

Recommended Motions for Closing Meetings in Kansas

Alan L. Cowles, M.D.

December 10, 2019

INTRODUCTION

In one of the most elegant statements in the Kansas Statutes we find Kansas' commitment to open meetings:

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.¹

In order to encourage open government, the *Open Meetings Act* places specific requirements as to when and how governmental bodies can close meetings. Among these requirements is a requirement that in closing a meeting a governmental body must pass a motion in which it describes the subjects to be discussed in the closed meeting, states the justification for closing the meeting, and gives the time and place at which the open meeting is to resume.

According to a 2016 study governmental bodies in Kansas had difficulty in devising motions for closing meetings.² Since many governmental bodies in Kansas have difficulty wording motions to close meetings, and trusting that governmental bodies in Kansas will want to comply with the requirements of the *Open Meetings Act*, we here provide assistance in formulating motions to close meetings.

The League of Kansas Municipalities³ has published a rather complete manual about the Kansas Open Meetings Act, entitled *Kansas Open Meetings Act Manual, 2017 Edition, A Resource for Kansas Government Officials*. It is available for \$75.00 from the League. Although it is a good resource on many topics, the *Manual* offers little help in formulating motions for closing governmental meetings in Kansas.

¹ K.S.A. 75-4317(a)

² Cowles, AL: *Governmental Business in Secrecy in Kansas*. February 26, 2016, available at <http://KansasOpenMeetings.org>.

³ <https://www.lkm.org/store/default.aspx>. Last checked 11/26/19. Address: 300 SW 8th Avenue Suite 100, Topeka, KS 66603-3951. Phone 785-354-9565.

THE KANSAS STATUTES

The Kansas Statutes include the following:

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 public 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: (1) A statement describing the subjects to be discussed during the closed or executive meeting; (2) the justification listed in subsection (b) for closing the meeting; and (3) the time and place at which the open meeting shall resume. The complete motion shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the public body or agency. Discussion during the closed or executive meeting shall be limited to those subjects stated in the motion.

(b) Justifications for recess to a closed or executive meeting may only include the following, the need:

- (1) To discuss personnel matters of nonelected personnel;
- (2) for consultation with an attorney for the public body or agency which would be deemed privileged in the attorney-client relationship;
- (3) to discuss employer-employee negotiations whether or not in consultation with the representative or representatives of the public body or agency;
- (4) to discuss data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;
- (5) to discuss matters relating to actions adversely or favorably affecting a person as a student, patient or resident of a public institution, except that any such person shall have the right to a public hearing if requested by the person;
- (6) for the preliminary discussion of the acquisition of real property;
- (7) to discuss matters relating to parimutuel racing permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 74-8804, and amendments thereto;

(8) to discuss matters relating to the care of children permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 2017 Supp. 38-2212(d)(1) or 38-2213(e), and amendments thereto;

(9) to discuss matters relating to the investigation of child deaths permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 22a-243(j), and amendments thereto;

(10) to discuss matters relating to patients and providers permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 39-7,119(g), and amendments thereto;

(11) to discuss matters required to be discussed in a closed or executive meeting pursuant to a tribal-state gaming compact;

(12) to discuss matters relating to security measures, if the discussion of such matters at an open meeting would jeopardize such 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; (C) a public body or agency, public building or facility or the information system of a public body or agency; or (D) private property or persons, if the matter is submitted to the public body or agency for purposes of this paragraph. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments;

(13) to discuss matters relating to maternity centers and child care facilities permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 65-525(d), and amendments thereto;

(14) to discuss matters relating to the office of inspector general permitted to be discussed in a closed or executive meeting pursuant to K.S.A. 2017 Supp. 75-7427, and amendments thereto; and

(15) for the governor's domestic violence fatality review board to conduct case reviews.

(c) No binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act.

