Approved: 3/31/09

Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 2, 2009, in Room 143-N of the Capitol.

All members were present.

Committee staff present:

Melissa Doeblin, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the committee:

Representative Frownfelter
Ed Jaskinia, Associate Landlords of Kansas
Luke Bell, Kansas Association of Realtors
John Todd, Concerned Citizen, Wichita
Eric Sartorius, City of Overland Park
Melissa Wangemann, Kansas Association of Counties
Michael Smith, Assistant Attorney General
Melissa Wangemann, Kansas Association of Counties
Kim Winn, League of Municipalities
Fred Mars, Attorney, Concerned Citizen
Rich Gannon, Kansas Press Association

Others attending:

See attached list.

The hearing on **HB 2246 - Cities; neighborhood organizations; nuisance actions for city code violations** was opened.

Proponent:

Representative Frownfelter, appeared before the committee as a proponent of the bill. He stated this bill goes along with **HB 2247**, which is being heard in Local Government. He advised the intent of this bill is not to displace anyone out of their home that they own/rent. This law has no bearing on any military person being deployed for any length of time. This bill deals with abandoned houses and only abandoned houses. Abandoned houses can cause neighboring homes to lose their value or make it impossible to sell. This bill would help neighborhoods from seeing their communities deteriorate before their eyes. It would also allow property that has been abandoned with no one to maintain this property to access the city/county to intercede and clean up the appearance of the property. If the city/county does not have the time or manpower, they can delegate this to any outside organizations, such as CHODO, CDC, NBR, neighborhood groups, seniors/churches, scouts, optimists, rotary clubs, etc. The city/county has the authority to charge back to the property owner a fee referred to as a "special assessment lien", which would be agreed upon before the project is done with the individual organization. He also provided pictures of neglected houses and a listing of common acronyms and/or words and their definitions. (Attachment 1)

Written Proponent:

Ashley Jones, Director of State Policy at Greater Kansas City Local Initiatives Support Corporation (LIST), presented written testimony as a proponent of the bill. (Attachment 2)

Ken Strobe, City Manager for City of Dodge City, submitted written testimony in support of this bill. (Attachment 3)

Kent Hinson, City Administrator, City of Melvin, submitted written testimony in support of this bill that would allow them to deal with neglected property more readily. (Attachment 4)

Minutes of the House Judiciary Committee at 3:30 p.m. on March 2, 2009, in Room 143-N of the Capitol.

Opponents:
Ed Jaskinia, President of The Associated Landlords of Kansas (TALK), appeared as an opponent. He stated this bill would give neighborhood groups the ability to, 1) Act with a power that is superior to local Code Enforcement Officers (Section 4), and, 2) Act in the capacity of an Attorney (Section 2). He also stated this bill only allows you to go on to the property, not do any work. In addition, they want code enforcement by code enforcement people who are special trained for the job. (Attachment 5)

Luke Bell, Vice President of Governmental Affairs of Kansas Association of Realtors(BAR), spoke as an opponent. He stated this bill was the wrong approach and it would delegate important governmental functions to private neighborhood organizations that are not accountable to local homeowners and citizens. Code enforcement and nuisance abatement are important governmental functions that should only be performed by qualified professionals and supervised by local governments. He stated elected people are held accountable, neighborhood people are not. Allowing private neighborhood organizations to bring civil lawsuits against private property owners creates a system that would allow unaccountable private organizations to assume governmental functions with no oversight or procedural fairness. (Attachment 6)

John Todd, is a concerned Citizen from Wichita, Kansas and appeared as an opponent. He stated he is a licensed self-employed real estate broker and has been following public housing initiatives in Wichita for a number of years. He stated this bill gives un-elected organizations quasi-governmental powers that are inappropriate and therefore powers that must be reserved only for duly elected policy boards like city councils. The creation of a "neighborhood organization" to act as a future neighborhood developer, would allow a quasi-governmental entity to potentially run roughshod over neighboring single family homeowners and the potential for intimidation of these property owners is tantamount to a "taking" of their property rights without a due process of law.(Attachment 7)

The hearing on **HB 2246** was closed.

The hearing on **SB 34 - Continuation of certain exceptions to disclosure under the open records act** was opened.

Jill Wolters, Staff Revisor gave an overview of the bill regarding Kansas Open Records Act and Review Open Records Act exemptions under K.S.A. 45-229 and **SB 702**, enacted in 2008. The Senate bill provided an extension to 14 statutory exceptions to the Open Records Act until July 15, 2009, in order for legislative review of the Open Records Act in order to determine if any statutory exceptions to the law were unnecessary and could be discontinued and it also extended the open records exceptions for another year in order for the Legislature to review these exceptions during the 2008 interim.
In **2000, Sub. For HB 2864** was enacted into law. As part of that bill, K.S.A. 45-229 provided that all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and that any new exceptions created by the legislature or substantial amendment to an exception, shall expire five years after creation or amendment, unless the legislature acts to continue the exception. In the year prior to the expiration the Revisor of Statutes is required to certify the language and citation of each exception to the Speaker of the House of Representatives and the President of Senate. She listed additional requirements by Subsection (h).

Jill provided a listing of the 14 statutory exceptions to the Open Records Act that were extended until July 15, 2009 in **2008 SB 702.** A listing was also provided of the 16 statutory exceptions to the Open Records Act certified by the Revisor of Statutes in 2008. Note: If any additional information is needed regarding reference to Attachments A, B, C or D, in her review, you may contact Jill Wolters, Staff Revisor at 296-2321. (Attachment 8)

Proponents:
Eric Sartorius, representing the City of Overland Park spoke as a proponent of the bill. Of particular interest is a provision excepting discussions of homeland security issues, K.S.A. 45-221 (a) (45). He explained that exception is particularly important when local jurisdictions are working in cooperation with private companies, religious institutions, hospitals and schools to coordinate on security matters. (Attachment 9)

Melissa Wangemann, on behalf of Kansas Association of Counties, provided written testimony in support of the bill stating these exceptions have been carefully considered during their enactment in the past and have proven over time to carefully balance the interest of public information against the interest of personal privacy

and security.(Attachment 10)

There were no opponents.

The hearing on **SB 34** was closed.

The hearing on **SB 135 - Kansas open meetings act; interactive communications constituting open meetings** was opened.

Chairman Kinzer explained this bill is changing the word from "meetings" to "interactive communications."

Michael Smith, Assistant Attorney General, is responsible for enforcement of the Kansas Open Meetings Act (KOMA) in the office of Attorney General Steve Six and spoke in support of the bill. This bill would amend the KOMA to correct an oversight in the drafting of House Bill 2947 enacted in the 2008 legislation session. The intent of this bill is to clarify that "serial meetings" are prohibited under KOMA. The bill changed the wording from" meetings" to "interactive communications". Supplemental Note as recommended by the Senate Committee substituted the phrase "interactive communications" in a series, to "meetings in a series" to clarify that serial meetings, except for legislative meetings as provided by Section 22 of Article 2 of the Constitution of Kansas, are required to be open under KOMA. (Attachment 11)

Melissa Wangemann, General Counsel for Kansas Association of Counties spoke as a proponent and was in agreement that a clarifying amendment was in order. (Attachment 12)

Kim Winn, Director of Policy Development and Communications for the League of Municipalities spoke as a proponent and that changing the word "meetings" to "interactive communications" is not a substantive change. (Attachment 13)

Fred Mars, Attorney, and a concerned citizen from Wichita, Kansas appeared before the committee to present testimony regarding the Kansas Open Meetings Act and specifically as it applies to Board of Regents. He also offered proposed amendments to K.S.A. 75-4319 and K.S.A. 75-4320 as solutions to problems outlined in his testimony. (Attachment 14)

Richard Gannon, Director of Governmental Affairs for the Kansas Press Association submitted written testimony in support of the bill. (Attachment 15)

The next meeting is scheduled for March 3, 2009.

The meeting was adjourned at 4:40 p.m.

JUDICIARY COMMITTEE GUEST LIST

DATE: March 2, 2009

NAME	REPRESENTING
FRED MARRS	SHOCKER BLACK & GOLDS (WICHITA)
REP. STAN FROWNFELTER	31st DIST
Richard Gannon	KPA
Melissa Wangemann	KAC
Kim Winn	LKM
Doug Smith	LISC
[illegible] Jones	LISC
Dan Gibb	KSAG
Michael Smith	KSAG
Whitney Damron	KS Bar Assn.
Joseph Molina	KS Bar Assn.
Nancy Zogleman	Polsinelli
Lana Walsh	Judicial Branch
ERIK SARTORIUS	City of OVERLAND PARK
Luke Bell	KS Assoc. of REALTORS
ED JASKINIA	THE ASSOCIATED LANDLORDS OF KANSAS
SEAN MILLER	CAPITOL STRATEGIES

STATE OF KANSAS

STAN FROWNFELTER
REPRESENTATIVE, 31ST DISTRICT
WYANDOTTE COUNTY
4527 GIBBS ROAD
KANSAS CITY, KANSAS 66106
(913) 262-9659
STATE CAPITOL
TOPEKA, KANSAS 66612
(785) 296-7668

TOPEKA

HOUSE OF REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: CORRECTIONS AND JUVENILE JUSTICE
TAXATION
TRANSPORTATION AND PUBLIC SAFETY BUDGET

HB 2246

Introduction

Chairman Kinser and members of the judiciary committee, thank you for having the hearing on HB 2246.

