because we wrote the story about Carlsen," he said. "I guess they just figured it's time to silence the newspaper and they chose to manipulate funding as a way to do it."

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: July 25, 2006 11:53:39 AM CDT
To: <rgannon@kspress.com>
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The Liberty Sentinel
FORT SCOTT RESIDENTS SEEK GRAND JURY INVESTIGATION OF CITY OFFICIALS
(Fort Scott Tribune) A group of Fort Scott residents is circulating a petition listing 12 alleged violations by city officials with hopes of getting enough signatures to force a grand jury investigation. The allegations include misuse of public funds, misuse of public property, violation of the Kansas Open Meetings Act and violation of the Kansas Open Records Act.

The group must obtain 190 signatures. If the signatures are found to be valid by the county clerk, the district judge will determine whether the petition is in proper form and then convene a grand jury to decide whether to bring criminal charges.

City Attorney Bob Farmer said one particular allegation listed in the petition had already been checked out by state officials. He said a letter from the Department of Commerce had indicated neither the city nor the resident involved had violated any state statute.

"In many instances, we've made attempts to address these improprieties and acknowledge that those attempts have met a stone wall," said Mel Antrium, one of three residents who helped write the four-page petition. "This was a last resort."

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From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: July 28, 2006 11:24:36 AM CDT
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The Liberty Sentinel
HOW WAS THE MONEY SPENT?
(The Topeka Capital-Journal) The Topeka Capital-Journal will file a lawsuit in state district court, trying to pry loose the financial records of a coalition of public school districts that has forced the Legislature to dramatically increase school spending.

The newspaper says Schools for Fair Funding Inc. should be considered a public entity-and abide by the Kansas Open Records Act-because it is supported by taxpayer dollars. The group has denied The Capital-Journal access to its financial data dating back to its creation more than seven years ago.

"I think they're playing hide and seek with the money," said Mike Merriam, the attorney for The Capital-Journal. "What the newspaper and public needs to know is how the school districts are spending money through this corporation."

The nonprofit Schools for Fair Funding is supported by 18 school districts and has won hundreds of millions of dollars in school funding increases from the Legislature following a high-profile legal battle. School districts support the organization based on per-pupil spending that varies year to year, but generally at several dollars per student.

Over the course of the lawsuit, the funding has reached into the millions of dollars. The Kansas Legislative Research Department surveyed districts last year, reporting they paid Schools for Fair Funding a total of $2,095,020. The cumulative total has certainly grown since then.

Merriam argues that because Schools for Fair Funding was founded by public school districts and is directed by school officials and supported by school funds, it qualifies as a public entity.

Alan Rupe, a Wichita attorney who represents Schools for Fair Funding, said the organization is a private entity that simply is providing a service to school districts. "They are not public records," he said.

Rupe said School for Fair Funding has offered to disclose the money it has received from school districts since Jan.1, 2006. But Rupe said the organization won't reveal its spending data, saying the public money it receives becomes private upon receipt.

Meanwhile, the Legislature two years ago passed a law that required organizations that receive at least $350 per year from public agencies to make the receipt and spending of that money open to the public.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: August 3, 2006 10:16:08 AM CDT
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The Liberty Sentinel
KOMA COMPLAINT FILED AGAINST FRANKLIN COUNTY COMMISSIONERS
(Ottawa Herald) An open meetings complaint has been filed with the Attorney General's office against the Franklin County Commission. The complaint stems from a commission meeting during which discussion took place on the creation of a full-time county counselor's position and the naming of Lisa Johnson as counselor.

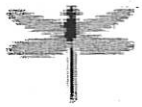
Though there is no record of a commission vote in the county minutes and no record of public notice being given in advance of the move, the commission provided a written release at its June 7 meeting that announced the county would give Scott Ryburn, the county counselor, notice that his contract would be terminated and that Lisa Johnson would become the county's full time counselor. Ryburn is a private attorney who was given the county contract in January. Johnson had been the county's deputy attorney.

Commission Chairman Ed Taylor said that no vote was needed because Johnson already was a county employee and that the change was an internal personnel move handled by Jay Newton, the interim county administrator.

"We in government do many things that justify being called to task and the press is an important means of encouraging people to always question authority. Newton said in a statement. "The ethics, careers and professionalism of both Scott Ryburn and Heather Jones [county attorney] has unjustifiably been challenged. I hope something can be done to correct that."

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: August 8, 2006 11:59:05 AM CDT
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com



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The Liberty Sentinel
MCCUNE COUNCIL ACKNOWLEDGES VIOLATION OF KANSAS OPEN MEETINGS ACT
(Pittsburg Morning Sun and Parsons Sun) At its May meeting, the McCune City Council violated the Kansas Open Meetings Act by adjourning to an executive session to discuss the appointment of an elected official. After the closed session, the council returned to an open meeting and voted to appoint Bill Allen to fill a vacant seat on the council. Under the state's open meetings law, the council can only discuss matters of non-elected personnel, attorney-client relationship, acquisition of property and security measures in executive session.

The council acknowledged the violation at its June 12 meeting. According to meeting minutes, Mayor Chris Peacock "states that he would like to apologize to the citizens because we (the council) violated the Kansas Open Meetings Act." Peacock then asked the council to rescind the vote of the May meeting appointing Allen to the council.

In the minutes, the city attorney said that since the city "did not follow KOMA, then the issue is automatically void so there is no need to rescind the vote." The city attorney also suggested, in the minutes, that because the council was not aware of the violation there would be no cause for the county attorney's office to pursue charges.

Crawford County Attorney John Gutierrez said he had never received a formal complaint about the issue, but after hearing about it he made some informal inquiries.

Gutierrez said his understanding of the situation indicated there was no proof that the council knowingly violated the act. He also said that the subsequent actions were sufficient to correct the mistake..

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: August 16, 2006 10:06:20 AM CDT
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The Liberty Sentinel
COUNTY ATTORNEY CITES CITY COMMISSION FOR MEETING VIOLATION
(Ft. Scott Tribune and Pittsburg Morning Sun) While the Bourbon County Attorney's Office has cited the Fort Scott City Commission with violating the Kansas Open Meetings Act, it's a violation the office said wasn't intentional.

A letter was issued by the county attorney's office to Michael Lancaster and Tom Prue, chairperson and vice chair of the Fort Scott Citizens Advisory Committee, stating that County Attorney Terri Johnson concluded that the commission had violated the Kansas Open Meetings Act by giving no prior notice before conducting a walk through of the Newman-Young Clinic. The city is considering using the clinic's building for expansion of city hall.

In her official statement, Johnson said although KOMA was violated, "I found no evidence that the violation was an intentional act by any commissioner."

Johnson said all of the commissioners acknowledged that a violation had occurred and cooperated with the investigation. The commissioners agreed to undergo training involving the Open Meetings Act and "to establish a system of safeguards to prevent future violation."

Citizens Advisory Committee Chairman Mike Lancaster and CAC member Thom Prue, who filed a complaint claiming the city violated the law, said they disagreed with Johnson's conclusion that commissioners unintentionally violated the law.

"Not with that many people involved," Prue said.

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From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: August 18, 2006 10:02:40 AM CDT
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The Liberty Sentinel
STUDENTS PUBLISH OWN NEWSPAPER
(Johnson County Sun) After being denied college funds to print two summer issues of The Campus Ledger, Johnson County Community College students plan to circulate a different paper on campus.

When college trustees nixed student access June 15 to campus newspaper funds to print summer issues, board President Elaine Perilla said students could print their own paper.

Students met that challenge when area residents donated funds, and the students donated time, to publish The Lexicon.

Funding did not present the only obstacle to student editors Kevin Mimms and Miguel Morales, They said the student life and leadership development director, Pam Vassar, told them they could not distribute The Lexicon on campus based on college policy. After finding nine other publications being distributed on campus, the students appealed the policy decision to interim President Larry Tyree. Tyree granted distribution permission.

"I was surprised at the speed," Mimms said. "He wants things to be open an above board and he said that in his interviews."

Morales said campus rules placed a third hurdle before the staff. He said students could not use the Ledger's circulation boxes, instead, to circulate on campus, staff had to provide boxes.

The Lexicon's first issue deals almost entirely with campus news. Morales said the top story is an interview with Tyree.

Trustees said they voted to deny campus newspaper funding as an unusual expense. The Ledger has never published summer issues. Trustee Jon Stewart cast the lone vote to let the paper publish.

Morales and others associated with The Ledger said the paper had about $30,000 left over, but need only about $6000 to print the two summer issues. They felt the board acted to retaliate against them for reporting on controversial news.

The Ledger in April revealed a 2003 memo detailing then-President Charles Carlsen's alleged unwelcome advances toward a female employee. He denied the allegation before resigning April 20.

The Ledger's follow-up stories included the Faculty Senate's call for openness in picking Carlsen's successor, an alleged second encounter between Carlsen and the female employee and an editorial alleged Perilla knew but did not relay information to the board about allegations against Carlsen.

Morales said The Lexicon's printer produced the issue for less than $2000. The exact cost and printer's name are being withheld for business reasons.

In a related story:

CALIFORNIA LAWMAKERS PASS BILL EXTENDING PRESS FREEDOM TO COLLEGE JOURNALISTS SACRAMENTO, Calif.(AP) The state Senate sent Gov. Arnold Schwarzenegger a bill that would make California the first state to prohibit college administrators from censoring student newspapers.

Sen. Debra Bowen(D) said the bill would give college journalists the press rights as their professional colleagues. Administrators could still discipline students for publishing hate speech, and campus newspapers would still be subject to libel and slander laws.

Schwarzenegger, who received the bill Aug. 10, has not said whether he will sign it.

The bill is in response to a ruling by the 7th. District Court of Appeals in Chicago. The court said university administrators could review articles before publication if their student newspapers are published under the auspices of the college.

The California Newspaper Association and free-speech advocates had argued that administrators might try to apply the ruling in other court districts.

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From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: August 29, 2006 9:36:45 AM CDT
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The Liberty Sentinel
SCHOOLS GROUP OPENS ITS SPENDING RECORDS
(The Topeka Capital-Journal) Schools for Fair Funding Inc. released documents providing the most detail to date as to how the organization has spent more than $2.9 million contributed by 19 Kansas school districts. The group had for months refused to release its records.

The Topeka Capital-Journal sued in Butler County District Court last month to force Schools for Fair Funding to open its records. And Attorney General Phil Kline made his own request for records under a 2005 law and promised legal action if the group refused.

The released information indicates most of the money-about $2.26 million-has gone to attorneys, with an additional $158,000 spent on expert witnesses. The documents also show Schools for Fair Funding has spent about $474,000 for lobbying. That spending reached a high point this year at more than $136,000.

Still, The Capital-Journal plans to continue with its suit, asking that the court find Schools for Fair Funding a "public agency" subject to all of the provisions of the Kansas Open Records Act.

"We welcome the information Schools for Fair Funding released, but it doesn't change our belief that because the organization receives money from public entities it should be considered a public agency and, therefore, subject to the Open Records Act," said Pete Goering, executive editor of The Capital-Journal. "We will continue to pursue that in the courts."

BREAKDOWN OF CONTRIBUTIONS TO SCHOOLS FOR FAIR FUNDING BY SCHOOL DISTRICT:
-Salina, $415,262
-Derby, $325,768
-Hays, $302,044
-Dodge City, $301,955
-Emporia, $260,417
-Newton, $193,443
-Leavenworth, $193,254
-Great Bend, $175,004
-Wichita, $172,294

-Arkansas City, $145,878
-Manhattan, $136,816
-Winfield, $129,863
-Independence, $115,655
-El Dorado, $103,082
-Augusta, $98,310
-Garden City, $41,722
-Kansas City, Kan., $35,000
-Fort Scott, $33,402
-Liberal, $25,040

TOTAL $3,204,217

More than 100 other public school districts have said they never gave money to Schools for Fair Funding. They feared that the group's activities would force the Legislature to back out of funding commitments to rural schools to give more money to urban schools.

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From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: August 31, 2006 9:46:33 AM CDT
To: <rgannon@kspress.com>
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The Liberty Sentinel
JUDGE DENIES LINN COUNTY RECALL PETITION, LEAVES DOOR OPEN FOR REVISED PETITION
(Linn County News) A district judge July 17 sided with the Linn County Clerk in denying a request by Linn County residents to circulate a recall petition regarding County Commissioner Larry Hall. However, District Judge Richard Smith wrote in his decision that if a specific sentence were redacted from the petition, "the petition would be otherwise legally sufficient for circulation."

Wes McClain and other residents have sought to recall Hall citing an alleged private meeting between Hall, another commissioner and a contractor; a purchase by Hall of an $800 rock rake for the county that was allegedly made prior to approval of the expenditure by the commission; and public distribution by the county of county employee names and social security numbers. Judge Smith agreed the distribution of employee names and social security numbers "[lacked] wisdom," but he disagreed with the plaintiffs' wording in the recall petition that the distribution was "illegal."

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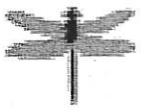
From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: September 6, 2006 10:20:28 AM CDT
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com



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The Liberty Sentinel
RECORDS NOT SO OPEN AFTER ALL
(The Topeka Capital-Journal) Thick black lines on hundreds of Schools for Fair Funding documents obscure the work of attorneys, educators and strategists involved in the landmark lawsuit that forced the state to adopt huge increases in public school funding.

The documents were released in response to a lawsuit brought against Schools for Fair Funding by The Topeka Capital-Journal, which seeks to have the organization declared a public agency subject to the Kansas Open Records Act. Attorney General Phil Kline made his own request for records under a 2005 law and promised legal action if the group refused.

Alan Rupe, attorney for the non-profit organization that pressed school funding litigation in state and federal courts, said the heavy redaction of content in 2,700 pages of material was legally justified.

"One thing we're not going to do is disclose attorney-client information," the Wichita attorney said.

However, a Topeka attorney representing The Capital Journal said it was unlikely a judge would applaud Rupe's decision to keep secret so much of Schools for Fair Funding's documentation.

"Of the redacted material," said attorney Mike Merriam, "very little will be found by a court to actually be privileged."

The materials released by Schools for Fair Funding does offer a glimpse at some expenditures of the $3.2 million contributed by public school districts. Most of the money was spent on legal services. Some quirky spending was also discovered.

