

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Carlos Mayans at 3:30 p.m on February 3, 2000 in Room 519-S of the State Capitol.

All members were present except: Representative David Huff, excused

Committee staff present: Michael Heim, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Lisa Montgomery, Office of the Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:

Daniel Hermes, Government Relations Director, Office of the Governor
Representative Douglas Johnston
Vernon Keel, President, Kansas Sunshine Coalition for Open Government
John Lewis, President-Elect, Kansas Sunshine Coalition for Open Government
Mike Taylor, Government Relations Director, City of Wichita
Kelly Kultala, Lobbyist, City of Overland Park
Randall Allen, Executive Director, Kansas Association of Counties
Rebecca Bossemeyer, County Clerk, Geary County
Don Moler, Executive Director, League of Kansas Municipalities
David Furnas, Executive Director, Kansas Press Association
Harriet Lange, Kansas Association of Broadcasters
Gary McNair, Legislative Chair, Kansas Association of Broadcasters
(Written Testimony) Jeffery Bottenberg, Legislatiave Counsel,
Kansas Sheriff's Association

Others attending: Guest List (See [Attachment 1](#))

Chairperson Mayans stated several bills have been or soon will be introduced in this Legislature on the issue of Open Records and Open Meetings, and it is the intention of the committee to study and hold hearings about those bills, with the goal of determining if amendments to the statutes are necessary. He then introduced Mike Heim, Committee Researcher.

Mr. Heim distributed a copy of the Kansas Open Records Act, K.S.A. 45-215 et seq. and a copy of K.S.A. 21-3914 listing the crimes and punishments affecting unlawful use of public records. (A copy of the statutes may be obtained through local public libraries or the Internet.) Mr. Heim reminded that the right to such records is not a constitutional right; that each state establishes its own law; and, regardless of state law, there are instances where federal law rules.

The Chair noted that one of the bills to be considered will be the Governor's and Attorney General's proposal to establish an independent Public Assistance Officer and make other amendments to current law. Daniel Hermes, Office of the Governor, and Steve Phillips, Assistant Attorney General, in turn, presented testimony relating to the proposal to strengthen laws relating to open records and open meetings. Mr. Phillips noted the Attorney General reconvened her 1996 Task Force (in reaction to news media stories about problems of citizens acquiring access to open records) who have recommended changes described in his written testimony. Both testimonies are attached: Mr. Hermes, [Attachment 2](#), and Mr. Phillips, [Attachment 3](#).

The Chair asked Mr. Phillips if it was envisioned that the Public Assistance Officer would hold hearings and have outcomes in a timely manner. His response was that the anticipated minimum time would be ten days; and that overall the goal is to shorten the time the court process entails. He noted that it is impossible to estimate the workload if the office is established. Last year, he fielded over 600 telephone calls on the subject; roughly one-fourth being about access to records. He agreed that public education is needed and that the current law includes too many exceptions to accessible records.

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Representative Douglas Johnston presented testimony to alert members to two bills he has introduced: (1) to require publication of the names of parolees who commit crimes while on parole; and (2) to require the Legislature every five years to reaffirm the exceptions to the Kansas Open Records Act. He stated his belief and that of several attorneys, that the exceptions established by the Kansas Department of Corrections and the Kansas Department of Transportation are inaccurate in their interpretations of federal law and they should be reviewed. (See testimony, [Attachment 5.](#))

Vernon Keel, President of the Kansas Sunshine Coalition for Open Government and Wichita State Professor of Common Law, presented testimony regarding open records and open meetings. He stated the statutes make it difficult for citizens and government personnel to know what records are legally open and available. His written testimony lists the Coalition's issues of concern relating to exemptions, enforcement, and penalties of the law (see [Attachment 6](#)). Mr. Keel expressed the opinion he did not believe a Public Assistance Officer is needed. "Indiana has a public access counselor, with a budget of some \$158,000 a year." He stated "it would be appropriate to identify someone in the Attorney General's Office to respond to citizen complaints; not a separate officer."

John Lewis, publisher of two weekly newspapers and President-Elect of the Kansas Sunshine Coalition for Open Government, endorsed Mr. Keel's testimony and offered suggestions to legislators to consider in their deliberations. (See [Attachment 7.](#)) Mr. Heim asked him if he favored the suggested separate Public Assistance Officer, rulings and appeal process. Mr. Lewis responded he is not sufficiently knowledgeable about the process to respond.