HB 2246 goes with HB 2247 being heard in Local Government.

To start with, HB 2246 deals with abandoned houses and only abandoned houses. Also the intent of the law is not to displace anyone out of their home that they own/rent. This law has no bearing on any military person being deployed for any length of time.

The term "nuisance" is defined between lines 34 (3) to 42.

In short, property that has been abandoned with no one to maintain this property will access the city/county to intercede and clean up the appearance of the property. If the city/county does not have the time or manpower, they can delegate this to any outside organization. These organizations can be:

- city/county
- CHODO
- CDC
- NBR
- neighborhood groups
- seniors/churches
- scouts, optimists, rotary clubs, etc.

The city/county has the authority to charge back to the property owner a fee referred to as a "special assessment lien." This is to be agreed upon before the project is done with the individual organization.

This law will help neighborhoods from seeing their communities deteriorate before their eyes.

Thank you for your time and I ask for your support.

House Judiciary
Date 3-2-09
Attachment # 1

CHWC, INC.
COMMON ACRONYMS AND/OR WORDS AND THEIR DEFINITIONS

Revised 02/25/04

Appropriation – A special line-item designation by a U.S. Senator or U.S. Congressman placed into one of the major funding bills. Appropriation funding approved by Congress bypasses both the federal and local levels and comes straight to the receiving organization. An Environmental Review is necessary before the funds are wired.

CD2000 – Community Development 2000 – Now in its 4th year, this programs primary goal is to increase production of new and rehab house and thus improve neighborhoods. Each year the 20+ metro CDCs

CDC – Community Development Corporation – An agency which works within specific neighborhoods to improve the quality of life for its residents. The CDC Movement is over 25 years old, thus CHWC is one of the newer CDCs. CDCs typically are on the cutting edge of neighborhood development and take on projects which are considered risky by most.

CDBG – Community Development Block Grant - These are United States Department of Housing and Urban Development (HUD) funds passed by Congress every year and provided to the Unified Government of Wyandotte County/Kansas City, KS (UG). Organizations must apply for funding from the UG for specific projects within a specific geographic area. The funds are good for site development work, as long as the homes built on the site are for at least 50% or more low-to-moderate income families.

CHDO – Community Housing Development Organization – There are both State and local CHDOs. Both are governed by the same guidelines, just different reporting mechanisms. The CHDO is a special designation of non-profits working in community development. By federal law, CHDOs are required to receive a certain portion of the HOME funds allocated to a local governing body. CHDOs are required to maintain over 1/3 representation from local neighborhoods within the boundary of the local governing body.

CHIP – Community Housing Incentive Program – A program of the Unified Government to provide soft-second mortgages to persons/families below 80% of median income. The qualified homebuyers can receive up to 20% of the value of the appraised value of the home, or $19,000 maximum, whichever is greater.

CHWC – Fromerly known as Catholic Housing of Wyandotte County, now referred to outside of the predominant Catholic areas as Community Housing of Wyandotte County.

CSI – Crime and Safety Initiative – A LISC funded program which looks to improve crime and safety issues within a certain geographic area.

DAB – Donor Advisory Board - A board comprised of major funders of LISC and CD2000. The DAB sets the tone for LISC.

DIG – Development Incentive Grant – A LISC funded grant for production of single-family new construction and acquisition/rehab. Every new house built and sold is eligible for $3,000/home up to 5 homes. After 5 homes the DIG increases to $5,000home, and after 10 homes it increases to $7,000/home. For acquisition/rehab the DIG is 4% of acquisition costs, 8% of hard renovation costs up to the appraised value of the home. Acquisition/rehab homes within the NPI neighborhoods are NOT eligible for the DIG, however, new construction is eligible.

Downzoning – The process by the Unified Government which changes the zoning from zoning established around WW II to current actual conditions in neighborhoods. In most cases, the neighborhoods are downzoned from RP-5 (planned apartment 5 units) to R1b (single-family designation) to keep the large, older homes from being cut up into apartments.

Environmental Review – Is a review to see the impact of the federal funds on the area to receive it. Requires clearance letters from the State Housing Preservation Organization (SHPO), Health Department, UG (for flood plain), and several other departments which show the project will not have a negative impact on the area or potential homeowners.

All acquisition/rehabs utilizing federal (primarily CDBG and HOME) funds are required to receive clearance, as well as new construction projects utilizing federal funds.

Fannie Mae – An organization founded by Congress, it is one of the largest, if not largest, purchasers of mortgages from lenders. It also currently provides a line of credit, in conjunction with Security Bank and UMB, for our construction loans for new, single-family homes.

HOME – Similar to CDBG, only HOME funds can be used directly for construction of new, single-family homes and the rehab of existing structures. The persons/families who purchase homes with HOME funding are required to be below 80% of median income.

HSIAC – Hispanic Serving Institutes ……. – This is a grant program from the U.S. Department of Education for Donnelly College. A portion of their last grant proposal was for $105,000 minor home repair funds for CHWC, Inc. We are to provide up to $5,000 in grant funds for persons/families living in the St. Peter/Waterway/Bethany, and Prescott Neighborhoods.

HUD – U.S. Department of Housing and Urban Development

KCCDI – Kansas City Community Development Initiative – This group is comprised of the large foundations/philanthropists in the metro Kansas City area. KCCDI funds the NPI program and generally makes the final decisions concerning the program.

LAC – Local Advisory Committee – A working committee of LISC, they generally advise LISC and staff.

Lead-Base Paint Rule – All homes built before 1975 contain lead-based paint. Congress, and LISC, require that any federal funds (HOME or CDBG) expended over $25,000 requires a complete abatement (which is very costly). Any funds over $5,000 but under $25,000 require special remediation (covering or cleaning up), and any funds under $5,000 requires only notification and

LISC – Local Initiative Support Corporation – Our single-largest funder. They are a national intermediary of funds from some of the larger foundations in the United States, such as the Ford Foundation, State Farm, etc., as well as the U.S. Department of HUD.

Low-to-Mod – A HUD designation which is based on the median income of the entire metro area, including Johnson County. As Johnson County has a high median income it pushes up the entire metro area median income, and thus makes a large percentage of persons/families within Wyandotte County eligible to purchase homes.

LURA – Land Use Restriction Agreement – A document recorded at the courthouse which runs with the property sold. The LURA is usually put in place to avoid the property from becoming rental, or some other criteria.

Median Income – For persons in the Kansas City Metro area, median incomes are designated for families from 1-8 persons. A detailed list of median income per family size is available from me, or Betty, upon request.

MOU – Memorandum of Understanding – An agreement between 2 or more parties detailing the terms of a partnership/program. Currently we are working on an MOU between CHWC and Kaw Valley Habitat for Humanity.

NeighborWorks Organization – There are 220 NeighborWorks organizations which are affiliated with NRC. Each organization is eligible for expendable grant funds, revolving loan funds, and training opportunities for staff and board.

NHSA – Neighborhood Housing Services of America – Part of Neighborhood Reinvestment Corporation, NHSA provides loans through NeighborWorks organizations such as CHWC. The terms of the loans are 30 years, with fixed interest at 5.95% for homebuyers.

NPI – Neighborhood Preservation Initiative – The largest initiative for CHWC. The main focus of the program is the acquisition/rehab of properties on a scale otherwise not attainable through conventional sources. NPI operates on a very concentrated, targeted approach to community development. NPI provides funds for the acquisition/rehab, as well as general operating, funds for neighborhood activities, and a variety of other services/activities.

NRA – Neighborhood Revitalization Act – An important redevelopment act by the Unified Government. This act allows for 95% tax rebate for a 10 year period for new, single-family homes, and certain other development. The property owners pay the tax for the first year and then are to receive back 95% in the form of a rebate check.

NRC – Neighborhood Reinvestment Corporation – This is an organization chartered by Congress 25 years ago. It has an annual appropriation from Congress, the most recent of which was $115 million this past January. NRC has an annual application process for funding in August, and a secondary cycle in March (if funds are available). CHWC has received over $30,000 in expendable grant funds and typically around $75,000 in RLF funds.

