

*Statement for the Committee on Federal and State Affairs  
in support of Senate Bill No. 70  
Amending the Kansas Open Meetings Act*

*Alan L. Cowles, M.D., Ph.D.*

*February 2, 2017*

Chairman LaTurner, Vice-Chairman Estes, Ranking Member Faust-Goudeau and Members of the Committee:

Thank you for this opportunity to testify in support of Senate Bill No. 70, amending the *Kansas Open Meetings Act*.

In 2012, I became aware of a \$750,000 lawsuit, filed by a former city-county employee, with the Lawrence-Douglas County Health Board, the Douglas County Commission and the Lawrence City Commission named as defendants. For almost a year and a half, these groups successfully hid their discussions by holding executive sessions to discuss “personnel matters” or “privileged matters” or equivalents.

This incident led me to study the practice of closing meetings, first in Douglas County and then for the State of Kansas as a whole. I studied the minutes of the governing bodies of the 10 most populous counties and the 10 most populous cities of Kansas for calendar year 2014,<sup>1</sup> giving the benefit of the doubt in questionable cases to the counties and cities. The study revealed that 631 closed sessions were held for a total of at least 240 hours. 95% of the governing bodies closed meetings at times without disclosing *any* meaningful information about the subjects they were to discuss. In doing this, they conducted at least 200 hours of governmental business in complete secrecy. The subjects to be discussed during closed sessions were most commonly described vaguely as “personnel matters” or an equivalent or “privileged communications.” In 88% of closed sessions and for 83% of closed session time, governmental business was conducted in secrecy.

During 2014 the amount of business conducted in secrecy varied widely, with governmental bodies conducting as much as 41 hours of business in secrecy. On the other hand, the Manhattan City Commission showed that it didn’t have to conduct any governmental business in secrecy during 2014. Note that the City of Manhattan survived very well.

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<sup>1</sup> The full report, *Governmental Business in Secrecy in Kansas*, is available at [www.KansasOpenMeetings.org](http://www.KansasOpenMeetings.org).

By conducting a substantial portion of their business in complete secrecy, 95% of the governmental bodies acted in opposition to the clearly-stated purpose of the *Kansas Open Meetings Act*, that “*the conduct of governmental affairs and the transaction of governmental business be open to the public.*” Their actions are inconsistent with the respect most citizens of Kansas want shown for open government.

As you know, the *Kansas Open Meetings Act* [K.S.A. 75-4317 et seq.] specifies that in closing an open meeting, any governmental body subject to the *Act* must pass a formal motion in which is stated (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed meeting and (3) the time and place at which the open meeting is to resume. The purpose of this requirement is to enable Kansas citizens to know enough about what their elected officials are doing so that they may respond appropriately.

To serve its purpose, the required motion needs to give citizens *meaningful* information about the subjects being discussed. Meaningful information is information that would allow a member of the public to identify the issue or issues that are to be discussed in the closed meeting.

Unfortunately, the current *Kansas Open Meetings Act* does not define *subject* or *justification*, and to make matters worse, the current *Act* gives a list of *justifications* for closing meetings and then calls them *subjects*. This and a 1987 court case<sup>2</sup> which ignored the purpose of the *Open Meetings Act*, have led many governmental bodies to provide, as subjects to be discussed, phrases such as “personnel matters”<sup>3</sup> or “privileged information,” thereby leaving the public without any clue as to what is really being discussed.

Last year we proposed an amendment to the *Kansas Open Meetings Act*. The bill was referred to the Committee on the Judiciary and a hearing was held, just one year ago today. Later, those who had concerns about the wording of the amendment met and quickly agreed on a revised proposal. Senate Bill 70 is identical to that revision (last year’s Sen. Bill 487).

Please note that

- the proposed changes only affect the unfortunate wording in the current *Act*,
- for governmental bodies in Kansas, no new requirements are added,

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<sup>2</sup> *State of Kansas vs. Board of Education of Unified School District No. 305, et al.* Saline County District Court, Case No. 87 C-169, November 17, 1987. See also *State of Kansas v. United School District No. 305, Saline County*, 13 Kan.App.2d 117, 121 (1988).

<sup>3</sup> Almost anything any branch of government in Kansas engages in is, to some extent, a “personnel matter, thereby making “personnel matter” essentially meaningless.

- no requirements are deleted, and
- no requirements are changed, and
- two sections referring to now nonexistent sections of the Statutes are deleted.

Motions to close meetings have become a meaningless ritual that give the public no chance to know what business is being conducted. Prior to the enactment of the *Open Meetings Act*, governmental bodies conducted governmental business in complete secrecy at will. Now almost all of the governing bodies of the largest cities and counties in Kansas pass meaningless motions and then conduct governmental business in complete secrecy. As long as governing bodies close meetings at will to do business in secrecy, there seems to be little value in having an *Open Meetings Act* in Kansas.

Elected officials should remember that they are, at all times, responsible to the citizens. The *Kansas Open Meetings Act* should be amended so that elected officials can be held accountable. The *Act* should require that when closing an open meeting, a governmental body state the specific subjects to be discussed in sufficient detail to allow members of the public to identify the specific issues that the governing body intends to discuss in the closed session. This can be done easily while protecting the interests of the governmental entities involved. Eliminating governmental business in secrecy is not a partisan matter because all citizens are currently being denied their right to know and respond appropriately to the actions of their elected officials

Members of the Committee, this year marks the 50<sup>th</sup> anniversary of a landmark piece of legislation designed to make government more open and responsive to the people, the federal *Freedom of Information Act*. We all appreciate the many times that legislation has enabled us to know more about the operations of our federal government. For Kansans, there may be no better gift in this 50<sup>th</sup> anniversary year than to improve the *Kansas Open Meetings Act*, so that its basic principle, “*that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public*” can be carried out.