Alan Rupe charged his clients $475 for reading Kansas Board of Education member Connie Morris' tell-all autobiography "From the Darkness: One Woman's Rise to Nobility." He read the book prior to questioning her at a deposition tied to the school funding litigation against the state.

Richard Olmstead, a lawyer in Rupe's Wichita firm, charged the school districts for appearing in July 2005 as a guest lecturer at Wichita State University. His total bill to Schools for Fair Funding that day was

$1,145.

John Robb, a Newton attorney who served as co-counsel to Rupe, was in Topeka during May 2000 to attend meetings related to the litigation. He billed Schools for Fair Funding a rate of $125 for a 12-hour workday, pocketing $1500. He also charged his client for a $13 parking ticket he received in Topeka.

While millions flowed into attorneys' pockets, thousands more was spent crafting a public image for the lawsuit and persuading lawmakers to change school spending policy.

Of that money, Schools for Fair Funding has spent $474,000 on a pair of lobbyists - most recently at $10,000 per month - to try to convince lawmakers to increase school funding. Another $10,000 was reimbursed to them from Schools for Fair Funding to pay for meals, copying, mileage and golf outings with legislators. There were also reimbursements for doughnuts, Cedar Crest's annual Easter egg hunt, and a charity shrimp peel.

Correspondence released between Schools for Fair Funding and their Topeka lobbyist, John Peterson was subject to broad redaction. That includes a 1999 letter from Peterson outlining what Peterson could do for the organization. Everything except date, address, greeting, and the phrase "Services would include the following" was obliterated.

Senate Majority Leader Derek Schmidt said information about billings to Schools for Fair Funding would fuel "coffee-shop talk," but they shouldn't get in the way of a more substantive discussion about use of taxpayer money by public school districts to battle the state in court.

"This is all about taxpayers financing litigation against themselves," Schmidt said. "I just strongly doubt that most taxpayers think that is a good idea."

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From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: September 8, 2006 9:42:15 AM CDT
To: <rgannon@kspress.com>
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The Liberty Sentinel
CITY COMMISSION TO BE SUMMONED BEFORE GRAND JURY
(By The Associated Press) A city advisory committee has submitted a petition to summon the Fort Scott City Commission to testify before a grand jury.

The Citizens Advisory Committee's petition alleges city misuse of public funds, illegal distribution of state funds, misuse of confiscated property, illegal dumping in a flood plain and insulting and discriminating acts by city officials against private citizens.

Committee members submitted the petition, which contained more than 400 signatures, including a mandatory 190 verified signatures, to the Bourbon County District Court.

A grand jury would determine if there's probable cause that the city committed the alleged violations. A grand jury must be summoned within 60 days after a petition has been submitted, according to state statute.

Fort Scott city officials declined to comment.

The city was previously cited by the county attorney's office for violating the Kansas Open Meetings Act. However, the violation didn't seem intentional, county attorney Terri Johnson said in a July 7 letter. City officials acknowledged the violation and underwent a review session on the open meetings act.

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From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: September 12, 2006 11:51:20 AM CDT
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The Liberty Sentinel
MEMO WARNS AGAINST E-MAIL
COUNCIL TOLD THAT USE AT MEETINGS COULD VIOLATE LAW
(The Topeka Capital Journal) An inquiry from a citizen prompted Topeka city attorney Brenden Long to send out a recent memorandum discouraging Topeka City Council members from using e-mail to communicate with each other during their meetings.

Long wrote in an e-mail to The Topeka Capital-Journal that his concerns focused on Kansas Open Meetings Act provision 75-4317a, which defines an open meeting as being "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."

Long said it takes five members of the nine-member city council to constitute a quorum, with three constituting a majority of the quorum. Consequently, he said, an electronic message discussing city business sent by one council member to two or more others would appear to fit that definition.

The e-mail concern became public when Mayor Bill Bunten mentioned it at a council meeting. Bunten said that some people who watch council meetings had told him they thought some council members were e-mailing each other as those meetings were in progress.

"It appears that conversations were going on by e-mail between council members that the public was not privy to-and they should be, because it's an open meeting," Bunten said. "We need to have an understanding that in an open meeting all communications and conversations should be public."

Long said it was his perception that e-mail exchanges between only two council members don't constitute an open meeting's violation; nor do e-mail discussions involving three or more council members about a matter that isn't city business.

"As Mayor Bunten indicated, I have told council members that they should be careful about how they communicate with each other both in and out of public meetings," he said. "There are rules and laws that must be heeded in these matters, as well as issues of public perception concerning the decision-making process."

Long's memo sent to council members was marked "confidential" which he said is common practice when he shares attorney-client communications with the council.

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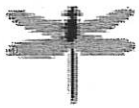
Subject: **The Liberty Sentinel**
Date: September 14, 2006 10:28:00 AM CDT
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com



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The Liberty Sentinel
A PIG FARM NEXT DOOR
(Anderson County Review-Editorial) There's a hole in Kansas' local planning and zoning laws that keeps the public from having access to the full process of P&Z hearings to rezone property. It's an area that should be fixed by state legislators next session to give Kansans full information about those zoning issues.

The hole in the law became apparent recently when the Anderson County Planning and Zoning Commission held a public hearing on a rezoning application which would have paved the way for yet another step-a special use permit application-to place a rock quarry on the rezoned land. Neighbors were understandably concerned, and county commissioners, pressured by the applicant's attorney, made the odd move of sending the once-denied rezoning request back to P&Z with instructions to consider only the merits of the rezoning request-and ignore the knowledge it was all aimed at placing a quarry on the land.

P&Z board members heard from both sides during a public hearing in which the audience of 50 or so people attended. The board then closed the hearing and proceeded to go into "executive session," meaning to meet outside the presence of the public, to deliberate the information and find a conclusion. By law the board would have had to come back into public session to announce and record their decision, but the discussion among the board members, their interpretation of the facts and application of logic to the issue could have been conducted wholly in secret.

One of the board members refused to vote on the motion, saying she didn't believe it was legal to close the meeting to the public. The Review also protested, and the P&Z board agreed to keep the meeting open while they literally pushed their chairs into a circle, deliberating the task before them in a huddle at the front of the room while the crowd waited.

Only a handful at the meeting took advantage to stand by the huddle to listen in. Most of the rest sat in the room, chatted quietly among themselves, and waited for the board to render an opinion.

Though unorthodox, what the P&Z board did was completely legal. It would also have been legal for the board to close the meeting and have its conversation truly in private before coming back to open session

to render its decision. We applaud them for not doing that. It's important to note that Kansas' open meeting laws allow government to go into closed session on certain occasions like this; but that action is never required, as some publicly-elected officials and their staffs believe.

The obvious concern is that neighbors to the property as well as the applicants themselves involved in such an issue should have the right to hear what logic an appointed board of regulators uses to interpret the information provided in the hearing. But interpretations of the state's law defining the authority of those boards allows them to deliberate in secret. That's wrong.

What justification can there possibly be to allow non-elected members of a zoning board to shut the public out of such deliberations? If someone wanted to put a pig farm next to your house, wouldn't you want to know how the decision was made, and why?

Legislators should act immediately next session to plug this gaping hole in the public's right to know.

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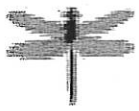
From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: September 19, 2006 11:21:46 AM CDT
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com



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The Liberty Sentinel
BARTON COUNTY COMMUNITY COLLEGE SETTLES WITH FORMER JOURNALISM ADVISER
(The Associated Press) Barton County Community College has settled a lawsuit with former journalism instructor Jennifer Schartz who alleged she lost her job over the student newspaper's coverage of an athletic department scandal in which eight people have been convicted. Schartz said she will receive $130,000 under the settlement of her federal lawsuit. She had also sought-but did not receive-reinstatement plus a grant of tenure at the Great Bend school.

Schartz spent three years as a non-tenured, part-time instructor and adviser to the student newspaper before the school's trustees voted in April 2004 against renewing her contract, despite recommendations from her supervisors and then-president Veldon Law. In her lawsuit, Schartz claimed she was dismissed in retaliation for exercising her First Amendment rights as a faculty adviser, for supporting the rights of her students and for refusing to censor the content of the student newspaper. College officials said they were not required to explain the dismissal of a non-tenured employee. They also argued the school and its personnel were immune under Kansas law from the damages sought by Schartz. Allen Glendenning, the school's attorney in the case, said Wednesday that Schartz had lowered her financial demands to a point where it made more sense to settle than to continue litigation. He referred further comment to the college, which had no immediate statement.

Schartz was the adviser to the campus newspaper--The Interrobang - when it ran stories on what was then an internal investigation into academic misconduct involving coaches and athletes. Seven former coaches and the former athletic director were eventually indicted on federal charges that included using work-study and campus employment programs to pay athletes for work they didn't do, and falsifying athletes' academic records.

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3-26

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: September 21, 2006 10:24:21 AM CDT
To: <rgannon@kspress.com>
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The Liberty Sentinel
RECALL DECISION REMAINS IN APPELLATE PROCESS
(Linn County News) An appeal by the County Commission concerning a petition for recall of Commissioner Larry Hall is still in the appellate process at this time.

The appeal is designed to determine whether there must be an actual violation of open meetings or if an allegation is sufficient for recall.

The petition for recall was originally filed with the Linn County Attorney's Office in the first part of April 2006. County Attorney John Sutherland denied that petition on the basis that there were no grounds for recall of the elected official.

A second recall petition that was dated April 25 and filed with the county attorney was also denied on the same grounds.

On May 25 an appeal was filed in the District Court of Linn County asking for a review of the county attorney's decision to deny the circulation of a petition for recall.

After hearing arguments from both sides in July, Judge Richard Smith ruled that the petition was "legally sufficient for circulation" with the removal of one sentence alleging that Hall was responsible for the release of county employee's social security numbers during an open meeting.

Following Judge Smith's decision the county commissioners, with Hall recusing himself for the action, voted to file an appeal of the decision.

Gary Thompson, legal counselor for the county commissioners, stated the purpose of the appeal was to obtain clarification of the legislation regarding recall petitions. Thompson explained that Sutherland interpreted the legislation as saying mere allegations of open meetings infractions were insufficient to warrant a recall and there must be an actual conviction of a violation.

Judge Smith's interpretation of the same legislation was that allegations were sufficient to warrant a recall.

"It needs to be clarified," stated Thompson in an interview on Sept. 11.

The appeal filed by the commissioners is at the point in the appellate process where the document statement has been filed and the records have been sent. The Court has not decided to actually hear the case.

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From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: September 26, 2006 2:09:42 PM CDT
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The Liberty Sentinel
MEETING IN SECRET
(Gardner News-Editorial) The Gardner City Council met in closed-door session for 45 minutes Aug.28, but no one will ever know why.

The Kansas Open Meetings Act (KOMA) requires tax-funded agencies, such as city councils and school boards, to conduct business in public to ensure openness and accountability.

However, the law contains one exception-the "executive session"- that is fraught with potential for abuse.

Public officials are allowed under KOMA to meet in closed-door executive session meetings to discuss matters pertaining to non-elected personnel, attorney/client privilege and land negotiations.

The intent of the law is good. There is no public benefit in discussing a non-elected employee's job performance in an open meeting. Nor would it behoove taxpayers if school districts negotiated land purchases in public. It would only drive costs up.

The problem is that executive sessions are based on the honor system. No one really knows what is discussed during these meetings except for the participants.

This flies in the face of democracy.

The Gardner, Spring Hill and Edgerton city councils, and both USD 230 and 231, use the executive session privilege frequently, usually to discuss personnel and negotiations.

However, it was curious when the Gardner City Council met in executive session for 45 minutes last Monday before voting to put the annexation of the proposed BNSF intermodal site on the November public ballot.

The council moved to enter executive session to consult with the city attorney to "discuss matters which would be deemed privileged."

In all likelihood, the council consulted its attorney on legitimate legal matters that is allowed by KOMA.

We don't doubt that.

But to the average person who attended the meeting, it appeared that the council discussed privately whether it was going to put the annexation issue to a public vote.

We're not faulting the City Council. We're faulting the executive session exception itself.

The potential for governmental agencies to use executive sessions to escape public and media scrutiny is real.

It also is possible for discussion to begin on a legitimate executive session topic and then stray onto something that should legally be discussed in public.

A solution would be requiring executive sessions of tax-funded agencies to be tape recorded.

For years, the Kansas Press Association has lobbied the Legislature for such a KOMA safeguard.

Here's how it would work: A city council enters executive session. They tape record the meeting. The tape is stored for a determined amount of time. If someone raises a question on the legality of the executive session discussion, a judge would listen to the taped portion of the meeting in question and make a determination.

Sound Simple?

It is.

And it should be the law.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: September 28, 2006 9:51:44 AM CDT
To: <rgannon@kspress.com>
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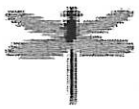

PATRICK HENRY ONCE SAID THAT LIBERTY IS NEVER SECURE AS LONG AS GOVERNMENT DOES BUSINESS IN SECRET.

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The Liberty Sentinel

CAPITAL-JOURNAL LAWSUIT DRAWS FIRE
(Topeka Capital-Journal) Attorneys representing Schools for Fair Funding urged a judge earlier this month to dismiss an open records lawsuit filed against the organization by the Topeka Capital-Journal. The attorneys also asked a Butler County judge to penalize the newspaper for what they described as a meritless campaign to "harass, humiliate and intimidate," and drive up the organization's legal expenses.

The lawsuit filed in July by the Capital-Journal is intended to determine whether Schools for Fair Funding, which is financed by the state and local tax collections of 19 public school districts in Kansas, should be regarded as a public entity subject to the Kansas Open Records Act. In response the newspaper's request for financial information, Alan Rupe, the organization's lead attorney, released 2,700 documents in August related to its revenue and expenditures. However, significant portions of the text were marked out. Redacted material was protected by attorney-client privilege, Rupe said. The new court filing from Schools for Fair Funding indicates the organization "on its own accord" provided financial records to the newspaper.

"The Capital-Journal does not believe Kansas taxpayers should have to rely on a lawyer's good will to review the activity of a group made up of, and funded by, public school district," said Wayne Stewart, managing editor of the Capital-Journal. "We're not going to back off. We want the courts to decide whether Schools for Fair Funding is a public agency and subject to the open records act."