RLF – Revolving Loan Fund – CHWC has a RLF which is provided annually by NRC and/or the Unified Government. The revolving loan funds can be used, depending on their original source, to provide grants/loans to persons as determined by the CHWC Loan Committee. In addition, the RLF can be utilized on CHWC-owned buildings.

SHPO – State Housing Preservation Organziation – A state organization which is charged with monitoring all Historically designated properties. The SHPO, for example, will be responsible for the oversight on Old Firestation #9 to ensure we adhere to all Federal and State rules.

Soft-Second Mortgage – A mortgage for a homebuyer that is in second position behind the first mortgage from a traditional lender such as a bank. Most of the time for CHWC the soft-second mortgages are federal funds used either in the actual construction of the home, or for the specific purpose of providing assistance to persons/families below 80% of median income in the purchase of the home. The soft-second mortgages are generally for a period of 10 years, up to 15 years (depending on the amount), and are reduced by a set amount each month over the term until zeroed out at the end. If the homebuyer(s) reside in the home for the entire period, there is no repayment. A soft-second mortgage document is recorded at the courthouse, as well as a LURA, spelling out the terms. CHWC is responsible for monitoring soft-second mortgages for the term. In the past, CHWC has been forced to foreclose on property where the homebuyer moved and was renting, as the terms of the soft-second and LURA were both violated.

TIF- Tax Increment Financing – A state law which enables local governments to freeze property taxes at the current level, and then calculate the taxes generated by any new/rehabbed homes within the TIF boundary over the next 20 years. This increment is then bonded, enabling the local government to provide funding to acquire/demolish property, and rebuild infrastructure and any other pre-development activities.

UG - Unified Government of Wyandotte County/Kansas City, Kansas

VOE – Verification of Employment. Required for all purchasers of homes funded by UG programs such as the CDBG and HOME program. Also required for all CHWC RLF and NHSA

VOI – Verification of Income – Required for all purchasers of homes funded by UG programs such as the CDBG and HOME program. Also required for all CHWC RLF and NHSA

1-7

8-1

1-10

Ashley Jones
Director of State Policy
Local Initiatives Support Corporation
913.375.7264
www.lisc.org/KansasCity

Testimony
Before the House Judiciary Committee
House Bill No. 2246
March 2, 2009

Mr. Chairman and Members of the Judiciary Committee,

I want to thank you for the opportunity to submit written testimony. My name is Ashley Jones and I am Director of State Policy at Greater Kansas City LISC. Greater Kansas City LISC is a program area of the Local Initiatives Support Corporation, the nation's largest community development organization, dedicated to revitalizing urban core and rural neighborhoods.

Greater Kansas City LISC started the Kansas Housing Policy Network about a year and a half ago. Although it began with only a hand-full of individuals from across the state interested in the creation of community development tools, it has grown to include over 400 members to date. The Kansas Housing Policy Network includes representations from the Homebuilders, Realtors, Homeless Providers and Advocates, Community Development Corporations, and many other interested entities.

Currently, Greater Kansas City LISC's signature program, NeighborhoodsNOW, serves three Kansas City, Kansas Neighborhoods: Douglas Sumner, Downtown KCK and St. Peters, Waterway. Now in its fourth year, NeighborhoodsNOW has invested more than $13 million in these neighborhoods.

One of the greatest challenges we face as we work with residents to revitalize their neighborhoods is the number of vacant, abandoned or dilapidated houses in the community. No matter how much funding we put into these neighborhoods, individuals are less likely to move into neighborhoods if they have to live next to one of these poorly kept structures. Property values in the neighborhoods also suffer, which affects both existing and potential residents.

In almost all cases, community development corporations are the developers of last resort. Most of the areas serviced by nonprofits have had severe disinvestment over a prolonged period of time. Working in such disinvestment is hard, time-intensive work. Tools, such as this bill provides for nuisance abatement, will allow the work we do in these neighborhoods to both move at a pace that will allow our programmatic and monetary resources to be used efficiently and effectively.

We encourage you to support HB 2246, as it will help us to create sustainable communities.

House Judiciary
Date 3-2-09
Attachment # 2

CITY HALL
P.O. Box 880
Dodge City, KS 67801-0880
Phone: 620/225-8100
FAX: 620/225-8144
TTY: 620/225-8115
www.dodgecity.org

SENT VIA E-MAIL

February 11, 2009

Representative Stan Frownfelter
300 SW 10th Street
Topeka, KS 66612

Re: House Bills 2246 and 2247

Dear Representative Frownfelter,

Thank you for providing copies of House Bill 2246 and 2247 and for your work in promoting this legislation. The City of Dodge City, and I'm sure many other cities of similar size, would certainly benefit from the enactment of this proposed legislation.

Due in part to the demographics of our community we are continuously confronted with residential properties, many times owned by absentee landlords, which are in a deteriorating or dilapidated condition. On many occasions the properties could be rehabilitated. Unfortunately, the landlord either has no interest in doing so, or lacks the financial resources necessary for such action. Consequently the City is left with a deteriorating property which does not meet the criteria for condemnation, but constitutes a blight on the neighborhood.

In addition, our City currently faces a critical housing shortage. The existing housing inventory falls seriously short of meeting our current needs. At the same time, new housing construction appears to be focused primarily on upper income properties, leaving a serious shortage in low cost housing for either purchase or rental purposes.

Your proposed legislation would provide an important alternative for the City, by which a rehabilitated residential property could be placed on the market in an expedited manor, thus helping to alleviate our existing housing shortage. The City of Dodge City would strongly support enactment House Bill numbers 2246 and 2247.

Thank you again for your work on and interest in this important legislation.

Sincerely,

Ken W. Strobel
City Manager

KWS/mlw

Cc: Representative Pat George

House Judiciary
Date 3-2-09
Attachment # 3

CITY OF MULVANE

211 NORTH SECOND STREET
MULVANE, KANSAS 67110
(316) 777-1143
(316) 777-4081 (Fax)

March 2, 2009

Rep. Stan Frownfelter
State Capitol
Topeka, Ks. 66612

RE: **Support for HB 2246**

Dear Rep. Frownfelter,

This letter is to express support for HB 2246 relating to nuisance abatement in cities.

HB 2246 will strengthen a city's ability to deal with neglected property more readily.

HB 2246 provides another tool for local government to address slum and blight conditions.

Property maintenance is so critical in maintaining property values. HB 2246 will help out in that regard.

We urge you to support HB 2246.

Sincerely,

Kent Hixson
City Administrator
City of Mulvane

House Judiciary
Date 3-2-09
Attachment # 4

Ed Jaskinia
President
(913) 207-0567

James Dunn
Vice President (Zone 1)
(785) 843-5272

The Associated Landlords of Kansas

Doris Nelson
Vice President (Zone 2)
(785) 223-7226

Kevin Kimmel
Vice President (Zone 3)
(316) 265-7977

P.O. Box 4221 • Topeka, Kansas 66604-0221

The Associated Landlords of Kansas (TALK) was created in 1981 by a group of people from across Kansas to "Promote a strong voice in the legislature, a high standard of ethics, and provide educational opportunities for landlords." Some of our members helped create The Residential Landlord-Tenant Act of 1975, a model of fair law for both landlords and tenants. Our organization consists of members in 18 chapters across the state, and new chapters are in the process of being formed.

In this 2009 legislative session, we continue to work for fair and decent housing for all. We have listed below some of the issues that are of interest to us in this legislative session.

Testimony on HB 2246

At their finest, neighborhood organizations work to help the citizens within their community. For example, in Kansas City the Leavenworth Road Association (LRA) works to help its senior citizens, people in need, and local business. Many volunteer hours are given so that ALL may have a higher quality of life. They work in co-operation with the Community Police and Code Enforcement departments to help keep the area as safe and as crime-free as possible.

At their worst, some neighborhood groups have appeared to be vigilante groups, targeting those who are "different" from themselves.

This bill would give neighborhood groups the ability to:

1) Act with a power that is superior to local Code Enforcement Officers (Section 4)
2) Act in the capacity of an Attorney (Section 2)

While we believe that the writer of this bill has honorable intentions, we also see that this bill has the potential for the targeting of Tenants in rental properties and other "undesirables" as defined by local community activists.

If we can be of help to you in these or any other areas concerning property, tenants, or landlords, please feel free to contact us.

Ed Jaskinia, President

ZONE 1
Landlords of Lawrence Inc.
Landlords of Johnson County, KS Inc.
K.C.KS. Landlords Inc., serving Wyandotte Co.
Eastern Kansas Landlords Assc., serving Miami Co.
Franklin Co. Landlords Assc.
Osage Co. Landlords Assc.