Please support Senate Bill No. 70.

Thank you.

Alan L. Cowles, M.D., Ph.D.

## *Governmental Business in Secrecy in Kansas — Summary*

*Alan L. Cowles, M.D., Ph.D. — KansasOpenMeetings.org*

*February 20, 2016*

The Kansas *Open Meetings Act* [K.S.A. 75-4317 et seq.] specifies that in closing an open meeting, any governmental body subject to the *Act* must pass a formal motion in which is stated (1) the justification for closing the meeting, (2) the subjects to be discussed during the closed meeting and (3) the time and place at which the open meeting is to resume. The purpose of this requirement is to enable Kansas citizens to know enough about what their elected officials are doing so that they may respond appropriately.

To serve their purpose, the required motions need to give citizens *meaningful* information about the subjects being discussed. Meaningful information is information that would allow a member of the public to identify the issue or issues that are to be discussed in the closed meeting.

*In spite of the Kansas Open Meetings Act, almost all city and county governing bodies close meetings at times without giving the public any meaningful information about the subjects they are going to discuss. By doing this they conduct governmental business in complete secrecy.*

Examination of the 2014 minutes of the governing bodies of the 10 most populous counties and the 10 most populous cities of Kansas reveals that 631 closed sessions were held for a total of at least 240 hours. All of the governing bodies except for the Manhattan City Commission closed meetings at times without disclosing *any* meaningful information about the subjects they were to discuss. In doing so, they conducted at least 200 hours of governmental business in complete secrecy. The subjects to be discussed during closed sessions were most commonly described vaguely as “personnel matters” or an equivalent or “privileged communications.” Rarely in these cases was an informative subject disclosed. In 88% of closed sessions and for 83% of closed session time, governmental business was conducted in secrecy. The intent of the governing bodies in conducting business in secrecy is unknown and probably varied widely, depending on the situation.

An example of the mischief such secrecy can lead to is that of the Lawrence-Douglas County Health Board, the Douglas County Commission and the Lawrence City Commission. In 2012 and 2013 they successfully hid their discussions and settlement of a \$750,000 lawsuit for almost a year and a half by closing meetings to discuss “personnel matters” or “privileged matters” or equivalents.

During 2014 the amount of business conducted in secrecy varied widely, led by the Saline County Board of Commissioners (41 hours) and followed by the Salina City Commission (31 hours), the Shawnee County Commission (25 hrs.) and the Board of Riley County Commissioners (20 hrs.).

The Manhattan City Commission conducted no governmental business in secrecy. Other governmental bodies that conducted little business in secrecy were the Overland Park City Council (0.2

hours in 2014), the Olathe City Council (0.5 hours), the Shawnee City Council (0.5 hours) and the Douglas County Commission (1.2 hours).

By conducting a substantial portion of their business in complete secrecy, governmental bodies acted in opposition to the clearly-stated purpose of the Kansas *Open Meetings Act*, that “*the conduct of governmental affairs and the transaction of governmental business be open to the public.*” Their actions are inconsistent with the respect most citizens of Kansas want shown for open government. Most of the instances of closed sessions were not mere technical violations because, in not specifying the subjects of their discussions in meaningful ways, a significant public right to know was denied.

Motions to close meetings have become a meaningless ritual that give the public no chance to know what business is being conducted. Prior to the enactment of the *Open Meetings Act*, governmental bodies conducted governmental business in complete secrecy at will. Now almost all of the governing bodies of the largest cities and counties in Kansas pass meaningless motions and then conduct governmental business in complete secrecy. As long as governing bodies close meetings at will to do business in secrecy, there seems to be little value in having an *Open Meetings Act* in Kansas.

*Motions to close meetings have become meaningless rituals that give the public no chance to know what business is being conducted.*

Elected officials should remember that they are, at all times, responsible to the citizens. The Kansas *Open Meetings Act* should be amended to require that when closing an open meeting, a governmental body state the specific subjects to be discussed in sufficient detail to allow members of the public to identify the specific issues that the governing body intends to discuss in the closed session. This can be done easily while protecting the interests of the governmental entities involved. Eliminating governmental business in secrecy is not a partisan matter because all citizens are currently being denied their right to know and respond appropriately to the actions of their elected officials.

*Prior to the enactment of the Open Meetings Act, governmental bodies conducted governmental business in complete secrecy at will. Now almost all of the governing bodies of the largest cities and counties in Kansas pass meaningless motions and then conduct governmental business in complete secrecy. The Kansas Open Meetings Act should be amended to require that when closing an open meeting, a governmental body state the specific subjects to be discussed in sufficient detail to allow members of the public to identify the specific issues that the governing body intends to discuss in the closed session.*

The full *Governmental Business in Secrecy* report is available at [www.KansasOpenMeetings.org](http://www.KansasOpenMeetings.org). For more information, contact Alan L. Cowles, M.D., Ph.D., Lawrence, Kansas, 785-331-2334.