

Kansas Press Association, Inc.

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Feb. 2, 2017

To: Sen. Jacob LaTurner, chairman of the Senate Federal and State Affairs Committee, and committee members

From: Doug Anstaett, executive director, Kansas Press Association

Re: Testimony in support of SB 86

Mr. Chairman and members of the Committee:

I am Doug Anstaett, executive director of the Kansas Press Association.

My association's members wholeheartedly support the language in Senate Bill 86 because it will finally place statutory limits on what can be charged for access by the public and press to the records of what government is doing.

That this has become necessary is unfortunate. For too long, those of us who rely on access to public records to exercise our rights have been at the mercy of public bodies that charge rates that are sometimes so outrageous that public records are closed by default because no one — including many of the newspapers in Kansas — can afford to pay the bill.

While we have relied for years on an attorney general's opinion about what is a reasonable copy charge, nothing else is there to guide public officials. Furthermore, the charges aren't consistent from jurisdiction to jurisdiction, with many agencies never charging a dime for record requests — not even when multiple copies are involved — while some others gouge the public with high per-hour charges for reviews that are often unnecessary.

A public record is, by state law, the property of the citizens of Kansas. However, in hearing the horror stories from my members, you would conclude these records are the personal property of the employees of public agencies, available only after reporters and ordinary citizens jump through hoop after hoop to try to get what is usually rightfully theirs.

Public records provide the written record of what government has done and plans to do. Citizens of the state of Kansas have a right to review those records without being charged through the nose for it.

Senate Bill 86 tries to bring some sanity to this often frustrating situation. Placing limits on what can be charged and whose salaries can be included in the costs is sorely needed if for no other reason than consistency.

Our nation's Constitution and its first 10 amendments, the U.S. Bill of Rights, provided considerable protections for citizens to ensure they would be free to be active participants in our democracy. The five freedoms in the First Amendment, in fact, are clarion calls to citizens to not be intimidated by an overzealous government but to instead exercise the rights to freedom of speech, freedom of the press,

freedom of religion, freedom of assembly and the freedom to petition government for a redress of grievances.

Those rights encourage citizens and the press to ask questions, to seek answers and to hold the feet of government officials to the fire so that the government's business is done in public and that the recorded information needed to judge the performance of those same officials is accessible.

Citizens and member of the press cannot access information when the cost of doing so becomes prohibitive. And we in the press cannot serve the vital role of "watchdog" of government when access to records is made so difficult that you simply throw up your hands out of frustration.

The Kansas Open Records Act was written with the admonition that it to be construed liberally. That meant when a question arose about whether a record should be released, government should err on the side of disclosure.

But when government can choose to thumb its nose at the public and make it difficult to learn about what that government is doing, it has become too large. So maybe it's time to clip the wings of government and once again remind public officials they work for the rest of us.

One other thing: the Kansas Open Records Act was never designed to create a revenue stream for governmental agencies. No, it was placed in law to provide public access to the public's business. The language in SB 86 will help accomplish the statute's original intent.

And if I might be allowed to suggest a simple friendly amendment to the language in this statute: Whenever public and non-public information is intermingled in the same document and redaction of confidential or protected information is necessary, it shall be done at no cost to the requester.

Proponents of this legislation have gone to considerable expense over many years to bring conferees to Topeka; they are tired and we are, too. So below, I've paraphrased just a few of the comments from journalists and private citizens that have been made in the last few years about what we continually run into when trying to get public records. Nothing has changed since these comments were written; in fact, it has gotten worse.

Earl F. Glynn, *Overland Park*

"For more than 10 years I have requested a number of open records and attended a number of open meetings as a private citizen and as a journalist. I have encountered several issues with open records and open meetings. Now that I am a private citizen researcher again, I have concerns mostly about the cost and availability of open records."

Jeffrey Jarman, *Wichita*

Jarman and his wife wanted to know why their daughter had been assigned to a different high school in the Maize school district than her four friends. Here's how he described the situation at an earlier hearing on a similar bill: "We were fortunate. We were able to pay for the information we requested. But, \$1,000 for 300 pages is a heavy price to pay. In fact, it is too heavy of a price. Open records are meaningless if citizens cannot afford access to the information. (We need) the Legislature to send a clear and convincing signal to all public agencies: the government is for the people and access to routine information is imperative to ensure the effective functioning of our democracy."

Aly Van Dyke, *formerly with the Topeka Capital-Journal*

"I asked for inspections conducted in Shawnee County by the Kansas Board of Cosmetology. The agency keeps all of its inspections on paper. So we could have received 700 pages worth of inspections

or pay \$20 an hour for a state agency to digitalize its records. The board charged us \$1,600. And they wanted it up front. So we obliged. The work ultimately took significantly less time, so we got about \$1,200 back. But if we hadn't paid the \$1,600 up front, we would have been denied access to public records.

"I've also requested Kansas Department of Agriculture inspections for small animal breeders across the state. (The department) wanted \$946 for one year's worth. The KDA also doesn't fill records requests until after the payment is made. I sat on it a while, trying to figure out how to ask my editor for nearly \$1,000 in records that might not show us anything."

Walter Hermreck, *military veteran, Gardner*

"As a citizen and a taxpayer I not only have the right, but the responsibility to my family, my fellow citizens of the community and even the elected officials themselves, to hold them accountable for the decisions they make. This can only be accomplished by ensuring citizens having easy and predictable access to public records. The current law allows for a public entity to put up roadblocks or shut someone out from their right to accessibility."

Tomari Quinn, *Topeka Capital-Journal*

"After receiving a tip that the Kansas Department of Agriculture was failing in its duties to ensure the accuracy of grain and livestock scales, backed up by court documents from a recent lawsuit, reporter Andy Marso submitted an open records request last year for the scale test reports that the company named in the suit submitted to the department. The request was denied as the company was under "administrative adjudication."

"Marso resubmitted the request in January, after the adjudication ended in a \$1,000 fine he was told was uncommonly low. What followed was a week's worth of back-and-forth emails in which the department initially quoted him an estimated price of \$700 for copies of the records. He made several attempts to mitigate the costs, including requesting an in-person inspection of the records (which is specifically allowed by law) and proposing to bring his own scanner/copier. He was informed he could inspect the records in person only if a Department of Agriculture attorney was present, at a cost of \$20 per hour. Marso paid for three hours of inspection time. The attorney brought him the records one scale location at a time, therefore causing dead time in which he had no documents to scan but was paying for her services."

Bob Weeks, *wichitaliberty.org*

"I would ask that the committee note that government records belong to the people, not the government, and that the people paid for their creation."