ZONE 2
Landlords of Manhattan Inc.
Labette County Landlords Assc.
Geary County Landlords Inc.
Shawnee County Landlords Assc.
Salina Rental Property Providers Inc.
South Central Kansas Landlord Assc.
Serving Sumner County

ZONE 3
Central Kansas Landlords Assc.
Bourbon County Landlords Assc.
Cherokee County Landlords Assc.
Crawford County Landlords Assc.

House Judiciary
Date 3-2-09
Attachment # 5

To: House Judiciary Committee

From: Luke Bell, Vice President of Governmental Affairs

Date: March 2, 2009

Subject: **HB 2246** – Allowing Neighborhood Organizations to Bring Civil Lawsuits Against Property Owners for Nuisance Violations

Chairman Kinzer and members of the House Judiciary Committee, thank you for the opportunity to provide testimony on behalf of the Kansas Association of REALTORS® (KAR) in opposition to **HB 2246**. KAR has faithfully represented the interests of the 9,000 real estate professionals and over 700,000 homeowners in the State of Kansas for over 85 years.

Summary of the Legislation

HB 2246 would allow certain defined neighborhood organizations to bring civil lawsuits against private property owners for acts or conditions created, performed or maintained on private property that constitute a local code violation and that:

(1) significantly affect other residents of the neighborhood;
(2) diminish the value of neighboring property; and
(3) are injurious to public health, safety or welfare of neighboring residents or obstruct the reasonable use of other property in the neighborhood.

KAR Has Significant Concerns with the Proposed Legislation

In general, we believe that **HB 2246** would impermissibly delegate important governmental functions to private neighborhood organizations that are not accountable to local homeowners and citizens. Code enforcement and nuisance abatement are important governmental functions that should only be performed by qualified professionals employed and supervised by local governments.

Allowing private neighborhood organizations to bring civil lawsuits against private property owners creates a system that would allow unaccountable private organizations to assume governmental functions with no oversight or procedural fairness. In the absence of the strict oversight and procedural fairness normally associated with governmental actions, the authority granted under this legislation could lead to many abuses of this authority as neighborhood organizations are not bound by these same restrictions and protections.

785.267.3610 VOICE
800.366.0069 TOLL FREE
785.267.1867 FAX

House Judiciary
Date 3-2-09
Attachment # 6

John R. Todd
1559 Payne
Wichita, Kansas 67203
(316) 312-7335

March 2, 2009

Representative Lance Kinzer, Chair
House Judiciary Committee, and
Members of the House Judiciary Committee

Subject: My written testimony in **OPPOSITION** to **House Bill #2246** before the House Judiciary Committee, March 2, 2009 at 3:30 p.m.

Mr. Chairman and Members of the House Judiciary Committee:

As an interested citizen, and as a licensed self-employed real estate broker, I have been following public housing initiatives here in Wichita for a number of years.

It strikes me that this House Bill #2246 gives un-elected organizations quasi-governmental powers that are inappropriate and therefore powers that must be reserved only for duly elected policy boards like city councils.

One of the New Communities Initiative goals here in Wichita involves land assemblage of a large tract of land that is currently owned by dozens of single-family residential owners. Our city has been using its powers under its building code wholesale to demolish houses that in my opinion are structurally sound and that should be preserved as affordable housing units.

The creation of a "neighborhood organization" to act as a future neighborhood developer, would allow a quasi-governmental entity to potentially run roughshod over neighboring single-family homeowners. The potential for intimidation of these property owners is tantamount to a "taking" of their property rights without due process of law.

Private property rights are too important to casually be passed on to any group that is not accountable directly to the people via the election process.

I urge you to OPPOSE House Bill #2246.

Sincerely,

John R. Todd

House Judiciary
Date 3-2-09
Attachment # 7

Office of Revisor of Statutes
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MEMORANDUM

To: Chairman Kinzer and members of the House Judiciary Committee

From: Jill Ann Wolters, Senior Assistant Revisor

Date: March 2, 2009

Subject: SB 34, Continuation of certain exceptions to disclosure under the open records act

Interim charge. Kansas Open Records Act (KORA). Review Open Records Act exemptions under K.S.A. 45-229 and SB 702, enacted in 2008. The Senate bill provided an extension to 14 statutory exceptions to the Open Records Act until July 15, 2009, in order for legislative review of each provision to be completed. In recent years, the Legislature undertook a comprehensive review of the Open Records Act in order to determine if any statutory exceptions to the law were unnecessary and could be discontinued. 2008 SB 702 extended the open records exceptions for another year in order for the Legislature to review these exceptions during the 2008 interim.

In 2000, Sub. for HB 2864 was enacted into law. As a part of that bill, K.S.A. 45-229 (Attachment A) provided that all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and any new exception created by the legislature or substantial amendment to an exception, shall expire five years after creation or amendment, unless the legislature acts to continue the exception. In the year prior to the expiration, the Revisor of Statutes is required to certify the language and citation of each exception to the Speaker of the House of Representatives and the President of the Senate.

Subsection (h) further requires the legislature to:

"(1) ...review the exception before its scheduled expiration and consider as part of the review process the following:

(A) What specific records are affected by the exception;

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(B) whom does the exception uniquely affect, as opposed to the general public;
(C) what is the identifiable public purpose or goal of the exception;
(D) whether the information contained in the records may be obtained readily by alternative means and how it may be obtained;
(2) An exception may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exception and if the exception:
(A) Allows the effective and efficient administration of a governmental program, which administration would be significantly impaired without the exception;
(B) protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. Only information that would identify the individuals may be excepted under this paragraph; or
(C) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.
(3) Records made before the date of the expiration of an exception shall be subject to disclosure as otherwise provided by law. In deciding whether the records shall be made public, the legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exception of the type specified in paragraph (2)(B) or (2)(C) of this subsection (h) would occur if the records were made public. "

The following are the 14 statutory exceptions to the Open Records Act extended until July 15, 2009 in 2008 SB 702 (Attachment D) (Attachment B is the statutory

language):

K.S.A. 8-240. On applications for drivers' licenses and instruction permits, applicants are required to list their social security number (SSN). The statute provides that the SSN will remain confidential, except as provided in KSA 74-2012, which allows disclosure under proper judicial order.

K.S.A. 8-247. In regard to the expiration or renewal of a driver's license, the division of motor vehicles is required to notify persons of the ability to make an anatomical gift. If an applicant indicates a willingness to have such applicant's name placed on the organ donor registry, the division forwards the applicant's name to the organ procurement organization. Information concerning an applicant's indication of a willingness to have such applicant's name placed on the organ donor registry that is obtained by the division and forwarded is confidential.

K.S.A. 8-1324. Nondriver identification card, SSN. Same as K.S.A. 8-240.

K.S.A. 8-1325. Nondriver identification card, anatomical gift. Same as K.S.A. 8-247.

K.S.A. 12-17,150. In regard to a redevelopment project area or a transportation development district where tax revenues are pledged or used to pay bonds, the secretary of revenue is required to provide reports to the bond trustee/escrow agent/paying agent identifying each retailer having a place of business in such district setting forth the tax liability and the amount of such tax remitted by each retailer during the preceding month. The bond trustee/escrow agent/paying agent shall keep such retailers' tax returns confidential, but may use such information for purposes of allocating and depositing such tax revenues in connection with the bonds used to finance redevelopment project costs or used to finance the costs of a project.

K.S.A. 12-2001. The governing body of a City may grant a franchise to a telecommunications local exchange service provider. The statute states that the information provided to the municipalities under this section shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 (KORA) and 66-1220a *et seq.* (confidentiality of trade secrets).

K.S.A. 40-5006. This section of law is a part of the viatical settlements act of 2002. A viatical settlement provider/broker, insurance company, insurance producer, information bureau, rating agency/company, or any other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured, or the insured's financial or medical information to any other

person. Exceptions for disclosure include when it is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure <u>or</u> provided in response to an investigation or examination by the insurance commissioner or any other governmental officer or agency. Other disclosure reasons are listed in the statute.

<u>K.S.A. 40-5108.</u> In regard to insurance score models or other insurance scoring processes, they are considered to be a trade secret and to be kept confidential. There is an exception if the insurer has taken an adverse action based on credit information, the reason for such action must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take such adverse action.

<u>K.S.A. 41-2905.</u> This statute requires beer retailers who sell kegs to record the purchasers name, address and driver's license/identification card number. The records required to be kept shall not be available for inspection or use or subject to subpoena in any civil or administrative action or criminal prosecution other than a civil or administrative action or criminal prosecution relating to a specific violation of this section or K.S.A. 21-3610 (Furnishing alcoholic liquor or cereal malt beverage to a minor) or 41-727 (Purchase or consumption of alcoholic beverage by minor). Except as specifically provided by this subsection, records required to be kept by this section shall not be sold, distributed or otherwise released to any person other than an agent of the retailer or to a law enforcement agency.