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* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: October 3, 2006 11:00:34 AM CDT
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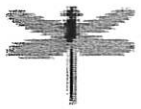

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The Liberty Sentinel
CITY NEEDS TO BE FORTHCOMING ON LEGOLAND TALKS
(Olathe News-Editorial) City staff and the City Council are wrestling with the Legoland development behind closed doors. While this is understandable to some degree, we hope they'll be as forthcoming as possible with details on this development. It's simply too big a deal for us to not have some idea on what's happening.

The city has been trying to hammer out a deal with RED Development.

How the amusement park gets built is not a secret. What RED wants isn't a secret. The council's appetite for tax breaks isn't a secret. So why hide under the guise of executive session?

The city will say it's in a position of negotiating weakness if it has to put all its cards on the table during negotiations.

Nobody is arguing that taxpayer subsidies would be necessary to make this deal happen. Transportation development districts would be one component. These sales taxes are added to purchases made on-site to help pay for transportation infrastructure, including curbs and turn lanes.

Sales tax and revenue (STAR) bonds will be considered by the state.

Hundreds of millions of dollars in taxpayer sales would be collected to help the developer pay for the park's infrastructure.

The city likely would be on the hook for general obligation bonds. How much? Estimates seem to keep rising like the water that poured over New Orleans a year ago today.

Meanwhile, all of the negotiations take place hidden from taxpayer purview. The project's early stages remind us of the arena project, which ultimately was a grand swing and a miss by either the city or developer.

We'll never really know because the council never allowed us into the back-room dealings until the project

was virtually dead.

The Kansas Open Meetings Act allows for executive session and our council is following the law, at least by the spirit if not the letter. But the statute is weak. It's written such that cities can interpret its vague language as they see fit, and the public is left wondering what is happening behind closed doors.

What shouldn't happen is for the city to work out every angle of a development deal in executive session and then have a public meeting under the pretense of doing the people's business in public. If the city is going to make a billion-dollar sausage, paid for at least half or more with taxpayer dollars, taxpayers deserve to see how that sausage is made.

The people have every right to review the deal before the councilmembers' opinions are finalized.

This could be the largest project in the history of the city.

It could be a huge success. It also has the potential to bankrupt the city.

The council and staff owe it to residents to keep us informed on a development of this magnitude.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
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Date: October 5, 2006 10:01:25 AM CDT
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The Liberty Sentinel
DON'T HIDE IT Public having access to information about how its money is spent is always a good thing

(The Topeka Capital-Journal Editorial) Nonprofit agencies watching the lawsuit over open records in the Schools for Fair Funding case should have nothing to worry about-as long as their dealings are on the level.

The Kansas Open Records Act requires nonprofits taking in more than $350 a year to make their records available for inspection by the public, and this is a good thing. Any agency that is taking the public's dollars, whether through taxes or charitable contributions, has an obligation to account to those who contribute.

Visit Topeka Inc., which gets its operating funds from the city's hotel tax, is happy to open its financial records. It has concern that the lawsuit might force it to reveal what it considers its trade secrets. It does, after all, compete with other cities to draw convention business and tourists to Topeka, so it thinks its rivals might have access to details of incentives or conversations with prospective visitors.

The competition, though, whether it is Lawrence, or Wichita or Overland Park, has the same obligations to share the details of how they spend their taxpayers' money, so the playing field is level.

The financial scandals in private enterprise that have rocked the nation over the past decade, including the looting of our own Westar, have taught us that we need to ask questions, early and often.

The boards of directors and stockholders of those corporations certainly learned a hard lesson about oversight, but it was too late for such businesses as Enron.

If an agency that uses public funds or solicits funds from the public can't stand up to scrutiny, we need to know it. We need to know it right now.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel--Quiz**
Date: October 12, 2006 10:32:55 AM CDT
To: <rgannon@kspress.com>
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The Liberty Sentinel SPECIAL QUIZ ISSUE

When the U.S. Constitution was signed on Sept. 17, 1787, it did not contain the essential freedoms now outlined in the Bill of Rights. Several of the Founding Fathers viewed them as unnecessary.

However, after vigorous debate, the Bill of Rights went into effect on Dec. 15, 1791. The freedoms guaranteed in this document were articulated in the 45 words written by James Madison that we recognize as the First Amendment to the U.S. Constitution.

While the First Amendment protects many of our basic freedoms, few of us know much about it.

HOW WELL DO YOU KNOW YOUR RIGHTS?

Take this quiz to see if you need a refresher course in American history.

1) The BILL OF RIGHTS is:
A. The first ten amendments to the U.S. Constitution.
B. The statement the police must read when you are arrested.
C. The opening paragraph of the Declaration of Independence.
D. The Preamble of the U.S. Constitution.

2) The First Amendment protects children at school.
A. True B. False

3) Is it constitutional to teach about religion in a public school?
A. True B. False

4) Which of the following is not explicitly protected by the First Amendment?
A. Press B. Privacy C. Assembly D. Religion

5) Which of the following categories of speech is never protected by the First Amendment?
A. Indecent speech on the Internet.
B. Four-letter words.
C. Obscenity
D. Nudity

6) Is it constititutional for a school to require a neutral "moment of silence"?
A. Yes B. No

7) The government can ban song lyrics that most people would find offensive.
A. True B. False

8) Which of the following categories of speech does the First Amendment never protect?
A. Use of Racial epithets.
B. Ridiculing a persons ethnicity.
C. Speech that demeans a person's gender.
D. Speech that violates a person's legal right to privacy.

9) Can a school punish a student for wearing clothing with the Confederate flag?
A. True B. False

10) At which age does the First Amendment begin to protect an individual's right of free speech?
A. 18 B. 21 C. varies by state D. none of these

11) Is the First Amendment first because it is the most important?
A. True B. False

12) In the United States, does the media need to get permission from the government before it publishes critical articles?
A. True B. False

13) Who is considered the "Father of the U.S Bill of Rights"?

A. Benjamin Franklin
B. George Washington
C. George Mason
D. Tim Russert

14) When will the National Bill of Rights Day be celebrated in 2006?

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1) Answer: A. The first ten amendments to the U.S. Constitution.

2) Answer: A. True

3) Answer: A. True

4) Answer: B. Privacy is not explicitly guaranteed by the U.S. Constitution, but rather has been recognized by the Supreme Court to have evolved and "emanated" from the recognition of other constitutional rights.

5) Answer: C. Obscenity is a category of speech - defined by law - that is not protected by the First Amendment. Obscenity, however, is not the same as indecency, profanity or nudity and the First Amendment does protect - to at least some degree - such speech.

6) Answer: A. Yes, as long as it does not encourage prayer over any other quiet activity.

7) Answer: B. The First Amendment protects "offensive" speech in song lyrics and other published material from government censorship. However, the Federal Communications Commission can restrict when "indecent" speech is broadcast over the airwaves.

8) Answer: D. The First Amendment does not protect an individual's right to publish material that invades another person's legal right to privacy. The First Amendment does protect the other three answers to some degree.

9) Answer: A. Actually it depends on the situation. School officials would need to reasonably forecast that the attire would lead to substantial disruption.

10) Answer: D. The First Amendment protects all citizens, regardless of their age.

11) Answer: This is a trick question!
Its ranking implies that it is the most important amendment. However, it did not start out on top. James Madison had the current First Amendment as third, and rose to the top after the first two (one concerned Congress' pay) were rejected. But it is clear that it embodies the spirit and challenge of the United States. It is the oldest expression of expressive and religious freedoms in the world and has been adopted by other nations older than the United States.

12) Answer: B. False

13) Answer: C. George Mason is called the "Father of the Bill of Rights". Mason wrote the Virginia Declaration of Rights, which detailed specific rights of citizens. In addition to antifederalist Patrick Henry, he was later a leader of those who pressed for the addition of explicity stated individual rights as part of the U.S. Constitution, and did not sign the document mainly because it did not contain such a statement. His efforts eventually succeeded in convincing the Federalists to modify the Constitution and add the Bill of Rights. The Bill of Rights is based on Mason's earlier Virginia Declaration of Rights.

14) Answer: National Bill of Rights Day will be celebrated on Dec. 15, 2006.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

How well did you do on the quiz? If you have comments, concerns or wish to share your quiz results-----E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: October 26, 2006 3:12:06 PM CDT
To: <rgannon@kspress.com>
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The Liberty Sentinel
MITCHELL COUNTY ATTORNEY ADVISES COUNTY COMMISSION ON OPEN MEETINGS VIOLATION
(Beloit Call) Mitchell County Commission Chairman Terry Collins asked County Attorney Jess Hoeme about the information the commissioners received regarding an alleged violation of the Kansas Open Meetings Act (KOMA).

Chairman Collins said that the letter the commissioners received was very condescending and convicting of the group.

Hoeme said that he did have enough evidence to send the letter.

County Attorney 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.

Hoeme said that e-mail between commissioners is a violation of the KOMA if the e-mail pertains to county business.

Collins said that the commissioners need advice to see if KOMA has been violated and have been in contact with another attorney. He suggested they hire Jerry Harrison to deal with the matter.

County Attorney Hoeme said that according to statute, K.S.A. 75-4320, the complaint is not against each of the commissioners, it is a private complaint about violating the open meetings act.

Chairman Collins asked if they are able to find out who the formal complaint is from. Hoeme said the he would provide information for the commissioners if they ask.

Hoeme said that he is more than happy to work this situation out with the commissioners. He said that if this complaint can not be resolved it will have to go to court, and the county will not pay the commissioner's legal fees. Hoeme suggested that the group make an appointment to discuss the matter further but the commissioners can not continue to e-mail one another if the e-mail pertains to county business.

Commissioner Palen said that he knows about the KOMA and does not want to pursue it any farther. Commissioner Bunger said that he had no comments on the situation.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: November 2, 2006 10:19:02 AM CST
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The Liberty Sentinel
SUIT PROMPTS PRICELESS GESTURE
(Topeka Capital-Journal) Former Junction City mayors and city council members, Kay Blaken and Dr. Alex Scott, recently sent personal funds to The Topeka Capital-Journal in support of the newspaper's lawsuit seeking disclosure of documents from Schools for Fair Funding Inc. Why? Because they had shouldered the responsibility of managing tax dollars, and they were convinced SPFF should be required to fully disclose how it spent money from the 19 public school districts that funded it.

"The reason it struck me so deeply is that I've been on boards where we've worked with the people's money," said Blanken, adding that she was a member of a public housing authority. "When you're in that position, while you may not want to reveal everything, you're entrusted with those funds and you're responsible for showing people how their money is being spent."

A couple of weeks ago, after discussing the issue among their breakfast group, Blanken and Scott each sent $100 to The C-J to offset the newspaper's legal expenses.

"We thought your cause was just, and we know it's going to be expensive," said Scott, who served as a school board member and state legislator in addition to mayor and council member.

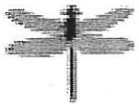
This just doesn't happen, people sending money to newsrooms.

The Topeka Capital-Journal could not be more grateful to Kay Blanken and Dr. Alex Scott. For the record, we are sending back their money along with some of the most sincere thank-you notes you've ever read.

Their support--and their commitment--is priceless.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: November 7, 2006 2:00:02 PM CST
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com



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The Liberty Sentinel
BULLY PULPIT A basic right denied
(Linn Co. News-editorial 10/04/2006) No matter what corner of the ring Linn County residents were lined up behind, all of them were robbed of their constitutional right to cast a vote when the petition to recall District 2 Commissioner Larry Hall was denied due to a technicality.

And, as Commissioner Larry Hall stated in his public address Monday, it's with mixed emotions when he heard the news. It's a bittersweet victory for his proponents and it's a hollow defeat for those asking that the voters of District 2 be allowed to cast their vote on whether they wish Hall to continue in a leadership capacity.

Secretary of State Ron Thornburgh's response to his office's error in directing the county clerk to the appropriate recall petition form was heartening in reference to due process for a voter. It was obvious that Thornburgh feels very strongly about allowing the people to have a voice.

His statement was that 40 percent of the district signed the petition, the required number to place the question of recall on the ballot, and those voters should not be thwarted with a technicality of the wrong form. As of Monday evening, Thornburgh was still in a series of meetings with the Attorney General's Office and others trying to come to a solution whether the voters of Linn County District 2 could place a check mark in a box to keep Larry Hall as a commissioner or remove him.

In a separate suit, the Supreme Court also moved in the direction of letting the voice of the people be heard when they denied Hall's suit asking that an injunction be placed on the question and asking that Judge Richard Smith's decision to allow the petition to be circulated changed.

The Supreme Court denied Hall's suit with a simple statement that the lawsuit was an "inappropriate remedy" to the situation.

The next issue that is in front of the Kansas Appelate Court on Hall's behalf, courtesy of Linn County taxpayers, is the question asking them if the Legislature intended in their Open Meetings legislation that an elected official must be convicted of his crime rather than a county attorney allowing the allegation for recall based on statute.

This sounds like a simple question, but voters beware. If this case goes before the Appellate Court for an opinion and they say the Legislature intended for conviction in cases - all people in the state of Kansas lose their ability to recall elected officials unless they take them to court and get a conviction first.

Open meetings, as voters and those who elect their governments, will change. No longer will there be a transparent government where the electorate knows what their elected officials are doing. Transparency means the public is told when their officials are meeting and why funds are being spent and for what purpose.

A conviction means that it will be much harder for normal people, those who vote their representatives into office, to remove that official from office should he/she begin conducting business out of the public's eye.

The Kansas Association of Counties and the Kansas League of Municipalities are already lining up on the side of a conviction response as they have a proven track record of not agreeing with legislation in place that the public deserves to know what their elected officials are doing.

The Kansas Legislature, on the other hand, has a track record of creating statutes designed to keep the public informed. This is apparent with legislation from two years ago keeping public notices in newspapers rather than allowing governments to put notices on obscure Web sites. Lawmakers were adamant that the public has a right to know and a transparent government is a must. They showed they do not take lightly when abuses of open government occur.

Although the issue may seem one of keeping a county commissioner in his chair, it goes much deeper to the God-given rights of Kansas citizens to know what their elected officials are doing and to choose to remove them from office.

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From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: November 16, 2006 1:27:07 PM CST
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The Liberty Sentinel

OPEN GOVERNMENT
The issue: A tax-funded lobbying group refuses a newspaper's request to open its financial records
Our Views: It's the taxpayers' money and they have a right to know how it is being spent

(Gardner News) Attorneys representing a lobbying group that uses tax dollars to leverage more money out of taxpayers' wallets seem to epitomize everything that is wrong with government these days.