Mike Taylor, Government Relations Director, City of Wichita, citing his past experience as a Wichita journalist and experience in his present position, expressed the opinion that (1) education about the law to make it understandable to government employees, journalists, and the public is worthwhile; (2) the Kansas Press Association, Association of Broadcasters, and other groups should join to foster better understanding of the law; and (3) legislators should be cautious of establishing new penalties and more bureaucracy. (See testimony, [Attachment 8.](#))

Kelly Kultala, Lobbyist for the City of Overland Park, testified that the city supports the Open Records Act in its current form and rejects additional regulation as being unnecessary. (See testimony, [Attachment 9.](#))

Randy Allen, Executive Director, Kansas Association of Counties, affirmed the message of education and endorsed the idea to have concerned organizations work together to develop a state-wide educational program. He stated the idea of a poster in appropriate offices resonated with him and offered to share the expense with the League of Kansas municipalities. (See testimony, [Attachment 10.](#))

Rebecca Bossemeyer, Geary County Clerk and Chair of the Legislative Committee of the County Clerk's Association, testified some recommended changes are overly aggressive and urged caution in creating any new positions in state government. She recommended the fees set for collecting copies be left to the discretion of the local municipalities. (See written testimony [Attachment 11.](#))

Don Moler, Executive Director, League of Kansas Municipalities, testified (1) the League actively trains its members on the requirements of KORA and KOMA and is willing to cooperate to expand education to state and local officials who maintain public records; (2) the League does not believe in the creation of positions in the Secretary of State's office to render and enforce opinions on disputes regarding open records requests; (3) that the Attorney General be provided authority to render binding agreements on open records disputes; and (4) impose fee limitations for copying records. (See written testimony, [Attachment 12.](#))

David Furnas, Executive Director, Kansas Press Association, offered testimony on the Association's concerns (see [Attachment 13](#) concurring with (1) the structured review of existing exemptions to open records; (2) the designation of an office or individual to administer the law; and (3) setting a fee limit for copies of records. The Chair asked if he favored a new Public Assistance Officer and Mr. Furnas replied the Association believes it is necessary to designate an officer or someone to coordinate the administration of the law and it seems logical that it be in the Attorney General's office. He also stated the sunset on periodic review of the exemptions is needed.

CONTINUATION SHEET

The Chair refereed committee members to the written testimony of Jeffery Bottenberg, Legislation Counsel to the Kansas Sheriff's Association (see Attachment 14) in which he referenced the experiences of several Sheriff's with respect to requests for accident and crime information. He also indicated support for general education; and opposition to the proposal for civil and criminal penalties on individual employees.

Harriet Lange, Kansas Association of Broadcasters, introduced Gary McNair, the association's Legislative Chair. Mr. McNair, in his written testimony (Attachment 15), endorsed the Florida law's guidelines for costs of duplicating records; and presented specific recommendations on attorney fees, penalties for violations, sunset exemptions, and the fees agencies may charge.

There being no others present to testify, Chairperson Mayans stated the committee will continue its discussion of the issues at next Tuesday's meeting. Also, he indicated there probably will be more legislation on the subject assigned to the committee by that time.

The Chair asked Research staff to chart the various recommended proposals for committee study next week, to include differences of proposals and estimated costs where applicable.

The Chair asked Mr. Keel if he believes it would be a good thing to eliminate all the exemptions in current statutes. Mr. Keel replied that nothing is absolute; however, the Coalition supports a sunset provision where exemptions would be reviewed (like that required by Florida's law). He said he believed there were far too many exemptions; especially as they make interpretation of the law more difficult. The Chair offered Mr. Keel the opportunity to provide him with a list of exemptions that the Coalition believes should be removed and any other changes they recommend.

The Chair announced the Committee will meet next Tuesday, February 8, 2000, to continue the hearing on open record issues; and on Thursday, February 10, the committee will begin development of its recommendations on the proposals. The following week it will continue development of the issue and perhaps finalize its decisions.

The meeting adjourned at 5:35 p.m., February 3, 2000.