<u>K.S.A. 41-2906.</u> Cereal malt beverage retailers. Same as K.S.A. 41-2905.

<u>K.S.A. 44-706.</u> Pursuant to the employment security law, a person is not disqualified from receiving benefits if they left work voluntarily due to circumstances resulting from domestic violence. No evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall be disclosed by the department of labor unless consent for disclosure is given by the individual.

<u>K.S.A. 44-1518.</u> Under the uniform athletic agents act, the secretary of state may issue subpoenas for any material that is relevant to the administration of the act. Any such information or material received by the secretary shall be treated as confidential by the secretary and shall not be open to public inspection except by court order.

K.S.A. 65-3239. Regarding the state-wide organ and tissue donor registry, no organ or tissue donation organization may obtain information from the organ and tissue donor registry for the purposes of fund-raising. Organ and tissue donor registry information shall not be further disseminated unless authorized in this section or by federal law.

K.S.A. 66-1233. Pursuant to this law, the state corporation commission shall authorize electric public utilities and natural gas public utilities to adjust the utility's customers' bills to recover the utility's prudent expenditures for security measures reasonably required to protect the utility's electric generation and transmission assets or natural gas production and transportation assets. The application and request shall be confidential and subject to protective order of the commission.

The following are the 16 statutory exceptions to the Open Records Act certified by the Revisor of Statutes in 2008 (Attachment C is the statutory language):

K.S.A. 8-255c. Pursuant to K.S.A. 8-255b, the medical advisory board gives advisory opinions to the director of vehicles in the case of any person whose license to operate a motor vehicle has been suspended, revoked or reviewed by the director of vehicles and for good cause shown that the operation of a motor vehicle on a highway by such person would be inimical (tending to obstruct or harm) to public safety and welfare because of an existing or suspected mental or physical disability. In regard to this process, all reports made to, and all medical records reviewed and maintained by, the division shall be kept confidential and shall not be disclosed except upon the order of a court, pursuant to the request of the division or medical advisory board and shall not be subject to subpoena or discovery in any administrative/criminal/civil matter.

K.S.A. 12-5332. Pursuant to the wireless enhanced 911 act, the secretary of administration may require an audit of any wireless carrier's books and records concerning the collection and remittance of fees. Information provided by wireless carriers to the secretary or the advisory board pursuant to the wireless enhanced 911 act will be treated as proprietary records which will be withheld from the public upon request of the party submitting such records.

K.S.A. 17-12a607. Under the uniform securities act, records are presumed to be public, subject to the following exceptions:

(1) A record obtained by the administrator in connection with an audit or inspection under

K.S.A. 17-12a411(d) [records of persons issuing or guaranteeing any securities subject to the provisions of this act and of every broker-dealer, agent, investment adviser or investment adviser representative registered or required to be registered under the act] or an investigation under K.S.A. 17-12a602 [general authority of the administrator {securities commissioner} to investigate violations of the act];

(2) a part of a record filed in connection with a registration statement under K.S.A.17-12a301 and 17-12a303 through 17-12a305, or a record under K.S.A. 17-12a411(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) a record that is not required to be provided to the administrator or filed under the act and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure;

(4) a nonpublic record received from a person specified in K.S.A. 17-12a608(a) [records shared by other state administrators, the federal government or a foreign government]; and

(5) any social security number, residential address unless used as a business address, and residential telephone number contained in a record that is filed.

K.S.A. 38-1008. The Interstate Commission for juveniles, pursuant to the interstate compact for juveniles, allows the Commission to exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

K.S.A. 38-2209. Child in need of care records are confidential except as is necessary for the exchange of information between interested parties to provide necessary services to the child and the child's family. The records are divided into the following categories: Court records [official file and social file],agency records and law enforcement records. In regard to each category, specified parties are allowed access.

K.S.A. 45-221 (a) (44). The amount of franchise tax paid to the secretary of revenue or the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships shall not be required to be disclosed.

K.S.A. 45-221 (a) (45). Records, other than criminal investigation records, the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; or (C) private property or persons, if the records are submitted to the agency, shall not be required to be disclosed.

K.S.A. 45-221 (a) (46). Any information or material received by the register of deeds of a county from military discharge papers (DD Form 214) shall not be required to be disclosed. Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.

K.S.A. 45-221 (a) (47). Information that would reveal the location of a shelter or a safehouse or similar place where persons are provided protection from abuse shall not be required to be disclosed.

K.S.A. 56-1a610. Limited partnership income tax filing extension applications filed with the secretary of state shall be confidential and only disclosed to partners in the limited partnership, pursuant to a proper judicial order or pursuant to the general powers of the secretary of revenue regarding tax records.

K.S.A. 56a-1204. Limited liability partnership income tax filing extension. Same as K.S.A. 56-1a610.

K.S.A. 65-1,243. Records received and information assembled by the birth defects information system are confidential medical records. All medical records reviewed and maintained by the department of health and environment shall be kept confidential and shall not be disclosed except upon the order of a court of competent jurisdiction and shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil matter. The secretary may use

information assembled by the system to notify parents, guardians and custodians of children with congenital anomalies or abnormal conditions of medical care and other services available for the child and family.

K.S.A. 74-50,184. Pursuant to the Kansas professional regulated sports act, the athletic commission may receive criminal and juvenile proceedings background information to determine the qualifications of a person for appointment to be the boxing commissioner. Such information, other than conviction data, is to be kept confidential.

K.S.A. 74-8134. Pursuant to the Kansas angel investor tax credit act, portions of documents and other materials submitted to KTEC that contain trade secrets shall be kept confidential. Portions of documents and other materials means any customer lists; any formula, compound, production data or compilation of information certain individuals within a commercial concern using such portions of documents and other material means to fabricate, produce or compound an article of trade; or any service having commercial value, which gives the user an opportunity to obtain a business advantage over competitors who do not know or use such service.

K.S.A. 74-99b06. The following records of the Kansas bioscience authority shall not be subject to the provisions of the Kansas open records act, when in the opinion of the board, the disclosure of the information in the records would be harmful to the competitive position of the authority:

(A) Proprietary information gathered by or in the possession of the authority from third parties pursuant to a promise of confidentiality;

(B) contract cost estimates prepared for confidential use in awarding contracts for research development, construction, renovation, commercialization or the purchase of goods or services; and

(C) data, records or information of a proprietary nature produced or collected by or for the authority; financial statements not publicly available that may be filed with the authority from third parties; the identity, accounts or account status of any customer of the authority; consulting or other reports paid for by the authority to assist the authority in connection with its strategic planning and goals; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the authority.

K.S.A. 82a-2210. Horsethief reservoir benefit district sales tax. Same as K.S.A. 12-17,150.

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Testimony Before The
House Judiciary Committee
Presented by Erik Sartorius
Regarding SB 34

March 2, 2009

The City of Overland Park appreciates the opportunity to share with the committee its support for Senate Bill 34.

The Kansas Open Records Act assures public access to important public records. At the same time, the law allows essential exceptions to protect the privacy of citizens and allow the effective and efficient administration of government programs.

The City of Overland Park believes the Kansas Open Records Act currently strikes a fair balance to create open and efficient government, and strongly supports retention of current exceptions. When contemplating reauthorization of KORA, critical consideration must be given to just whose data is generally contained in records held by the government. More often than not, the information contained in governmental records either belongs to or refers to private individuals.

Of interest to the City of Overland Park is a provision excepting discussions of homeland security issues (K.S.A 45-221 (a) (45)). This exception is particularly important when local jurisdictions are working in cooperation with private companies, religious institutions, hospitals and schools to coordinate on security matters. The City requests that this exception be retained by the legislature, as Senate Bill 34 does in subsection (l) on page 4 (lines 19-25).

The exceptions to the Kansas Open Records Act balance the need for open government with the necessity for insuring the right to privacy of individuals. Because of this, the City of Overland Park supports SB 34 and respectfully requests that the committee recommend SB 34 favorably for passage.

TESTIMONY OF THE KANSAS ASSOCIATION OF COUNTIES
TO THE HOUSE JUDICIARY COMMITTEE
ON SB 34

Mr. Chairman and Members of the Committee:

I am offering written testimony in support of SB 34, which extends the exceptions to disclosure of information under the Kansas Open Records Act.

The Kansas Association of Counties believes these exceptions have been carefully considered during their enactment in the past, and have proven over time to carefully balance the interest of public information against the interest of personal privacy and security.

We would appreciate your favorable consideration of SB 34.

Melissa Wangemann

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Date 3-2-09
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STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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House Judiciary Committee
Senate Bill 135
Assistant Attorney General Michael Smith
March 2, 2009

Mr. Chairman and members of the committee, thank you for allowing me to provide testimony in support of Senate Bill 135. I am the Assistant Attorney General responsible for enforcement of the Kansas Open Meetings Act (KOMA) in the office of Attorney General Steve Six.