Government always works best when it is conducted in the open. Backroom dealings almost always breed scandal. Even when government actions are kept secret for the best intentions, the results rarely build upon public confidence.

The Topeka Capital-Journal is suing Schools for Fair Funding (SFFF) to gain access to its financial records under the Kansas Open Records Act.

But SFFF's attorneys are urging a Kansas judge to drop the lawsuit and to penalize the newspaper for "harassing, humiliating and intimidating" the organization and "driving up its legal expenses."

Since when is trying to protect open government "harassment, humiliation or intimidation?"

If they believe what they're doing meets with the approval of taxpayers - especially Johnson Countians who came out on the short end of this financial formula - why set up a "shell corporation" to hide how money was spent to sue for more tax money.

SFFF is an organization -- funded by 19 public school districts -- that bankrolled a lawsuit that resulted in $800 million in increased state education funding during the last legislative session.

The Capital-Journal believes the organization is subject to the Kansas Open Records Act (KORA), which requires tax-funded agencies to allow the public their receipts and expenditures.

But SFFF refuses to open its books for the newspaper, claiming that it is a private organization.

We agree with The Capital-Journal.

So does Attorney General Phill Kline.

Any organization that subsists entirely on public funds should be subject to KORA.

The Capital-Journal is doing a noble job in holding SFFF's feet to the fire.

What could SFFF be hiding?

If they are so proud of the work they are doing on behalf of tax-funded school districts, why not open their books to the public?

Although The Capital-Journal hasn't been privy to all of SFFF's finances, it recently learned that its 19 member school districts have contributed at least $3.2 million to the organization since 1999.

Guess who reportedly received the bulk of the money?

That's right - attorneys. They received about $2.2 million. And they are concerned about The Capital-Journal "driving up legal expenses?" Yeah, right.

Another $475,000 went toward lobbying. A drop in the bucket compared to the attorneys' take, but still more tax money spent to get - you guessed it - more tax money.

We believe that using tax dollars to lobby for more tax dollars is not only unconstitutional, it is morally reprehensible.

Shame on SFFF and their arrogant attorneys.

Taxpayers' decisions should not be circumvented through tax-funded lobbying, lawsuits and arrogant attorneys.

Taxpayers - voters - should have the ultimate decision making authority.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: November 22, 2006 11:34:50 AM CST
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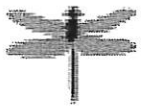

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The Liberty Sentinel
TAPES BUILD TRUST
(Lawrence Journal-World) Most executive sessions of elected public bodies probably are called and conducted properly, but how would anyone know if one wasn't? And how would they prove it?

Answering those questions is the impetus behind proposed legislation to require governmental bodies to tape-record executive sessions. The audiotapes would only come into play if someone alleges that an executive session has been used illegally, that is, to discuss business or make decisions that should be made in a public meeting. In the case of such an allegation, the tape of the executive session or sessions in question would be provided to a judge, who would listen to them and determine whether there had been a violation of the Kansas Open Meetings Act. The tapes would be made public only if a violation is found to have occurred.

In its legislative agenda draft for 2007, the Kansas Association of Counties states its opposition to the taping of executive sessions. KAC probably is not the only government group that takes that stand, but it's difficult to understand why government officials would be opposed to a measure that helps build trust of those they represent.

As it stands, the only way those outside an executive session ever will know whether something improper occurred is for someone inside the meeting to tell them. That certainly can happen, usually when some member of the public board is unhappy with the conduct or outcome of the executive session. But what if people in the meeting are unaware of the laws regarding executive session or, worse, if everyone in the meeting is aware of the open meeting laws but agrees to sidestep them anyway?

If someone not in attendance-or even a single person who was at the meeting-alleges improper conduct, it's easy enough for others to claim nothing improper occurred. That is, of course, unless there is a recording to which officials can turn.

It seems that officials who are following the law would have no fear of recordings that only would confirm they had acted properly. Most of the time, tape-recording an executive session would be merely a formality. But occasionally, tapes could be an important tool in settling a dispute on whether an executive session was conducted properly. It's hard to understand why any public officials would be opposed to that.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **THE LIBERTY SENTINEL EXTRA #1**
Date: December 1, 2006 10:02:59 AM CST
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The Liberty Sentinel EXTRA
Rather than publishing public notices in local Kansas newspapers, a few governmental entities want to change the law and provide public notice information solely on their own, government controlled websites.

Due to the relevance of this issue, The Liberty Sentinel has temporarily suspended its objective to report only on Kansas events.

We hope the information provided in a special 7-part series will enlighten our readers on the importance of publishing public notices in newspapers and the consequences of public notification through cyberspace, which is hackable and inherently unreliable.

The following EXTRA is # 1 in the series.

HACKERS BRING HAVOC TO GOVERNMENT WEBSITES
(Public Notice Resource Center July 6,2006) Last week, the Iowa Education Jobs website was hacked, replacing state job listings with a picture of a naked woman. Apparently, attacks on Iowa government websites are common:

"We didn't look into it too hard," said Joe Thompson, a technical support worker with DWX, the company that maintains Iowa Education Jobs[...]

Thompson said Web sites are attacked daily from such places as China, the Netherlands and Russia. He said it will be difficult to find the perpetrator.

While this incident was a generally harmless and juvenile prank, it does raise questions about security of government websites. According to a government spokesperson, the problem was not identified by the website security consultants, but rather by teachers looking for jobs.

People will always be able to identify pornographic pictures in place of job listings, but a more devious hacker could alter public notices in a way unnoticeable to the average citizen, rendering the notices useless. By changing one number, an eminent domain hearing being held on August 1 could be listed as August 10, leaving landowners out of an important decision making process.

This case is coupled with yet another example of lax network security in the federal government. Recently released documents show that a government consultant used common internet programs to obtain the

passwords of 38,000 FBI employees, including Director Robert Mueller. The passwords gave him access to the FBI database, considered one of the most secret databases in the world which contains important items including information on the witness protection program.

Asked if he was surprised that a secure FBI system could be entered so easily, Stewart[a computer security expert] said, "I'd like to say 'Sure,' but I'm not really."

Until governments take website and network security more seriously, they cannot provide the unalterable medium that public notices require.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **THE LIBERTY SENTINEL EXTRA #2**
Date: December 5, 2006 9:54:55 AM CST
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

PATRICK HENRY ONCE SAID THAT LIBERTY IS NEVER SECURE AS LONG AS GOVERNMENT DOES BUSINESS IN SECRET.

The Liberty Sentinel EXTRA
Rather than publishing public notices in local Kansas newspapers, a few governmental entities want to change the law and provide this information solely on their own, government-controlled Web sites.

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The following EXTRA is # 2 in the series.

REMOVAL OF WEB SITE INFORMATION WITHOUT NOTICE LEADS TO MERCURY POISONING
The New Jersey Department of Environmental Protection (DEP) has provided a stunning example of why the public cannot rely on government agencies to publish their own notices. Unfortunately, several children were harmed in the process.

In New Jersey, the DEP provides information on polluted sites throughout the state and keeps a list of the locations on its Web site. This watch list is meant to educate the public on the location of contaminated land sites. In 2005, more than 1,800 sites disappeared from the pollution watch list without notification to the public.

In July of this year, a day care center known as Kiddie Kollege was closed when approximately one-third of the 60 children and some staff workers tested abnormally high for levels of mercury. Mercury, a toxic metal which can build up over time, is known to have negative effects on exposed individuals.

It was determined that Kiddie Kollege was operating on the site of a former mercury thermometer factory in rural Franklin township. The state attorney general is investigating the matter.

The mercury levels in the afflicted children are high enough to require long term monitoring with ultimate long term health implications unknown. Mercury vapors are "heavy" and will concentrate near the floor where children play or nap. The building displayed mercury levels 27 times the regulatory limit.

The Agency for Toxic Substances and Disease Registry, a federal public health agency of the U.S. Department of Health and Human Services, ranks mercury high on its list of priority hazardous subtances. The Comprehensive, Environmental, Response, Compensation, and Liability Act (CERCLA) ranks mercury 3rd on its list of "materials which are determined to pose the most significant potential threat to human health to their known or suspected toxicity."

"Kids' skin was literally starting to peel," said Bill Wolfe, a former DEP executive. "How can a thermometer plant with known contamination be taken off a watch list?"

The Public Notice Resource Center stated, "public notice on contaminated areas should be posted in newspapers in order to reach the widest possible audience and as an added benefit, notices posted in newspapers become part of public record and cannot simply be deleted." The Arlington, Va. organization went on to say,"By allowing government agencies to publish on their own Web sites, important public information becomes subject to loss or change with no oversight."

In the meantime, the recommended course of action for New Jersey citizens seems to be to call the DEP to make sure their homes, offices, grocery stores, children's schools and playgrounds and any other areas they spend time are not contaminated..

(Note: The Department of Health and Human Services Agency for Toxic Substances & Disease Registry, The New York Times, Gloucester County Times and Public Notice Resource Center contributed to this article.)

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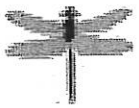
From: Richard Gannon <rgannon@kspress.com>
Subject: **THE LIBERTY SENTINEL EXTRA #3**
Date: December 13, 2006 9:31:09 AM CST
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com



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The following EXTRA is # 3 in the series.

MEETING RECORDS LOST AS HACKER HITS TOWN WEB SITE
(The Providence Journal Providence, R.I.) A computer virus crippled a page on the Barrington Web site this week that posts upcoming government meeting agendas and some past meeting minutes -- an online record of recent deliberations and decisions now lost.

The virus left a calling card on the Web page: "hacked" and the cryptic phrase "EL07 Turkishnowar."

"A malicious prank is what it is," said Barrington Webmaster Joe Shansky.

The town does keep hard copies of meeting minutes. And the official requirement of giving public notice that a meeting is coming is met by newspaper advertising. Those minutes posted on the Web site were generally from a few meetings past and some would be removed regularly as new minutes were posted.

As town officials described it, the virus apparently exploited a loophole of sorts in a database maintained by Intap Business Solutions, in Providence, which is the Web host of the town's official site. Intap has hosted the site for several years.

The virus did not target sites hosted by Intap, but, rather, it apparently affects databases generally and might have impacted sites around the country and worldwide.

The files of meeting agendas and minutes could not be opened because they had been corrupted, said Shansky.

"What happened was a virus was able to get through the blocking mechanism of the Web site from the Internet service provider," said Shansky. "There was a loophole or something in the code that allowed it to go through."

Shansky said efforts have been underway to close the loophole so that it won't happen again.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **THE LIBERTY SENTINEL EXTRA #4**
Date: December 19, 2006 9:50:08 AM CST
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The following EXTRA is # 4 in the series.

GOVERNMENT WEB SITES HACKED
(Notice News) This summer has been difficult for computer technicians at the federal government. Government Web sites have always been a prime target of hackers and 2006 has been especially difficult for the federal government.

The problem reached such proportion that Congress held hearings on the Internet and governmental cyber security last September.

During the hearings, computer security experts voiced frustration. Paul Kurtz, executive director of the Cyber Security Industry Alliance (CSIA), added "From our view, this is yet another incident of not taking security seriously. It seems like there's a breach-a-day in government.

Several agencies reported stolen laptops allowed breaches in their cyber security.

In the second-largest data breach on record, the VA said approximately 26.5 million veterans were exposed to identify theft when a VA employee violated agency policy and took a laptop home with the information.

The laptop was then stolen in a home burglary.

The Senate Appropriations Committee has earmarked $160 million to cover the cost of the VA's free credit-monitoring obligations to those affected by the intrusion.

Even though stolen laptops have been major issues with several federal agencies, it is not the government's primary cyber security concern.

Rather, what agency heads and security people fear the most is: a system hack.

The U.S. Department of Agriculture (USDA), reported earlier this year that unknown hackers may have accessed a database containing the names, Social Security numbers and photos of current and former agency employees. The USDA is providing one year free credit monitoring to the 26,000 employees potentially at risk for identity theft.

The U.S. Navy also experienced a data breach this summer. Sailors and their family members were exposed to potential identity theft when a civilian Web site disclosed the names, birthdates, and Social Security numbers of 28,000 Navy members and dependents.

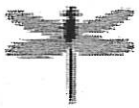
While some local governmental entities wish to place public notices solely on their Web sites, what assurance can be given that the information will not be tampered with? A slight alteration in a hacked public notice could have significant and lasting ramifications on a community.

The federal government has spent billions of dollars on computer security and massive hacks are still occuring. Do local governments have the resources to assure their Web sites containing public notices will not be hacked?

The Public Notice Resource Center states,"By allowing government agencies to publish on their Web sites, important public information becomes subject to loss or change with no oversight."

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: December 28, 2006 3:31:52 PM CST
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com



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The following EXTRA is # 5 in the series.

VIRGINIA PAPER HELPS EXPLAIN FEDERAL PUBLIC NOTICE
(Notice News) When a federal public notice was published in the Roanoke Times about the pending widening of a highway, the wording of the notice was vague enough that it confused readers. Instead of letting readers struggle to figure out the notice, the Roanoke Times got to the bottom of the confusing notice and published an article clarifying the information:

A public notice in Sunday's newspaper about widening U.S. 221 in Roanoke County probably raised more questions than it answered.

Saying that a "categorical exclusion" document has been prepared about the widening project, the notice said the period for public comment ends Monday.

That choice of words may have made some people think that actual construction is imminent on U.S. 221, also called Bent Mountain Road, in the Cave Spring neighborhood.

It is not, said Laura Bullock, spokeswoman for the Virginia Department of Transportation.

The article went on to explain the purpose of the "categorical exclusion," a federal document used to exclude certain parts of projects from extensive environmental study. This article serves as a great example of the added value that newspapers can bring to public notices.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **THE LIBERTY SENTINEL EXTRA #6**
Date: January 2, 2007 11:01:51 AM CST
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The following EXTRA is # 6 in the series.

MARYLAND GOVERNOR CALLS FOR PAPER BALLOTS IN NOVEMBER ELECTION
(Public Notice Resource Center) The Maryland State Board of Elections rolled out its new $106 million electronic voting apparatus during the September 12 primary elections. However, the election was marred by technical glitches and human errors which disenfranchised untold numbers of voters. The day following the primary, three Princeton scientists released a research paper and a video showing how easy it was to hack into the Diebold machines used in the Maryland election and change vote totals.

In response, Maryland Governor Robert Ehrlich has called for the November election to be held on more reliable and unalterable optical scan paper ballots. An Ehrlich spokesman told the Washington Post that paper ballots eliminate "chronic problems that electronic voting machines demonstrated [Sept. 12] with respect to crashing and susceptibility to tampering."

After $106 million invested, the argument is being made that these electronic machines are just too unreliable and too prone to tampering to be allowed to decide elections.

THE ARGUMENT IS THE SAME FOR PUBLIC NOTICES. Like voting machines, online web pages of public notices are far more prone to human error and tampering than the newspapers that have published public notices for years.

If a large state government and a major technology company cannot ensure the viability of electronic elections, it's hard to imagine small town websites being secure enough to publish notices. Maryland is

learning the hard way that some changes only create more problems.

The Princeton released research paper and video may be viewed at:
itpolicy.princeton.edu./voting/

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **THE LIBERTY SENTINEL EXTRA #7**
Date: January 8, 2007 9:21:46 AM CST
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The following EXTRA is # 7 in the series.

ONE CLICK WEBSITE CRASHES
(Notice News Government Web site Security) "DDoS" is short for a Distributed Denial of Service attack. A DDoS attack is one of the most damaging actions a computer criminal can inflict on a Web site. While the programming of this type of malicious code is complicated, the idea is relatively simple. The program simply visits a Web site a large number of times, so much so that the Web site's bandwidth cannot handle the traffic and therefore crashes.

Now, an illegal service is offering a program designed to allow would-be hackers to bypass complex programming and cripple a website with a URL address and a click of the mouse. These types of attacks are hard to stop and can down Web sites for days and even weeks, not to mention costing sites thousands of extra dollars in increased bandwidth capacity.

This again goes to the question of how government Web sites can be trusted with being the sole publishers of public notice. Notices must be accessible at all times to citizens and to this day, newspapers are the only public notice carrier that can provide that assurance.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: January 15, 2007 8:52:15 AM CST
To: <rgannon@kspress.com>
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The Liberty Sentinel
SCHOOL BUSES ARE A PUBLIC CONCERN
(Wichita Eagle 11/29/06 Mark McCormick Commentary) When I asked Durham Bus Services General Manager Jim Price a couple of weeks ago how many drivers he'd disciplined or fired in the past year, he firmly but politely said he wasn't required to divulge that information because Durham is a private company, even though it runs the buses for the Wichita school district.

A school district spokeswoman said the same thing.

But there was a reversal of sorts last week.

Wendy Johnson, another spokeswoman for the district, told me that while Durham did not give me that information, I did have a right to get it, without names, via an open records request to the district.

"If you were to submit an open records request, we have that," Johnson said. "We get that information regularly as part of our monitoring work."

As for the names, Johnson said, "that is not information (Durham) is required to give."

I've filed a formal request with the school district for the termination and discipline information I'd sought from Price. I'll let you know what I find out.

Regardless of how that turns out, Durham can still stonewall parents seeking information about Durham employees. Private companies doing public work should get public scrutiny.

Twice this month, I've written about strange happenings on school buses. An attendant urinated in a cup in front of an 8-year-old girl, tossed the cup out of the window and asked the child not to tell what she'd seen. Back in March, a bus driver took pictures of girls on a bus, and the Kechi mother of one girl had difficulty finding out why.

I'm not bashing bus drivers. I'm arguing for transparency and open government.

Take the case of Shayla Johnston, the Kechi mom, who said she didn't get the information she wanted about the driver who took pictures of her daughter until I got involved a couple of weeks ago.

After months of asking the district for the driver's name and for details of what happened, Johnston submitted an official request for information on Nov. 8 under the Kansas Open Records Act.

Among other documents, Johnston sought "any and all documentation regarding the bus driver involved in the above-referenced subject, including but not limited to his name, his current employment status and any reprimand he received..."

The district's response encapsulates the accountability issues with this particular public-private relationship.

"The District is not the employer of the bus driver referenced in your letter," school officials wrote to Johnston in response. "The District contracts with Durham School Services to provide bus services for District students. Durham, as the provider of the service, employs bus drivers. The District does not have access to personnel records of Durham bus drivers. The only document that the District has in its possession relating to the bus driver is a Security Services Incident Report form that was completed by a District employee. A copy of the incident report form is enclosed."

On one hand, district officials have told me that they closely monitor the background checking, training and disciplining of Durham employees. Yet when Johnston inquired about what happened to her child on the school bus, she got a letter basically saying, "Don't look at us, the driver isn't our employee."

And that answer arrived after Johnston had spent eight months waiting for answers.

If a man you didn't know frightened your daughter by taking photos of her, would you want the information you sought to come out this way? After months of inquiries?

I don't need every little detail about a bus driver's life.

But if Durham needs so much secrecy to perform the public duties taxpayers pay for, then maybe it shouldn't be transporting children.

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: January 18, 2007 11:13:12 AM CST
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The Liberty Sentinel
CHAMBER WON'T RELEASE FINANCIALS
GROUP GOT MORE THAN $630,000 IN TAX DOLLARS PAST TWO YEARS
(Atchison Globe) Atchison Area Chamber of Commerce officials have finalized their 2005 audit but refuse to make public documents showing the exact spending of more than $320,000 in taxpayer dollars.

However, chamber officials assure there has been no financial wrongdoing as to the cause for the holdup of finalizing the late audit.

Following finalization of the 2005 chamber audit earlier this month and a records request from the Globe, chamber officials re1eased a copy of the audit and tax forms showing the chamber's overall expenditures and revenues.

In 2005, the chamber received $273,500 in tax dollars, with $160,000 for tourism from the city, county and transient guest tax and $113,500 from the city and county for economic development.

That amount doesn't include rollover balances from 2004, which totaled $49,641, leaving a grand total of $323,141 in tax dollars, or 52 percent of the chamber's $618,125 total revenue for 2005.

However, neither the audit nor tax forms show specifically on what the chamber spent the tax dollars.

Interim Chamber President Jacque Pregont said she and executive board members would not release documents showing details of how taxpayer dollars from economic development and tourism were spent in 2005 as well as for 2006.

She said the chamber is a private entity and does not have to release those documents.

"We're trying to be as open and accessible as possible," Mrs. Pregont said after handing over the audit and tax documents. "The audit's done, and we have nothing to hide."

Globe Publisher Chris Wessel said if the chamber has nothing to hide, it should open its books to the public, which funded more than half the chamber operations in 2005.

"I don't see what the big deal is," Mr. Wessel said. "If there's nothing wrong, why not let the public see where the chamber spent all its tax dollars?"

As the government watchdog of the community, the Globe is interested in making sure all tax dollars are spent appropriately, Mr. Wessel said.

"Going over the chamber's accounts payables and receivables should be a clear and simple way to show where the money was spent," Mr. Wessel added. "I don't think that's asking too much for all the public funding the chamber receives."

According to a press release by Noel Rueb, chairman of the chamber board of directors, the completion of the audit proved there was nomisconduct by former chamber president Glenda Purkis.

Ms. Purkis resigned immediately following a November board meeting when she and board members were expected to review the unfinished 2005 audit with Atchison CPA Patsy Porter.

Before the meeting, Ms. Purkis said the audit couldn't be completed because records pertaining to more than $100,000 in chamber gift certificates and funding were not reconciled and needed to be a part of the audit.

Following the resignation, Mr. Rueb said he would not comment whether Ms. Purkis' resignation was connected to the unfinished audit or if her resignation was expected.

"Mrs. Porter's audit confirmed the board's prior knowledge and stance that there were no financial improprieties by the past president, Glenda Purkis," Mr. Rueb wrote. "We are hopeful this will lay to rest any thoughts, speculation and/or rumors of financial wrongdoing, which have arisen due to Ms. Purkis' resignation".

* Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

From: Richard Gannon <rgannon@kspress.com>
Subject: **The Liberty Sentinel**
Date: January 22, 2007 10:42:08 AM CST
To: <rgannon@kspress.com>
Reply-To: rgannon@kspress.com

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The Liberty Sentinel
Chamber opens finances
Seekers required to pay $25 per hour to browse

(Atchison Globe) The public can now review financial records of the Atchison Area Chamber of Commerce for those willing to pay $25 per hour and be supervised at all times.

According to a new open records policy implemented Thursday by the chamber board, anyone wanting to see how chamber officials spent funds in 2006 and beyond can make a written request, go to the chamber office and sort through the financial records.

While most must pay the hourly fee, chamber members are allowed one hour free of charge to search before having to pay.

Copies of financial records are 25 cents per copy, regardless of membership, and no original documents are permitted to leave the chamber office.

Following a Wednesday board meeting to discuss the policy, Todd Caudle, chamber board chairman, said with no previous records policy in place, board members needed to create one that followed open records laws and would be simple enough to not hinder the public's search.

He said members agreed to the fees, supervision and other specifications as a way to ensure records were kept safe, a supervisor could answer questions and time spent with the public didn't adversely affect productivity at the chamber.

"I'm happy with how it turned out and I'm looking forward to that now that we have a procedure, everyone will be treated fairly when they come in," Mr. Caudle said. "We have no problem with people coming in and if they have concerns, we think, sure, bring them to our attention and instead of just digging through our papers, maybe we can make it a little easier for them."

A good starting fee?

Although Mr. Caudle said board members approved implementing the $25 fee to cover the cost of having interim chamber President Jacque Pregont as the records supervisor, some might find it cheaper to acquire some of the same information by submitting a request through the city or county.

Because the city contracted with the chamber and gave public funds for economic development and tourism,

City Manager Kelly DeMeritt explained that through the city's open records policy someone could request records showing how the chamber spent that funding.

According to the city's open records policy, a person would pay $14 per hour for staff time, $11 cheaper than the chamber.

For a similar request to the county, Atchison County Clerk Pauline Lee said a person would have to pay about $11.45 to $19 per hour for staff time -- about $6 to $13.55 less -- depending on the hourly wage of the county employee.

Through the city's policy, media sources wouldn't be charged for requests, meaning taxpayers would have to eat the chamber's bill for the records search.

Although Mr. Caudle said the chamber might initially bill the city, he said he's not sure officials would actually seek to collect from one of its funding sources that gives the chamber thousands of dollars each year.

Mrs. DeMeritt said that although she hasn't verified it yet, the city could likely receive the information at no charge through its contracts with the chamber.

However, due to chamber officials' mingling public funds with their private ones, all chamber financials are considered open to the public.

To view the private financials as well, those requests must be made through the chamber.

"We've got members that may or may not want some of their information out there," Mr. Caudle said. "But as long as we co-mingle funds, we will be a public entity."

Past and future

The records policy comes on the heels of a Globe request in December seeking to make public chamber documents that show how officials spent more than $300,000 in 2006.

Chamber officials refused a November request to see the chamber's 2005 and 2006 financials following the resignation of former chamber president Glenda Purkis. She resigned immediately following a November board meeting held to discuss problems with the unfinished 2005 audit.

The audit was finished in December. Chamber officials claimed problems with it had nothing to do with Ms. Purkis' resignation. They refused, however, to allow the Globe to see the financials.

Atchison County Attorney Jerry Kuckelman supported the Globe's latest request in a letter sent to the chamber prior to the board's Wednesday meeting.

He stated that under a new state statute, chamber and other not-for-profit officials are required to make their records open if they receive more than $350 of taxpayers' money.

The chamber received an estimated $310,559 of taxpayer money in 2006 from the city and county for tourism and economic development.

Following the chamber's response, Mr. Kuckelman said the new policy seemed to meet the statute guidelines.

Globe staff members and chamber officials have agreed to meet at 8:30 a.m. Monday, Jan. 15, at the chamber office to look at the 2006 financials.

Globe Publisher Chris Wessel said he was pleased with the chamber's decision and praised board members for seeking a quick remedy to making the organization's financial records available to the public.

"Chamber board members, especially new Chairman Todd Caudle, deserve credit for getting this new process set in motion as quickly as possible," Mr. Wessel said. "We have every confidence in our chamber and appreciate its board for acting in the best interest of the community. This action will put a lot of rumors to rest and streamline accounting practices in the future."

Meanwhile, Mr. Caudle said the records policy is the first the chamber has created and is likely to change, as is the chamber's accounting practices.

He said board members are discussing separating the public and private funds and whether it would make accounting practices easier.

However, Mr. Caudle said board members' first priority is searching for a new president, whom they hope to have in place in March.

For the time being, however, he said board members would continue to track the progress and efficiency of the new records policy and study its efficiency.

"This is probably a good experience for us to go through," Mr. Caudle said. "And for other folks out there who are in organizations like the chamber, this is a great process for them to watch that maybe will help them."

Do you have an Open Government experience to share? E-mail it to rgannon@kspress.com

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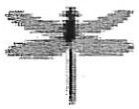

PATRICK HENRY ONCE SAID THAT LIBERTY IS NEVER SECURE AS LONG AS GOVERNMENT DOES BUSINESS IN SECRET.

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The Liberty Sentinel
GLOBE EXAMINES CHAMBER FINANCIALS
(Atchison Globe) Atchison Area Chamber of Commerce officials have instituted a new policy reining in credit card usage by employees in light of issues with former chamber president Glenda Purkis, who charged personal items and in some cases did not provide receipts.

The new policy was implemented in late November, almost one month following her resignation that came after a chamber board meeting held to discuss problems with the unfinished 2005 audit.

Financial records recently made public by chamber officials show that in 2006 Ms. Purkis charged about $1,057 on the chamber credit card to pay for personal items including airline tickets, hotel stays, "Wicked, the Musical" tickets and about $127 worth of Wal-Mart purchases. No receipt was provided for the Wal-Mart purchases.

In 2005, about $898 was also used for airline tickets, hotel stays and a T-Mobile bill.

Throughout both years, receipts were sometimes not provided for both her personal charges and chamber purchases for office supplies and other items.

The credit card bills are paid for using private chamber funding and taxpayer dollars for tourism and economic development.

Todd Caudle, chamber board chairman, said board members have been working on the new policy throughout 2006 and that it's more of a coincidence in timing that the policy was finalized soon after Ms. Purkis resigned.

"Could it be considered as bad judgment? Yes. Could it be considered that (Ms. Purkis) was breaking any of our policies or rules? No," Mr. Caudle said. "It was just an item that we moved on to clear up for the next person coming in and will take some of that gray area out of it that probably made for more problems than it should've."