Senate Bill 135 would amend the Kansas Open Meetings Act to correct an oversight in the drafting of House Bill 2947, enacted in the 2008 legislative session. The intent of SB 135 is to clarify that "serial meetings" are prohibited under KOMA. After we met with the interested parties to this legislation, including the Kansas League of Municipalities, the Kansas Association of Counties and the Kansas Press Association, we all came to the conclusion that SB 135 was necessary.

House Bill 2947, now L. 2008, Ch. 178, sought to codify the violation of KOMA by "serial communications."

The first portion of the new definition is "meetings in a series shall be open if they collectively involve a majority of the membership of the body or agency. . ." K.S.A. 75-4317a provides the definition of a meeting. It requires that a meeting must involve a majority of the body or agency. If there is less than a majority, there can be no meeting and a series of communications could occur. Unfortunately, this defeats the purpose of the newly adopted section.

By substituting the phrase "interactive communications" for "meetings" in section (f), the intent is retained and there would be no question that a series of communications, as defined in KOMA would be a violation.

As the chief law enforcement agency responsible for enforcement of the Kansas Open Meetings Act, the Attorney General's office strongly supports SB 135 and believes that it is necessary for effective enforcement of the prohibition on serial meetings in Kansas. Thank you for your consideration. I would be happy to answer any questions.

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TESTIMONY OF THE KANSAS ASSOCIATION OF COUNTIES
TO THE HOUSE JUDICIARY COMMITTEE
ON SB 135

Mr. Chairman and Members of the Committee:

Last fall the Kansas Attorney General raised a concern about the language in K.S.A. 75-4318 relating to serial meetings. The language at issue was added during the 2008 session.

The Attorney General met with the Kansas Association of Counties, the League of Municipalities and the Kansas Press Association to discuss the problematic provision, and we all agreed that a clarifying amendment was in order.

We support the Attorney General's efforts to clarify an important aspect of the Kansas Open Meetings Act, and request your favorable consideration of SB 135.

Melissa A. Wangemann
General Counsel

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House Judiciary
Date 3-2-09
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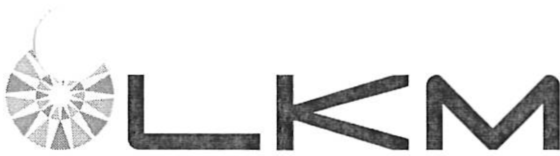

League of Kansas Municipalities

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To: House Judiciary Committee
From: Kim Winn, Director of Policy Development & Communications
Date: March 2, 2009
Re: Support for SB 135

Thank you for the opportunity to offer comments regarding SB 135. We believe that this bill is simply clarifying in nature and, therefore, support its passage.

In 2008, there were a number of changes made to the Kansas Open Meetings Act as a result of an agreement between the League of Kansas Municipalities, the Kansas Association of Counties, the Kansas Press Association, and others. One of the purposes of that bill was to codify the concept of a "serial meeting." The relevant language is contained in K.S.A. 2008 Supp. 75-4318(f).

Following the passage of the bill, the Attorney General's office identified the need for a technical correction to last year's bill. It is our understanding that changing the word "meetings" to "interactive communications" is in no a way a substantive change.

SB 135 amounts to a two-word change which is truly technical in nature. For this reason, we respectfully request your support for SB 135 and would ask that it be placed on the consent calendar.

Thank you in advance for your consideration of this matter. I would be happy to stand for questions at the appropriate time.

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Date: 27 Feb. '09

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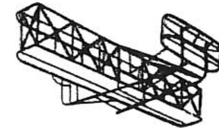

State of Kansas
Legislator

RE: MEMORANDUM IN SUPPORT OF AMENDMENT TO THE KANSAS OPEN MEETINGS ACT

Dear Legislator:

This Memorandum shall discuss the issue of the Board of Regents affective vitiation of the Kansas Open Meetings Act, K.S.A. § 75-4317 et seq. in general, and specifically, K.S.A. § 75-4319, as it applies to the Board of Regents.

I. EXECUTIVE SESSIONS

The executive session b (1) exception should only be for personal matters of the specific employee, and not for **policy matters** and the **functions** and **duties** of his position. Those policy matters and issues are required to be discussed in open session, and specifically is that so for Presidents and CEO's of our universities; as instructed by the enacting legislative intent of the KOMA, Attorney General opinions, and opinions of the Kansas Supreme Court, cited below.

II. THE QUESTION

The question is:

> "Will the legislature be informed of policies of the Board of Regents individually imposed upon university Presidents and CEO's, or will the legislature continue to be required to massively fund the Board, without proper knowledge of the Board of Regents' hidden individually imposed policies."

If policy matters are required: by the KOMA statute; and consistent with the past enacting legislative intent, Attorney General opinions, and Kansas Supreme Court opinions, cited below; to be discussed in open public meeting, not only will the legislature then have proper knowledge, but also the Shocker Black & Golds will then have the opportunity to attend those meetings and monitor the process as it relates to our university, and to then speak to our legislators should we have concerns. Presently, we are denied access and knowledge of policy matters significantly affecting our university that are always conducted in closed executive session of the President CEO of the university, with the Board thereby vitiating the legislative intent of the KOMA in the first instance.

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III. BOARD OF REGENT'S IMPOSED POLICIES

The Board can have their policies, but they need to take credit for them in open public meeting so that the legislature and the public will know, that it is the Board of Regents that is requiring the policy on the institution and the chief executive officer, not the chief executive officer legally responsible for the institution he represents making the decision independent of the Board. But the CEO of the Board and the Board of Regents members want to keep their policy determinations in secret and hid from **responsibility to the legislature** and **the public**: precisely because they know they would be criticized for unmeritorious policies; further could not justify unmeritorious policies applied to one university only; and further, contra to the stated legislative statute and intent of the legislature.

IV. THE PROBLEM

The fundamental problem is that the Board of Regents uses the exception of §75-4319 (b)(1):

> "(b) No subjects shall be discussed at any closed or executive meeting, except the following: (1) Personnel matters of nonelected personnel;",

as a way to vitiate the entire purpose of the statute and the statute itself. They accomplish their intent to preclude any legislative or public knowledge of substantive **policy matters** when hiring or annually reviewing the chief executive officer of state universities, by simply "**restating**" they are adjourning into executive session for purposes of "**Personnel matters of nonelected personnel**", and relying upon **a broadened view** of State v. BD. Of Educ. Of Unified Sch. D.305, 13 Kan.App.2d 117, 764 P.2d 459 (Kan.App. 1988), Syllabus 2, thus:

> "**Under the facts here presented**, [involving potential disciplinary matters of **four** individuals] when a public body faces discussions of topics, some of which are exempt and some of which may not be exempt under the Kansas Open Meetings Act, if segregation of the materials into open and closed sessions would make a coherent discussion pragmatically impossible, it is reasonable to close the entire meeting." (Emphasis added) [Brackets added].

Guess what? The Board of Regents has never since found it "**convenient**" to discuss policy matters in open session and personnel matters in closed session, **even when disciplinary matters are not involved**. The public generally doesn't have a thirst for knowledge about personnel matters, but it does have a concern for knowledge about policy matters and how the universities it funds are administered. The Board of Regents uses the personnel exemption as a way to cover direction of policy matters in secret, in closed executive session. For the Board of Regents, apparently as opposed to other Boards and Committees in the state, the Kansas Open Meetings Act does not effectively apply to the Board. In the process, they fail to even identify the subjects or topics to be discussed in closed executive session, or any justification for closing

the meeting, in violation of and as required by the statute.

In short, they use the stated exemption itself as the justification, and wholly fail to identify any subjects or topics they intend to discuss. The result is the Board's closed executive meetings totally control policy matters and the operation of the given institution – information that ought to be available to the legislature, and public knowledge – but because it is secret, allows for corrupt policy. Nor, to our knowledge, has the Board of Regents ever seen fit for any reason, to hold any such meeting in open session, although they are limited to the facts of the court's decision in State v. Board. All such meetings **are secret**, and held in closed executive meeting. It is submitted the Board has been able in the past and currently continues to secretly direct substantive policy unmeritoriously inconsistently among universities, without the **legislatures knowledge** and without **public knowledge**. The system of public knowledge and **legislative statutory intent** has been corrupted, and needs to be fixed if any kind of effective public knowledge, equitable, justifiable, and uniform policy is to be accomplished at least as applied to WSU and Wichita/Sedgwick County tax payers.