However, Mr. Caudle admitted the issue was one board members had discussed with Ms. Purkis.

"I'm just tied with what I can say on her confidentiality clause of why she left," Mr. Caudle said, "but it's just one thing that caused a little bit of friction between the executive committee, the board in general and in addition to their director.

"It wasn't a key factor -- it was another straw on the camel's back basically that I think created not the best working relationship between the director and the executive group," Mr. Caudle added.

He said the new policy was implemented by board members that forbids employees from using credit cards for personal purchases.

Four credit cards are issued at the chamber -- one to Stan Lawson, marketing director; Maria Miller, projects coordinator; Sally Webb, tourism coordinator; and the chamber president.

According to the new policy, however, if personal charges are made, they are to be reimbursed by personal check or the amount will be withdrawn from the person's next paycheck. The employee could also face disciplinary action that includes termination.

"Unfortunately, we didn't have a policy necessarily against doing those types of things throughout 2006," Mr. Caudle added. "I guess the key thing for us in the end is that she reimbursed us every time -- and so definitely she was handling it and taking care of it."

According to chamber credit card statements, almost $4,000 was spent in 2006 for travel and restaurant expenses while Ms. Purkis traveled to Aberline, Wichita, Newton, Davenport, Iowa, Alexandria, Va., and other areas for various functions. The amount also covered restaurant expenses in Atchison.

Depending on where and for what purpose, expenses were paid for using economic development, tourism or chamber funds, which were later marked on the credit card bills.

Those expenses also don't include about $400 paid monthly to Ms. Purkis for car expenses and other checks written to her to cover other traveling costs.

SPEAKING OUT

For the first time since resigning, Ms. Purkis spoke to the Globe on Tuesday saying her personal usage of the chamber credit card was mostly due to a mistake.

She said in every case, she paid Visa, not the chamber, for her purchases.

"This is crazy and it sounds like a 'the dog ate my homework' excuse but honest to god it's true: A couple of times I pulled the wrong card because my personal credit card is on the same bank and the only thing different was the last four numbers," Ms. Purkis said. "Then I separated the cards and put my card in with my checkbook and once in a while I would go off and forget my checkbook.

"It's stupid," Ms. Purkis added. "It was careless on my part too."

One of those instances occurred in October when she said she and her daughter were in St. Joseph, Mo., and she said she forgot her checkbook.

At that time, she charged clothing and food items to the chamber card and then left a note along with receipts for the chamber business manager.

As to food and travel costs, both she and Mr. Caudle agree that those costs are normal for taking prospective business people out to dinner and to travel to different chamber functions and learn new ideas.

Ms. Purkis said although she was chamber president for about 15 years, the job was always changing and by attending events and seminars she could "steal" ideas and try to implement them in Atchison.

Mr. Caudle said based on his recollection with reviewing the budget, the amount for food and travel seems reasonable and that sending the director outside of Atchison did benefit the chamber by bringing in good ideas.

"We expect our director to drop everything when someone wants to come over here and look at a potential factory site and expect her to do everything to make those people think about locating those jobs," Mr. Caudle said. "The beautiful thing about Atchison is we have great restaurants that aren't expensive.

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The spending issue was brought to light following the Globe's first glance at chamber documents Monday and Tuesday.

Chamber officials created an open records policy earlier this month and presented the information following Globe requests in November and December seeking to make public chamber documents that show how officials spent more than $300,000 in 2006.

The chamber received the funding from the city and county for tourism and economic development.

While chamber officials had denied prior requests from the Globe, Atchison County Attorney Jerry Kuckelman said in a letter to chamber officials that according to a state statute, they and other not-for-profit officials are required to make their records open if they receive more than $350 of taxpayers' money.

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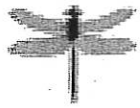

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The Liberty Sentinel
POWER PLANT HAS FOLKS FIRED UP
(Salina Journal 11/18/2006) It could've been compared to a 1960s sit-in, except the protesters weren't allowed to sit inside.

About 400 people attended a Kansas Department of Health and Environment public hearing Thursday in Lawrence regarding the proposed expansion of a 2,100 megawatt Sunflower Electric generating plant in southwest Kansas. The problem was that the room where the meeting took place in the Kansas Union at the University of Kansas seated only 100.

Salinans who attended the hearing on the project-which has implications for Salina's water supply-accused KDHE of intentionally making the venue too small so that public comment would be minimized.

Abner Perney, a member of the Salina City Commission, called it "the most appalling breakdown of a public function I have ever seen."

He also said the setup "was apparently by design, that they don't want to hear from the public about this whole plan."

Other Salinans who made the trip agreed.

"It was really set up so that you wouldn't get a lot of public input," Jerry Brown said, "because people were having to wait so long and it was just grueling."

The meeting lasted five hours and included a 45-minute reading of Sunflower's proposal.

Mike Heideman, communications specialist for KDHE, said there was no intent to stifle public input. "I don't believe that's the case, at all," Heideman said. "If there wasn't enough room, the reason was likely that we didn't anticipate the number that would show up in Lawrence."

FULL BEFORE THE START

The 100 available seats were taken up by about 5:30 p.m., Perney said, which was a ha1f hour before the hearing was scheduled to start.

"So the room filled up and there were people standing in the back, and (KDHE officials) come back and say, 'The fire code says you can't stand back here,' and somebody said, 'This is a public meeting. We have a constitutional right to be here,'" Perney said. "Yelling ensued, and the cops arrived and said, 'You can stand in the hall outside.'

"There were shouts about, 'This whole thing is a farce,' and 'It's a public hearing, but you're not going to let the public in.' ".

KDHE officials eventually set up an adjacent room that was tied into the public hearing's sound system.

"Clearly they should've anticipated there would be more than 100 people, especially since there were dozens of people who had come early from southwest Kansas and were already occupying a lot of the seats," said Stan Cox, senior scientist at The Land Institute, 2440 E. Water Well Road. "People had to come from across the hall or outside to give their comment and then go back in again."

Wes Jackson, the founder and president of The Land Institute, spoke at the meeting in opposition to the power plants.

The meeting didn't end until 11 p.m., and it was to resume at 5 p.m. Friday so that the remaining 25 people who had signed up to give a three-minute presentation could speak, Heideman said.

WATER CONSUMPTION

Perney had signed up to speak on Thursday, but he left at about 9:30 without having been called forward.

He said Friday morning that he didn't plan to return for the resumption of the meeting.

Perney said he was going to speak in opposition to the plant because of the amount of water it would use and because of concerns about air pollution and global warming.

He also was going to report that the Salina City Commission at its Nov. 27 meeting will consider whether to formally oppose the Sunflower Electric plant near Holcomb.

The plant is projected to use about 30,000 acre feet of water a year, which is about four times what the city of Salina uses.

Perney and City Manager Jason Gage expressed concern at Monday's commission meeting that such water consumption will affect recharge of the water table that feeds the Smoky Hill River. The Smoky - which nearly went dry last summer, causing a water emergency in Salina - supplies 60 percent of Salina's water.

CARBON DIOXIDE THREAT

Many of the concerns Salinans expressed at Thursday's meeting, however, had to do with the air pollution aspect. "What they're arguing is that (air emissions) will meet all the governmental regulations," Cox said.

"But carbon dioxide, which may be the biggest global threat, isn't regulated. That argument is sort of irrelevant to the issue of global warming, and the other regulations are pretty toothless at this point."

Brown, a retired teacher and administrator for the Salina School District, spoke at the meeting and said the project should be rejected in favor of wind-power plants.

"It's one thing to say you meet all the legal (environmental) requirements," Brown said, "but we're talking about horrendous things happening if this is put in place."

There were nearly some horrendous things happening at the Thursday meeting, Brown said.

"We just about had a riot on our hands," he said.

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LKM
League of Kansas Municipalities

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Topeka, Kansas 66603-3912
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TO: House Elections and Governmental Organizations Committee

FROM: Sandy Jacquot, Director of Law/General Counsel

DATE: January 30, 2007

RE: Opposition to HB 2054 and HB 2085

First, I would like to thank the Committee for allowing the League of Kansas Municipalities to testify today in opposition to HB 2054 and HB 2085. These bills would radically alter the delicate balance that the Kansas Open Meetings Act (KOMA) currently strikes between the need for certain privacy and the right of the public to have access to information. In addition, there are protections in the KOMA making this bill unnecessary.

HB 2085 would allow a member of a public body or agency to object to participation in an executive session if that member believes the action violates or "subverts the intent" of the KOMA. At that point, the executive session could only proceed if tape recorded and the tape preserved for at least a year. Then, the tape is subject to review and possible release by a court. First, K.S.A. 75-4320b provides adequate enforcement options for addressing any perceived violation. That statute gives the county or district attorney and the attorney general the ability to subpoena witnesses and documents, take testimony under oath and review any other material pertinent to an investigation. Thus, if a member of the public body was concerned about a violation of the KOMA, he or she could testify as to the violation without the need for a tape recording. In addition, there is nothing preventing any person from declining to go into executive session because that person feels the KOMA may be violated by the action and then that person later making a complaint to the county or district attorney or the attorney general. There are other logistical issues that arise with this legislation. A simple objection, whether or not it is made in good faith, triggers the tape recording of the executive session. If a disgruntled official objects to every executive session, all sessions would have to be recorded. This proposed legislation is just another example of a solution looking for a problem. The current law is quite adequate to address the issue that this legislation is attempting to regulate.

HB 2054 goes even further in making meaningless a governmental entity's ability to go into executive session. This bill allows any person in attendance at the meeting to request that the executive session be taped. Such individual does not even need to have a belief that the executive session violates or "subverts the intent" of the KOMA. The only exception is for executive sessions that involve the attorney-client privilege. Any citizen can, without any rational basis, require the entity to tape the executive session. This is extremely poor public policy and could result, in some cases, the taping of almost every executive session held by a city.

Further, who would be the custodian of these secret, and only subject to court order, tapes? Typically records of this type would be maintained by the city clerk, but if the executive session happened to be about the city clerk, clearly that would be unworkable. Therefore, there would be the possibility that numerous individuals would have to be named custodians of the executive session tapes that are supposed to be privileged. Despite the attempt in both of these bills to protect the attorney-client privilege, it is doubtful that the privilege could survive the pitfalls of the legislation. I do not believe any attorney would advise their client with a recording device in the room. At least HB 2054 does not require the taping of attorney-client privileged sessions.

Perhaps the most disturbing aspect of this legislation is that it presupposes that local officials and others cannot be trusted to carry out their statutory duties as provided by the KOMA. The League has much more faith in local government officials and believes that the current law is working well. We do not believe that there has been any showing that would support such a drastic and problematic change in the KOMA and would urge this Committee to reject both HB 2054 and HB 2085. Thank you again for allowing the League to testify in opposition to these bills.

KANSAS ASSOCIATION OF SCHOOL BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
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Testimony on **HB 2054**
before the
House Elections and Governmental Organization
by

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

January 31, 2007

Mr. Chair and Members of the Committee:

Thank you for the opportunity to appear in **opposition** of H.B. 2054.

School boards throughout the state deal with difficult personnel and student issues. Although KOMA promotes openness and requires that all formal action by a board of education be taken in open session, the act does allow closed or executive sessions in which the board may discuss six statutorily prescribed subjects. In each case, the discussion in executive session is allowed because the privacy rights of individuals, employees and students deserve protection or because the public interest is better served by not requiring discussion of the topic in open session.

While discussion of these topics may occur in executive session, nothing prevents them from being discussed in open session. Whether to discuss an item in executive session rests with the discretion of the board. Although the topics may be discussed in closed session, any binding action of the board must occur in open session. A board can never take binding action in executive session.

The most frequent reasons for boards of education going into executive session are concerns about personnel or student matters. H.B. 2054 allows "Any person in attendance at a meeting may request that a recording be made in closed or executive session...." Since the cost of providing the recording and personnel to do the recording will rest with the board of education, most employees and parents of students will routinely request executive sessions be recorded. The board will have an additional cost to provide for the tape recording and the staff to do the recording.

Recording executive sessions will have a "chilling affect" on school boards getting all the information necessary to make sure they are acting on facts and not rumor and innuendo.

In situations where there are allegations of wrongdoing against teachers, coaches or administrators, boards of education may allow parents and patrons to enter executive session one at a time for 3-5 minutes to share with the board their specific facts or experiences. Patrons and parents are reluctant to have their comments recorded even if they have personally observed or heard inappropriate conduct.

School employees as well as students and their parents have privacy rights that executive session is meant to protect. H.B. 2054 allows "... the party seeking enforcement of this act to inspect or use the recording of the closed or executive session or any portion thereof under such conditions as the court may direct."

Frequently allegations of violations of the Open Meetings Act arise when a board of education is dealing with a controversial employee issue or the closing or consolidation of school districts. Allowing executive sessions to be recorded will undermine the purpose of protecting individual employee or student confidentiality.

Thank you for your consideration.

KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY
concerning
HB 2054 and HB 2085
Tape Recording of Executive Sessions
Presented by Randall Allen
House Elections and Governmental Organization Committee
January 31, 2007

Chairman Burgess and members of the committee, my name is Randall Allen, Executive Director of the Kansas Association of Counties (KAC). I appreciate the opportunity to testify on behalf of the Kansas Association of Counties and our 99 member counties ***in opposition to*** HB 2054 and HB 2085, requiring the taping of closed or executive sessions of governing bodies in certain situations.

The primary reason we oppose this bill is that we are not aware that there is a problem. Never once since a bill of this nature was last heard by legislative committee has a member of the press or a member of the public contacted our office saying that there was a situation or concern regarding the content of closed session discussions that merited a bill to resolve. As such, both bills seem to us solutions in search of a problem. We would ask the proponents of this legislation to do what legislators normally ask of proponents of other bills, i.e. to first work with affected parties to reach an understanding of different points of view and, if possible, reach a solution short of a legislative remedy. If a problem is identified with the current application of the Kansas Open Records Act which demands a solution, and our association or our members are not willing to discuss a solution(s), then we would understand the Legislature adopting a bill of this nature through normal processes. As such, we thank the committee for the opportunity to comment and urge the committee to table both bills.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its members. Inquiries concerning this testimony can be directed to Randall Allen or Judy Moler at the KAC by calling (785) 272-2585.

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WICHITA
PUBLIC SCHOOLS

House Elections and Governmental Organizations
Representative Burgess, Chair

H.B. 2054 and H.B. 2085 Recording of Executive Sessions

January 31, 2007

Diane Gjerstad
Wichita Public Schools

Mr. Chairman and members of the Committee:

I rise in opposition to both H.B. 2054 and H.B. 2085 requiring the recording of executive sessions.

Executive sessions are not to protect the privacy of the elected public officials, but to protect the privacy of student information or employee information or the business which would put the public body at a disadvantage if done in public.

School boards deal with highly sensitive information when a student is under consideration for expulsion or suspension. The privacy of student information is governed by federal law (FERPA). When a student's conduct results in a recommendation of suspension or expulsion, the parent/guardian has the right to appeal to with the Board of Education. The meeting of the parent, student and Board is held in private under the Executive Session exemption of the Kansas Open Meetings Act. First imagine yourself as a parent in this uncomfortable, difficult and emotional position. You have asked to meet with the Board of Education – you are nervous. You walk into the room, sit down and see a tape recorder running in the middle of the table. Imagine the additional angst placed on the parent knowing a taped history of your student's exploits now sits in someone's office.

Executive Sessions are for a narrow range of topics for the Board to have a frank, private conversation. Taping will have a chilling affect.

These bill raise additional questions – who is responsible for the integrity of the tapes, under what conditions are the tapes to be stored, what is the process for access, who is responsible if the tape is inaudible or defective, who is responsible for destruction of tapes, who is going to ensure a retired Clerk disposed of tape correctly?

Mr. Chairman, if an elected official believes there is a violation of law a call to the District Attorney's office is the appropriate route; we oppose this bill.

Thomas L. Bell
President

TO: House Committee on Government Organizations and Elections

FROM: Deborah Stern, RN, JD
Vice President Clinical Services/ Legal Counsel

presented by:
Chad Austin, KHA

RE: House Bills 2054 and 2085

DATE: January 31, 2007

The Kansas Hospital Association (KHA) appreciates the opportunity to comment on the provisions of House Bill 2054 and House Bill 2085 related to changes to the open meetings law and the recording of executive sessions. We would like to bring to your attention the need to protect the proceedings of issues discussed in health care risk management and peer review meetings and exempt these meetings from the proposed recording requirement.

Currently, all reports, records and proceedings generated by peer review and risk management committees including executive sessions, are privileged and not subject to discovery, subpoena or any other means of legal compulsion. The Peer Review statutes beginning at K.S.A. 65-4915 et seq. as well as the Risk Management statutes contained in K.S.A. 65-4921 et seq. contain these protections. These statutes were put in place to encourage frank discussion to find and correct weaknesses in the health care delivery system. It is our strong belief that any request to record an executive session dealing with these sensitive subject matters will stifle the open discussion that peer review and risk management statutes foster and protect.

K.S.A. 75-4319 as currently written provides adequate guidance as to what subjects may be discussed in a closed executive session and for this reason KHA does not support amending this statute. If the Legislature agrees that K.S.A. 75-4319 must be amended and chooses to use HB 2054 and HB 2085 to make such amendments, KHA seeks your support to exclude the recording of executive sessions in which health care risk management and peer review issues are discussed.

Thank you for your consideration of these comments.

House Elections & Gov. Org.
Date: 1-31-2007
Attachment # 8

Kansas Hospital Association
215 SE 8th Ave. • P.O. Box 2308 • Topeka, KS • 66601 • 785/233-7436 • Fax: 785/233-6955 • www.kha-net.org

COUNTY MANAGER'S OFFICE

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aschlapp@sedgwick.gov

Andrew J. Schlapp
Director, Government Relations

TESTIMONY
HB 2054 and HB 2085
House Elections and Governmental Organizations
January 31, 2007

Chairman Burgess and members of the committee, my name is Andy Schlapp, Director of Government Relations for Sedgwick County. Thank you for the opportunity to submit written testimony in opposition to these bills.

Here are just a few reasons why taping executive sessions, even under the circumstances proposed in these new bills, burdens the effective conduct of government business without any real corresponding benefit.

1. There are effective tools and protections in place already to protect the public's right to know. Recall can be and has been used. Ouster is also available as a remedy. Current law provides for investigation and subpoenaed testimony.
2. Taping creates the opportunity for abuse by a minority faction, or even a lone member of a public body, to impose their will on the majority.
3. Taping executive sessions has the potential to chill conversation that should be frank, open and robust.
4. Taping raises serious questions regarding the government attorney's ethical responsibilities in the attorney client privilege.
5. Taping would lead to an almost routine request for production in any litigation involving a body or agency.

For the above reasons we respectfully oppose the above bills.

House Elections & Gov. Org.
Date: 1-31-2007
Attachment # 9

The City of
Overland
Park
KANSAS

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Overland Park, Kansas 66212
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www.opkansas.org

Testimony Before The
House Elections & Governmental Organization Committee
Regarding
House Bill 2054 and HB 2085
Submitted by Erik Sartorius

January 31, 2007

The City of Overland Park appreciates the opportunity to appear before the committee and present testimony in opposition to House Bills 2054 and 2085, which would require the taping of executive sessions of governmental bodies.

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. Specific topics for which executive sessions are allowed are clearly spelled out, as is the requirement that no binding action be taken in executive session (K.S.A. 75-4319 (c)). The focus of the ability to go into executive session is, for example, to protect the privacy of individuals discussed in such sessions (personnel matters), to allow discussion of litigation strategies and other legal issues with the public entity's attorneys (attorney-client privilege) or to allow public entities to negotiate effectively for the purchase of land (preliminary discussions relating to the acquisition of real property).

It was only two years ago that the City of Overland Park came to the legislature seeking a specific exception to the Kansas Open Meetings Act and the Kansas Open Records Act. After September 11, 2001, our police department began an in-depth review of our security procedures and an analysis of potential targets in our community. There was some question as to whether such work products and their presentation to the city council were covered under current exceptions to KORA and KOMA. Understandably, city officials did not want to place sensitive, detailed response plans in the public realm. These concerns will resurface if HB 2054 or HB 2085 is passed, as a theft, misplacement, or accidental loss of tapes could again threaten to place sensitive briefings into the hands of individuals who would use them against our citizens.

Opening executive sessions to tape recordings, no matter how well intentioned, will compromise the purpose of the closed session. The recording may become an open recording. The privileged status of attorney/client privileged communications may be lost by permitting such recording. The recording will certainly have a chilling effect on frank discussions. If council members are concerned that privileged conversations with city attorneys will not remain privileged, or that other sensitive information will be exposed, will they ask the necessary questions, no matter how uncomfortable, in order to

ensure that the city's interests are protected? Will they address personnel matters head on, or will discussions of possible action be tempered with concerns that the employee will eventually hear deliberations where they are mentioned in an unfavorable light? Human nature suggests that individuals tend to tame their conversations when they believe they are being overheard. At the same time, most would agree frankness is needed at times to address serious issues.

As the City of Overland Park has noted before, the vast majority of government business is conducted in broad daylight, with public comment and involvement encouraged and expected. For over thirty years, the Kansas Open Meetings Act has recognized that there are limited, legitimate instances where government entities should be able to consider issues in private. The City of Overland Park asks that you not do away with this current balance, and reject House Bill 2054 and House Bill 2085.

KANSAS MEDICAL SOCIETY
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To: House Elections and Governmental Organization Committee

From: Jerry Slaughter
Executive Director

Subject: HB 2054 & HB 2085; concerning the open meetings act

Date: January 31, 2007

The Kansas Medical Society appreciates the opportunity to submit the following comments on HB 2054 and HB 2085, both of which amend the Kansas Open Meetings Act as it relates to executive or closed meetings of public agencies. We have no position on the legislation, *per se*, but we do have a concern about a possible unintended consequence, unless it is amended.

The provisions of KOMA apply to governing boards of county and municipal hospitals, as they are public agencies under the act. While the legislation is not intended to do so, the fact that closed meetings of a hospital board could be recorded and subsequently released, may inadvertently violate the protections afforded peer review and risk management records. Peer review functions require candid and open discussion of private health care information in order to promote patient safety and quality improvement activities. Inadvertent release of such information could have a chilling effect on peer review and risk management activities, and discourage physicians and other providers from participation in such patient care improvement efforts.

To make it clear that the peer review and risk management functions are not intended to be compromised by these bills, we would urge the committee to add the following language to whichever bill the committee ultimately recommends for passage. In HB 2054 the amendment should appear at the end of line 42, page 1, in Section 1 (b)1; and in HB 2085 the amendment should appear at the end of line 4, page 2, in Section 1 (d)2. The amendment follows:

", except that in no event shall the court order disclosure, or allow disclosure, of any recording made pursuant to this subsection (d)(2) to the extent the recording involves, constitutes, or pertains to, peer review as defined by K.S.A. 65-4915, as amended, or risk management functions and activities described and defined by K.S.A. 65-4921, et seq., as amended."

This language is consistent with a similar amendment made by this committee at our request two years ago on in legislation which dealt with the Open Records Act. Thank you for considering our comments.

House Elections & Gov. Org.
Date: 1-31-2007
Attachment # 11

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. 31, 2007

To: Rep. Mike Burgess, chairman of the House Committee on Elections and Governmental Organization, and committee members

From: Doug Anstaett, executive director, Kansas Press Association

Re: HB 2085

Thank you, Mr. Chairman, and members of the committee, for this opportunity to once again state my support for a bill that will increase the public's trust in the governing process in Kansas.

I'm going to take a slightly different approach today. Rather than simply regurgitate past testimony on this issue, which many of you have heard before, I want to ask you a simple question:

If public officials are breaking the law during an executive session, how in the world will citizens ever know about it? The meetings are closed. Because there is no available independent method of verification, any suspicions of illegality are consequently reduced to a "he said, she said" debate, such as this:

"Madame Chairman, I believe we just broke the law."

"No, we didn't. You can't prove it, anyway."

Our issue is as simple as that. There is no way under current law to raise the level of public trust in the process, or to force public officials to comply.

Today, our opponents will argue that "most" public officials work hard to do what's right, some of them for little or no pay. We agree. But this bill isn't aimed at "most" public officials. It's aimed at those who break their vow to uphold the law. It's aimed at those who deliberately break the Kansas Open Meetings act, simply because they can.

Is tape recording of executive sessions the right answer? We think it is. Tape recording would provide cover for the innocent and a fairly effective deterrent for the guilty. The innocent could, if the need arose, use the tape to substantiate that what they had done was legally permissible. The guilty, if they knew what was good for them, would simply get back to the legally protected topic of discussion.

We don't claim to have cornered the market on all wisdom at the KPA. If tape recording is not the solution, then why won't our perennial opponents step forward and suggest a reasonable, verifiable way to ensure that executive sessions proceed according to the law, rather than line up against "our" solution?

Under KOMA, public officials are allowed 14 different reasons to legally close a meeting to discuss official business, including such subjects as personnel matters, pending legal matters, preliminary discussions about the purchase of real estate and security matters.

We are willing to allow closed sessions for those purposes. But we draw the line right there.

Talking Points to Consider

• Kansas law says it is "against the public policy of this state for any public meeting to be adjourned to another time or place in order to subvert the policy of open public meetings." Discussions that stray outside the law are in fact illegal, yet the public is denied knowledge of the illegality by the very nature of executive sessions.

• Recording would only occur if a member of a public body believes the discussion did not fall within the exceptions in the Kansas Open Meetings Act or within the motion made to justify the executive session.

• The more likely effect of this legislation will be to bring an end to any discussion that is illegal under KOMA. If no illegal discussion takes place, these tape recordings would never be heard by the public.

• We know most board members are conscientious and want to do the right thing. This legislation protects them because it would also create a record that could be used to counter false claims by the public about the legality of a closed session.

• This legislation is not designed to "chill" discussions in executive session, but to keep those discussions within the 14 exceptions included in KOMA.

• In the rare times it would be used, a tape would provide clear evidence that the law was being obeyed — or violated. The evidence would be provided by the members themselves in their own words, making it impossible for someone with a grudge to make a baseless charge.

• Rather than discourage good people from seeking office, tape recorded executive sessions also would provide assurance that their words or actions could not be twisted or misrepresented by their political opponents.

• A court will provide the insulation necessary to ferret out the responsible protests from the irresponsible claims. The bill says the court "shall weigh" any prejudicial effects to the public interest that might result from the public disclosure of the content of the meeting.

• Executive sessions by their very nature breed suspicion. Why not allow the public some semblance of security that what is being discussed is protected by the exceptions in KOMA?

• There are many board, commission and council members who are frustrated by these illegal discussions but have no recourse but to leave a meeting. Let's give them another tool to keep discussions within the exceptions approved in KOMA.

• We've seen at the national level, under both Democratic and Republican administrations, how "trust me" government doesn't work. Former President Ronald Reagan had it right: "Trust, but verify."

KAB
KANSAS ASSOCIATION OF BROADCASTERS

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Testimony
HB 2085
House Committee on Elections and Governmental Organization
January 31, 2007
By
Harriet Lange, President
Kansas Association of Broadcasters

Mr. Chairman, Members of the Committee, I am Harriet Lange, president of the Kansas Association of Broadcasters (KAB). KAB serves a membership of free-over-the-air local broadcast stations in Kansas. We appreciate the opportunity to appear before you in support of HB 2085.

The potential always exists for public distrust when executive sessions by public bodies occur. The provisions in HB 2085 will help to eliminate that distrust by providing for taping of these closed sessions under certain circumstances. If a member of a public body thinks the potential for a KOMA violation exists, the taping of the executive session will either discourage the violation, or it will document it. Either way, the public wins. If there is no violation or court action alleging a violation, the tape never becomes public. The ability for a public body to freely discuss legitimate sensitive issues in a legitimate closed session is left intact.

Public officials who follow the law should not be fearful of recordings of these closed sessions, which would serve to prove they had acted within the law should a closed session come into question.

If passed HB 2085 will further the state's policy of open government, will help to build public trust of public officials, and will protect public officials who may be wrongly accused of violating Kansas Open Meetings law.

We urge you to pass HB 2085.

Thank you for your consideration.

LKM
League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

TO: House Elections and Governmental Organizations Committee

FROM: Sandy Jacquot, Director of Law/General Counsel

DATE: January 30, 2007

RE: Opposition to HB 2054 and HB 2085

First, I would like to thank the Committee for allowing the League of Kansas Municipalities to testify today in opposition to HB 2054 and HB 2085. These bills would radically alter the delicate balance that the Kansas Open Meetings Act (KOMA) currently strikes between the need for certain privacy and the right of the public to have access to information. In addition, there are protections in the KOMA making this bill unnecessary.