V. SPECIFIC AUTHORITIES

A. Policy Matters are Legislatively Intended to be Discussed in Open Public Meetings

A cogent Kansas Supreme Court case discussing the purpose of the Kansas Open Meetings Act, is State Ex Rel. Murray v. Palmgren, 231 Kan. 524, 646 P.2d 1091 (1982). There the Court stated:

> "[7] Open Meetings Act was enacted for public benefit and is therefore construed broadly in favor of public to give effect to its specific purpose. K.S.A. 75-4317 et seq.";
>
> "[12] Open Meetings Act is not unconstitutionally overbroad on basis of an inhibiting effect on rights of public officials to assemble and discuss public affairs, **because elected officials have no constitutional right to conduct government affairs behind closed doors**, and because the Act places no constraints on purely private discussions of public officials, but regulates only the conduct of public business. K.S.A. 75-4317 et seq." (Emphasis added);
>
> "This theory, however, flies in the face of the purpose of the KOMA, stated in K.S.A. 75-4317(a): 'In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public.' Obviously, **the intent behind the statute is to protect the public.** In *Johnson v. Killion*, 178 Kan. 154, 158-59, 283 P.2d 433 (1955), this court stated: 'It is fundamental that where a statute is

designed to protect the public, the language must be construed in the light of the legislative intent and purpose and is entitled to a broad interpretation **so that its public purpose may be fully carried out**.' See also *Smith v. Marshall*, 225 Kan. 70, 75, 587 P.2d 320 (1978)." Id. at 1096 (Emphasis added);

"The First Amendment does indeed protect private discussions of governmental affairs among citizens. Everything changes, however, when a person is elected to public office. **Elected officials are supposed to represent their constituents.** In order for those constituents to determine whether this is in fact the case they need to know how their representative has acted on matters of public concern. **Democracy is threatened when public decisions are made in private.** Elected officials have no constitutional right to conduct government affairs behind closed doors. **Their duty is to inform the electorate, not hide from it.** The KOMA places no constraints on purely private discussions by public officials. It regulates only the conduct of public business. As such the KOMA is not unconstitutionally overbroad." Id. at 1099. (Emphasis added).

Rather than to broadly construe K.S.A. § 75-4319, as directed by the Kansas Supreme Court, the Board of Regents **narrowly** construes the statute to preclude even identification of the subjects or topics intended to be discussed, and equally narrowly construes and fails to disclose any justification for closing the meetings. Rather, they simply parrot the (b)(1) exemption, as if the exemption itself was the **"justification."**

While the regent members of the Board are not elected, but are appointed by the governor, they nevertheless are subject to the KOMA by the legislative statute's applicability. (See K.S.A. § 75-4318 (a)).

The regents duties are not to conduct the policy affaires of the state's universities, in secret in accord with their own personal wants; but their duty is to follow the policy desires of the legislature and inform the electorate, "not hide from it"; particularly is that so when they direct policy unfairly applicable to one university, WSU, and Wichita/Sedgwick County tax payers, primarily for the direct monetary benefit of KU.

As stated by Attorney General Opinion 88-25:

"Discussions concerning consolidation of departments and the addition or elimination of job functions or positions may not be held in executive session under the "personnel matters" exception. Cited herein: K.S.A. 75-4317; K.S.A. 1987 Supp. 75-4318; K.S.A. 75-4319." (Emphasis added).

"In *Memorial Hospital Ass'n, Inc. v. Knutson*, 239 Kan. 663, 669 (1986), the court reasoned: 'The KOMA is remedial in nature and therefore subject to broad construction in order to carry out the stated legislative intent.'

Therefore, the presumption of the KOMA is in favor of openness and **exceptions to the KOMA are narrowly construed**. See Tacha, The Kansas Open Meetings Act: Sunshine on the Sunflower State?, 25 U.Kan.L.Rev. 169, 175(1977). The exceptions to the KOMA permitting certain subjects to be discussed behind closed doors were enacted on the basis that in certain instances the interests involved in preserving confidentially outweigh the public's right to know. See Smoot and Clothier, Open Meetings Profile: The Prosecutor's View, 20 Washburn L.J. 241, 274 (1981). <u>The purpose of the 'personnel matters of non-elected personnel' exception is to 'protect the privacy of the **employees**</u>, saving[s] personal reputations, and encouraging qualified people to select and remain in the employ of government.' (Emphasis added.) Smoot and Clothier at 275. See Tacha at 195." (Emphasis added).

"In Attorney General Opinion No. 81-39 we opined that a public body may recess [*6] into executive session to discuss <u>individual employees</u>, but that '[d]iscussions concerning groups of employees which do not infringe upon the individual are beyond the purpose for which the exception for personal matters was created.' The proposed discussions do not concern employees as individuals but relate to **policy matters** and the **functions** and **duties** of employee positions. Therefore, the privacy interests of individual employee reputations is not as [sic at] stake and **the public's right to know of discussions concerning such <u>policy matters</u> is paramount**. We must conclude that the Commission may not recess into executive session under the personnel matters exception for such discussions." (Emphasis added).

Accordingly, and likewise, the regents can have their executive session for personal matters that no one cares about, but they shouldn't be able to discuss, for example: <u>whether or not the president of WSU can ask the Board of Regents for capital improvement moneys for a new building</u>; or discuss the addition or elimination of football, for which subject matter the Board even has no jurisdiction in the first instance; or any other policy matter, in closed executive session, in the process of secretly committing the chief executive officer of the institution to their particular policy. **They can have the policy, but they need to take credit for it in open public meeting so that the <u>legislature</u> and the <u>public</u> will know, that it is the Board of Regents that is requiring the policy on the institution and the chief executive officer, not the chief executive officer legally responsible for the institution he represents making the decision independent of the Board.** But the Board of Regents members want to keep their policy determinations in secret and hid from **<u>responsibility to the legislature</u>** and **<u>the public</u>**: precisely because they know they would be criticized for those policies; further could not justify such unmeritorious policy applied to one university only; and further, contra to <u>the stated legislative statute and intent of the legislature</u>. Hence, in our view, the need for a definitive amendment to preclude the corrupt acts of the Board of Regents. The Regents and the chief executive officer of the Board hold <u>positions of public trust</u> enjoined upon them by operation of law, and owe their duty to the legislature and the public. (See Attorney General Opinion 80-168).

B. Public Official vs. Employee Status of Universities and CEO of the Board

Another issue ignored by the Board of Regents by narrowly construing the statute, is the issue of whether the chief executive officer of each university in the state is an "**employee**", or rather a "**public official**". A summary of Attorney General Opinion, 87-10 states the issue thus:

> "The 'personnel matters' exception to the open meetings law, K.S.A. 75-4319(b)(1), pertains to employees of public agencies. **Persons appointed to public boards and committees are not employees, they are public officers**. Therefore, discussions concerning the qualifications of candidates for such appointed positions cannot take place in an executive session but must be held in an open meeting. Cited herein: K.S.A. 75-4317; K.S.A. 1986 Supp. 75-4318; K.S.A. 75-4319."

The full Attorney General Opinion, 87-10 discusses what constitutes the definition of a "**public official**", and
states:

> "Appointed members of boards and commissions are not employees, but are public officials. **[Clearly, regents are appointed by the governor and are public officials. What about chief executive officers of public institutions?]** '[A] public officer is one whose functions and duties concern the public, and who exercises some portion of the sovereign power of the state.' 63A Am.Jur.2d Public Officers and Employees §9. See *Sowers v. Wells*, 150 Kan. 630, 634 (1939). **[Clearly, chief executive officers of public institutions fit this Kansas Supreme Court and Attorney General definition, and are "public officers"]** A person who 'receives his authority from the law, and discharges some of the functions of government' is generally considered **a public officer**. 63A Am.Jur.2d at §5. See *The State v. Rose*, 74 Kan. 262, 269-70 (1906)." **[Again, clearly, chief executive officers of public institutions fit this Kansas Supreme Court and Attorney General definition, and are "public officers"]** (Square brackets supplied)(Emphasis added).

C. The Statute Requires Subjects for Discussion In Closed Session to be Identified

Another inconvenient issue for the Board of Regents that the Board doesn't even bother to narrowly construe, but just ignores, is the Statute's requirement, K.S.A. § 75-4319, for stating in any motion to recess for a closed or executive session, the **justification** for doing so, as well as stating the subjects or topics to be discussed:

> "(a)... Any motion to recess for a closed or executive meeting shall include a statement of (1) the **justification** for closing the meeting, (2) the **subjects** to be

discussed during the closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. **Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion**." (Emphasis added).

The Board, in derelict of its duty, narrowly assumes that it states the **Justification**, simply by stating the exemption. It does not! They are two distinct requirements. Neither does the Board, in like fashion, state the **subjects** or **topics** to be discussed, but simply states the exemption, as if it speaks for itself. It does not!

For purposes of hiring chief executive officers or reviewing them, and discussing policy matters particular to the institution they legally represent, the Board of Regents considers such officers to be "employees", so as to conduct the public's business in secret. But when it comes to any other purpose, for example like the recent TV appearances together in Wichita by Dr. Beggs, Dr. Wefald, and Dr. Hemenway, soliciting support to pressure the legislature for some **800 plus millions** in state tax moneys for university building maintenance purposes; or KU's public solicitation of support for **90 plus millions** for three buildings for alleged western Kansas pharmaceutical student purposes, the Board of Regents and the chief executive officers themselves, hold the chief executive officers out to the public as titled "**public officers**", presidents and chancellor, in charge of the public function of administration of the public's higher educational institutions. They should not be allowed to have it both ways, and the public's business should be conducted in the open, with the Board of Regents required to take responsibility for and provide public justification for the policies they require individual institutions to follow, which alleged identified above policies they presently cannot justify either to the legislature or the public. If so, then the public would understand why one university gets to follow one policy, but another is not allowed to do so. **We submit, it is precisely because the Board of Regents does not want to be publicly accountable or even accountable to the legislature, for policies they know they can not publicly justify, that they have bastardized the process and vitiated the statute's effective applicability to the Board of Regents**. And, of course, with a budget and desire to spend it as they want, of approximately **15 - 17 percent** of the State's annual budget, in excess of **some 1.2 billion dollars** the last time we checked in about 1995; the Board has ever power incentive to keep the public and the legislature in effective darkness as to the undisclosed basis of the decision making and how they are running our higher education system and allocating our moneys, as opposed to the allocations themselves. Nor can any chief executive officer complain publicly, if he intends to keep his position. We submit the legislature never meant the system to be set up or the Board of Regents conducted, as it is presently operated; and that it is time to correct the injustice and corrupt policy of operation of the Board the only way that it can be, and that is by amendment to the controlling statutes.

But back to the specifics of the statue. The **subjects** or **topics** are required by the statute to be delineated, not simply the parroting of the **category** of the **subjects** or **topics.**

A useful article on the KOMA is Kansas Sunshine Law; How Bright Does It Shine Now? The Kansas Open Meetings Act, The Journal Of The Kansas Bar Association, 34-June/July 2003, by Theresa Marcel Nuckolls, of the Attorney General's office. Says Ms Nucholls:

> "The purpose of the Kansas Open Meetings Act is to promote an informed electorate. (5: K.S.A. 75-4317). The Act is to be interpreted liberally, and its exceptions narrowly construed, to carry out the purpose of the law. (6: *Memorial Hospital Ass'n v. Knutson*, 239 Kan. 663, 669, 722 P.2d 1093 (1986))." ...
>
> "The motion for going into executive session should contain both the **subject** and a **justification** statement; the two are not the same thing. (121: Kan. Att'y Gen. Ops. No. 91-78; 86-33. *But see State v. U.S.D. 305,* 13 Kan.App.2d 17, 764 P.2d 459 (1988). ... While there is some argument as to what constitutes the **subject** versus the **justification**, it appears that **the subject** is one that is listed in K.S.A. 75-4319 (124: Or some other law) and **the justification** is a general explanation or policy statement concerning why an executive session is being held." ...
>
> "K.S.A. 75-4319(b) sets forth a list of 14 **topics** that may be discussed in an executive session." (Emphasis added).

Having identified some of the problems that occur as a result of the Board of Regents improper mental manipulation and narrow construction of the statute, to in effect vitiate the statute in total as it applies to the Board; when considering policy matters at our higher education institutions that the Board wishes to instruct, while maintaining the secrecy of its instruction and responsibility for same; all in the guise of co-mingling policy matters, with hiring a chief executive officer or providing for his review, so as to find it "**inconvenient"** to separate the two functions; it is now time to consider the statute itself, and then how it is to amend the statute to require proper compliance with legislative policy and the statute.

VI. SOLUTION FOR THE PROBLEMS

A. Amendment to K.S.A. § 75-4319

The following exhibits in bold the suggested amended language for the statute:

> "**75-4319**. Closed or executive meetings; conditions; authorized subjects for discussion; binding action prohibited; certain documents identified in meetings not subject to disclosure. (a) Upon formal motion made, seconded, and carried, all bodies and agencies subject to the open meetings act may recess, but not adjourn, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include a statement of (1) the justification for closing the meeting, (2) the **specific** subjects **of each of the relied upon categories of exemptions as identified in section (b)** to be discussed during the

closed or executive meeting and (3) the time and place at which the open meeting shall resume. Such motion, including the required statement, shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.
(b) No subjects shall be discussed at any closed or executive meeting, except the following **categories of subjects**:
(1)Personnel matters of nonelected personnel. **For purposes of subsection (b)(1), candidates for the position of chief executive officer (president or chancellor) of a Kansas higher education institution (university or community college) and holders of such positions, shall be considered public officers and not personnel or employees; nor shall policy matters be discussed with candidates for the position of chief executive officer of a Kansas higher education institution, or holders of such positions, in closed executive session.**
(2)...(14)..." ...
(e)

The bracketed language, **(president or chancellor)** and **(university or community college)** I believe to be unnecessary, but we put it in just to be even more specific about what the language said. For purpose of the statute, we would not include it.

B. Amendment to K.S.A. § 75-4320

An associated statute that could be considered for amendment as identified by bold language below, is K.S.A. § 75-4320:

> **75-4320** Penalties. (a) Any member of a body or agency subject to this act who knowingly violates any of the provisions of this act or who intentionally fails to furnish information as required by subsection (b) of K.S.A. 75-4318, and amendments thereto, shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney, in a sum set by the court not to exceed $500 for each violation. **Violation of the provisions of K.S.A. 75-4319 shall subject such violators to ouster of position pursuant to K.S.A. 60-1205.** In addition, any binding action which is taken at a meeting not in substantial compliance with the provisions of this act shall be voidable in any action brought by the attorney general or county or district attorney in the district court of the county in which the meeting was held within 21 days of the meeting, and the court shall have jurisdiction to issue injunctions or writs of mandamus to enforce the provisions of this act.

This last amendment to K.S.A. § 75-4320 isn't as important as is the amendment to K.S.A. § 75-4319. It was thought it might be useful, so the issue was raised, but it is not

necessary for our purposes.

VII. CONCLUSION

We believe the above suggested amendments would preclude the commitment by the Board of Regents of any new president of WSU in the hiring process, or in the review process: not to seek capital improvement moneys for any new building from the Board of Regents for WSU, resulting in effective **double taxation** of Wichita/Sedgwick County taxpayers uniquely in the state from all other counties; and not to consider the reinstatement of football for WSU – for which issue the Board of Regents even has no jurisdiction in the first instance – to resolve our now 22 year continual bleeding of traditional students problem caused by the then KU controlled Board of Regents in 1986, even when **$20,000,000** has been identified to start the fund raising to reinstate the program.

With the amendment to K.S.A. § 75-4319, those matters would then have to be discussed in open public meeting, and the Board would be loath to disclose any such corrupt policy to the public and legislature.

Without a traditional football program, like all other universities in the state, not to mention the community colleges, WSU can not appeal to traditional students wishing a traditional college experience, and their folks in Sedgwick County are required to send them to KU or K-State, or to a close community college like Butler for two years and then to KU or K-State, at much greater expense than if they could stay home and attend WSU.

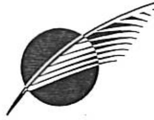
This asserted present policy also has Board of Regent tuition accountability rules affects as students from the Wichita area that would normally go to WSU, now go to KU and K-State for a traditional college experience; resulting in their first years tuition being kept by KU and K-State, which moneys are then lost to WSU. WSU then attempts to avoid having to make up for further lost tuition, as required by the tuition accountability rules, by putting some 2500 scholarships on the local 1.5 mill levy to mitigate against the continual bleeding of students. But this is a rather complex issue – although we submit, one of the substantive solicitation of students and tuition accountability bases and reasons for the original KU/Board of Regents policy of suspending football at WSU in the first instance, and continuing that policy presently – that would in any case be resolved by amendment to the statutory language above.

In appreciation of your consideration and hopefully support of the statute language amendment solution to these problems,

Respectfully submitted
Shocker Black & Golds

By: ______________
Fred Marrs

14-10



Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

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March 2, 2009

House Judiciary Committee
Re: S.B. 135

My name is Richard Gannon and I am Director of Governmental Affairs for the Kansas Press Association.

The Kansas Press Associations supports the passage of S.B. 135 as written.

Last legislative session, significant changes were made to the Kansas open meetings act regarding serial meetings. The interested parties expended considerable effort to reach compromise language for the statutory change.

Unfortunately we became aware of a minor inconsistency in bill drafting after the 2008 final adjournment. S.B. 135 rectifies the error.

Again, we support S.B. 135.

House Judiciary
Date 3-2-09
Attachment # 15