HB 2085 would allow a member of a public body or agency to object to participation in an executive session if that member believes the action violates or "subverts the intent" of the KOMA. At that point, the executive session could only proceed if tape recorded and the tape preserved for at least a year. Then, the tape is subject to review and possible release by a court. First, K.S.A. 75-4320b provides adequate enforcement options for addressing any perceived violation. That statute gives the county or district attorney and the attorney general the ability to subpoena witnesses and documents, take testimony under oath and review any other material pertinent to an investigation. Thus, if a member of the public body was concerned about a violation of the KOMA, he or she could testify as to the violation without the need for a tape recording. In addition, there is nothing preventing any person from declining to go into executive session because that person feels the KOMA may be violated by the action and then that person later making a complaint to the county or district attorney or the attorney general. There are other logistical issues that arise with this legislation. A simple objection, whether or not it is made in good faith, triggers the tape recording of the executive session. If a disgruntled official objects to every executive session, all sessions would have to be recorded. This proposed legislation is just another example of a solution looking for a problem. The current law is quite adequate to address the issue that this legislation is attempting to regulate.

HB 2054 goes even further in making meaningless a governmental entity's ability to go into executive session. This bill allows any person in attendance at the meeting to request that the executive session be taped. Such individual does not even need to have a belief that the executive session violates or "subverts the intent" of the KOMA. The only exception is for executive sessions that involve the attorney-client privilege. Any citizen can, without any rational basis, require the entity to tape the executive session. This is extremely poor public policy and could result, in some cases, the taping of almost every executive session held by a city.

Further, who would be the custodian of these secret, and only subject to court order, tapes? Typically records of this type would be maintained by the city clerk, but if the executive session happened to be about the city clerk, clearly that would be unworkable. Therefore, there would be the possibility that numerous individuals would have to be named custodians of the executive session tapes that are supposed to be privileged. Despite the attempt in both of these bills to protect the attorney-client privilege, it is doubtful that the privilege could survive the pitfalls of the legislation. I do not believe any attorney would advise their client with a recording device in the room. At least HB 2054 does not require the taping of attorney-client privileged sessions.

Perhaps the most disturbing aspect of this legislation is that it presupposes that local officials and others cannot be trusted to carry out their statutory duties as provided by the KOMA. The League has much more faith in local government officials and believes that the current law is working well. We do not believe that there has been any showing that would support such a drastic and problematic change in the KOMA and would urge this Committee to reject both HB 2054 and HB 2085. Thank you again for allowing the League to testify in opposition to these bills.

KANSAS ASSOCIATION OF SCHOOL BOARDS

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

Testimony on **HB 2085**
before the
House Elections and Governmental Organization
by

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

January 31, 2007

Mr. Chair and Members of the Committee:

Thank you for the opportunity to appear in opposition of H.B. 2085.

H.B. 2085 gives the authority over whether to record a meeting to a board member who may use the request to record the meeting to discourage the discussion, particularly if the board member is supportive of the employee or student whose acts or behavior is being discussed in executive session.

I have attached a copy of the reasons and justifications used by board members when they make a motion to go into executive session.

Under current law, if a school board member does not believe the board is complying with the Open Meetings Act, the board member may vote "no" on the motion to go into executive session, refuse to go into executive session or declare a conflict and abstain from voting pursuant to K.S.A. 72-8205.

Thank you for your consideration.

Appendix F

KANSAS OPEN MEETINGS ACT: SAMPLE MOTIONS FOR EXECUTIVE SESSION

KANSAS OPEN MEETINGS ACT
(Sample Motions for Executive Session)

Mr. President, I move that we go into executive session (fill in subject) in order to (fill in justification), and that we return to open session in this room at (fill in time).

SUBJECT	JUSTIFICATION
To discuss personnel matters of nonelected personnel	Protect the privacy interests of the individual(s) to be discussed
To discuss matters affecting a student(s)	Protect the privacy interests of the individual(s) to be discussed
To discuss confidential financial data or trade secrets of a business	Protect the interests of the business to be discussed
For consultation with our attorney on a matter protected by the attorney-client privilege	Protect the privilege and the board's position in (litigation, potential litigation, administrative proceedings, etc.)
To discuss negotiations	Protect the public interest in negotiating a fair and equitable contract
To have preliminary discussions about the acquisition of real property	Protect the public interest in obtaining the property at a fair price
To discuss matters relating to the security of a public body or agency, public building or facility or the information system of a public body or agency	Protect the security of the facility, computer, staff and students

Note: No binding action shall be taken during closed or executive session.

KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY
concerning
HB 2054 and HB 2085
Tape Recording of Executive Sessions
Presented by Randall Allen
House Elections and Governmental Organization Committee
January 31, 2007

Chairman Burgess and members of the committee, my name is Randall Allen, Executive Director of the Kansas Association of Counties (KAC). I appreciate the opportunity to testify on behalf of the Kansas Association of Counties and our 99 member counties ***in opposition to*** HB 2054 and HB 2085, requiring the taping of closed or executive sessions of governing bodies in certain situations.

The primary reason we oppose this bill is that we are not aware that there is a problem. Never once since a bill of this nature was last heard by legislative committee has a member of the press or a member of the public contacted our office saying that there was a situation or concern regarding the content of closed session discussions that merited a bill to resolve. As such, both bills seem to us solutions in search of a problem. We would ask the proponents of this legislation to do what legislators normally ask of proponents of other bills, i.e. to first work with affected parties to reach an understanding of different points of view and, if possible, reach a solution short of a legislative remedy. If a problem is identified with the current application of the Kansas Open Records Act which demands a solution, and our association or our members are not willing to discuss a solution(s), then we would understand the Legislature adopting a bill of this nature through normal processes. As such, we thank the committee for the opportunity to comment and urge the committee to table both bills.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its members. Inquiries concerning this testimony can be directed to Randall Allen or Judy Moler at the KAC by calling (785) 272-2585.

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WICHITA
PUBLIC SCHOOLS

House Elections and Governmental Organizations
Representative Burgess, Chair

H.B. 2054 and H.B. 2085 Recording of Executive Sessions

January 31, 2007

Diane Gjerstad
Wichita Public Schools

Mr. Chairman and members of the Committee:

I rise in opposition to both H.B. 2054 and H.B. 2085 requiring the recording of executive sessions.

Executive sessions are not to protect the privacy of the elected public officials, but to protect the privacy of student information or employee information or the business which would put the public body at a disadvantage if done in public.

School boards deal with highly sensitive information when a student is under consideration for expulsion or suspension. The privacy of student information is governed by federal law (FERPA). When a student's conduct results in a recommendation of suspension or expulsion, the parent/guardian has the right to appeal to with the Board of Education. The meeting of the parent, student and Board is held in private under the Executive Session exemption of the Kansas Open Meetings Act. First imagine yourself as a parent in this uncomfortable, difficult and emotional position. You have asked to meet with the Board of Education – you are nervous. You walk into the room, sit down and see a tape recorder running in the middle of the table. Imagine the additional angst placed on the parent knowing a taped history of your student's exploits now sits in someone's office.

Executive Sessions are for a narrow range of topics for the Board to have a frank, private conversation. Taping will have a chilling affect.

These bill raise additional questions – who is responsible for the integrity of the tapes, under what conditions are the tapes to be stored, what is the process for access, who is responsible if the tape is inaudible or defective, who is responsible for destruction of tapes, who is going to ensure a retired Clerk disposed of tape correctly?

Mr. Chairman, if an elected official believes there is a violation of law a call to the District Attorney's office is the appropriate route; we oppose this bill.

KANSAS HOSPITAL ASSOCIATION

Thomas L. Bell
President

TO: House Committee on Government Organizations and Elections

FROM: Deborah Stern, RN, JD
Vice President Clinical Services/ Legal Counsel

presented by:
Chad Austin, KHA

RE: House Bills 2054 and 2085

DATE: January 31, 2007

The Kansas Hospital Association (KHA) appreciates the opportunity to comment on the provisions of House Bill 2054 and House Bill 2085 related to changes to the open meetings law and the recording of executive sessions. We would like to bring to your attention the need to protect the proceedings of issues discussed in health care risk management and peer review meetings and exempt these meetings from the proposed recording requirement.

Currently, all reports, records and proceedings generated by peer review and risk management committees including executive sessions, are privileged and not subject to discovery, subpoena or any other means of legal compulsion. The Peer Review statutes beginning at K.S.A. 65-4915 et seq. as well as the Risk Management statutes contained in K.S.A. 65-4921 et seq. contain these protections. These statutes were put in place to encourage frank discussion to find and correct weaknesses in the health care delivery system. It is our strong belief that any request to record an executive session dealing with these sensitive subject matters will stifle the open discussion that peer review and risk management statutes foster and protect.

K.S.A. 75-4319 as currently written provides adequate guidance as to what subjects may be discussed in a closed executive session and for this reason KHA does not support amending this statute. If the Legislature agrees that K.S.A. 75-4319 must be amended and chooses to use HB 2054 and HB 2085 to make such amendments, KHA seeks your support to exclude the recording of executive sessions in which health care risk management and peer review issues are discussed.

Thank you for your consideration of these comments.

House Elections & Gov. Org.
Date: 1-31-2007
Attachment # 18

Kansas Hospital Association
215 SE 8th Ave. • P.O. Box 2308 • Topeka, KS • 66601 • 785/233-7436 • Fax: 785/233-6955 • www.kha-net.org

COUNTY MANAGER'S OFFICE

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Andrew J. Schlapp
Director, Government Relations

TESTIMONY
HB 2054 and HB 2085
House Elections and Governmental Organizations
January 31, 2007

Chairman Burgess and members of the committee, my name is Andy Schlapp, Director of Government Relations for Sedgwick County. Thank you for the opportunity to submit written testimony in opposition to these bills.

Here are just a few reasons why taping executive sessions, even under the circumstances proposed in these new bills, burdens the effective conduct of government business without any real corresponding benefit.

1. There are effective tools and protections in place already to protect the public's right to know. Recall can be and has been used. Ouster is also available as a remedy. Current law provides for investigation and subpoenaed testimony.
2. Taping creates the opportunity for abuse by a minority faction, or even a lone member of a public body, to impose their will on the majority.
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For the above reasons we respectfully oppose the above bills.

The City of
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Testimony Before The
House Elections & Governmental Organization Committee
Regarding
House Bill 2054 and HB 2085
Submitted by Erik Sartorius

January 31, 2007

The City of Overland Park appreciates the opportunity to appear before the committee and present testimony in opposition to House Bills 2054 and 2085, which would require the taping of executive sessions of governmental bodies.

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. Specific topics for which executive sessions are allowed are clearly spelled out, as is the requirement that no binding action be taken in executive session (K.S.A. 75-4319 (c)). The focus of the ability to go into executive session is, for example, to protect the privacy of individuals discussed in such sessions (personnel matters), to allow discussion of litigation strategies and other legal issues with the public entity's attorneys (attorney-client privilege) or to allow public entities to negotiate effectively for the purchase of land (preliminary discussions relating to the acquisition of real property).

It was only two years ago that the City of Overland Park came to the legislature seeking a specific exception to the Kansas Open Meetings Act and the Kansas Open Records Act. After September 11, 2001, our police department began an in-depth review of our security procedures and an analysis of potential targets in our community. There was some question as to whether such work products and their presentation to the city council were covered under current exceptions to KORA and KOMA. Understandably, city officials did not want to place sensitive, detailed response plans in the public realm. These concerns will resurface if HB 2054 or HB 2085 is passed, as a theft, misplacement, or accidental loss of tapes could again threaten to place sensitive briefings into the hands of individuals who would use them against our citizens.

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ensure that the city's interests are protected? Will they address personnel matters head on, or will discussions of possible action be tempered with concerns that the employee will eventually hear deliberations where they are mentioned in an unfavorable light? Human nature suggests that individuals tend to tame their conversations when they believe they are being overheard. At the same time, most would agree frankness is needed at times to address serious issues.

As the City of Overland Park has noted before, the vast majority of government business is conducted in broad daylight, with public comment and involvement encouraged and expected. For over thirty years, the Kansas Open Meetings Act has recognized that there are limited, legitimate instances where government entities should be able to consider issues in private. The City of Overland Park asks that you not do away with this current balance, and reject House Bill 2054 and House Bill 2085.

KANSAS MEDICAL SOCIETY
KMS

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To: House Elections and Governmental Organization Committee

From: Jerry Slaughter
Executive Director

Subject: HB 2054 & HB 2085; concerning the open meetings act

Date: January 31, 2007

The Kansas Medical Society appreciates the opportunity to submit the following comments on HB 2054 and HB 2085, both of which amend the Kansas Open Meetings Act as it relates to executive or closed meetings of public agencies. We have no position on the legislation, *per se*, but we do have a concern about a possible unintended consequence, unless it is amended.

The provisions of KOMA apply to governing boards of county and municipal hospitals, as they are public agencies under the act. While the legislation is not intended to do so, the fact that closed meetings of a hospital board could be recorded and subsequently released, may inadvertently violate the protections afforded peer review and risk management records. Peer review functions require candid and open discussion of private health care information in order to promote patient safety and quality improvement activities. Inadvertent release of such information could have a chilling effect on peer review and risk management activities, and discourage physicians and other providers from participation in such patient care improvement efforts.

To make it clear that the peer review and risk management functions are not intended to be compromised by these bills, we would urge the committee to add the following language to whichever bill the committee ultimately recommends for passage. In HB 2054 the amendment should appear at the end of line 42, page 1, in Section 1 (b)1; and in HB 2085 the amendment should appear at the end of line 4, page 2, in Section 1 (d)2. The amendment follows:

", except that in no event shall the court order disclosure, or allow disclosure, of any recording made pursuant to this subsection (d)(2) to the extent the recording involves, constitutes, or pertains to, peer review as defined by K.S.A. 65-4915, as amended, or risk management functions and activities described and defined by K.S.A. 65-4921, et seq., as amended."

This language is consistent with a similar amendment made by this committee at our request two years ago on in legislation which dealt with the Open Records Act. Thank you for considering our comments.

House Elections & Gov. Org.
Date: 1-31-2007
Attachment # 21