(d) Any confidential records or information relating to security measures provided or received under the provisions of subsection (b)(12), shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

COURT CASES AND ATTORNEY GENERAL OPINIONS

Kansas court cases provide guidance as to the interpretation of the statutes and should be followed when possible. Although cases decided in other state courts are not binding, they may provide useful insight. Similarly, although not having the force of law, the opinions of attorneys general provide additional guidance and help. As of this writing, these are available at <http://ksag.washburnlaw.edu>.⁴

With changes in the statutes and the publication of new court decisions, the relevance of previous court cases and attorney general opinions may change. Of special interest are the opinions of attorney general Robert T. Stephan. Between 1979 and 1987 Stephan argued repeatedly in favor of clearly specifying, in motions closing meetings, the subjects to be discussed in closed sessions. In 1987, a Salina district court considered his opinions incorrect to some extent.⁵ That decision was based on the failure of the legislature to make a clear distinction between “subject” and “justification” in the then-current *Open Meetings Act*. With the 2017 reforms to the *Act*, the distinction between “subject” and “justification” was made very clear and the Salina decision no longer relevant. Thus the opinions of Attorney General Stephan were affirmed and are again relevant. We will not cite any court case or attorney general opinion that is not relevant and appropriate at this time.

RECOMMENDED MOTIONS

Although meetings may be closed properly without using the motions below, we hope they will be helpful to governmental bodies.

In all of the following motions, citing the Kansas statute that is the basis for closing the meeting is optional but adds clarity. Also, “Board” can be used in place of “Commission,” as needed.

Open meetings need not always resume in the same place as they closed, as long as the place they are to be resumed is stated in the motion closing the meeting. Where open meetings resume

⁴ Last checked on 11/26/2019.

⁵ *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.

in the same place as they were closed, use of “The open meeting is to resume in this room at <specific time>.” will be appropriate most of the time.

Special caution: Use “recess for an executive session” as specified in K.S.A. 75-4319(a). Do not use “adjourn.”

MOTIONS FOR THE DISCUSSION OF PERSONNEL MATTERS UNDER (K.S.A. 75-4319(b)(1)):

The personnel exemption (K.S.A. 75-4319(b)(1)) allows the discussion of personnel matters of nonelected personnel” in closed sessions. It applies to discussion of individual employees and its purpose is “to protect the privacy of employees, save personal reputations and encourage qualified people to select and remain the employ of government.”^{6,7,8} Although there is no requirement in the *Open Meetings Act* that the discussion of an employee’s actions or performance be carried out in a closed session, common expectations of privacy should be considered carefully before discussing an employee’s performance in an open meeting. Applicants for employment may be discussed in closed sessions.⁹

The personnel exemption does not include discussion of other “personnel matters.” Among the other subjects that may NOT be discussed in closed meetings are

- personnel policy¹⁰
- personnel reorganization,¹¹
- the addition or elimination of job functions or positions, etc.,¹²
- salaries and benefits applying to job categories, except that negotiations with labor organizations may be discussed in closed sessions under K.S.A. 75-4319(b)(3)¹²
- any other personnel matter which is not specified by the Act, narrowly construed.

The following are not personnel:

⁶ Stephan, Robert T. Attorney General Opinion No. 86-33, March 7, 1986

⁷ Smoot & Clothier, 20 *Washburn Law Journal* 241-288, page 275 (1981)

⁸ Stephan, Robert T.: Attorney General Opinion 87-10, January 16, 1987

⁹ Schmidt, Derek, Attorney General Opinion 2016-3, March 1, 2016

¹⁰ Six, Steve and Smith, M.J.: Attorney General Opinion No. 09-21, September 23, 2009.

¹¹ Stephan, Robert T.: Attorney General Opinion No. 88-25, February 24, 1988.

¹² Stephan, Robert T.: Attorney General Opinion 81-39, February 10, 1981

- persons appointed to public boards and committees¹³
- independent contractors¹⁴
- elected personnel¹⁵
- judges¹⁶

We recommend the following motions:

Motion: I move that the Commission (or Board) recess for an executive session at <specific time> for the purpose of discussing a situation in which an employee may have violated our policy on <specific subject>. The justification for the executive session is to protect the privacy of the employee’s personnel record and is provided by K.S.A. 75-4319(b)(1). The open meeting is to resume in this room at <specific time>.

or

Motion: I move that the Commission (or Board) recess for an executive session at <specific time> for the purpose of discussing an employee’s job performance. The justification for the executive session is to protect the privacy of the employee’s personnel record and is provided by K.S.A. 75-4319(b)(1). The open meeting is to resume in this room at <specific time>.

The Commission or Board need not be concerned about incurring liability with such a motion because three essential elements of libel or slander are missing. No individual is identified. No statement is made harmful to the reputation of any individual. And nothing untrue is said. Citing K.S.A. 75-4319(b)(1) is optional but adds clarity. “Board” can be used in place of “Commission,” as appropriate.

Periodically, a governmental body may be required to perform an annual or other evaluation. In such a case, the following may be used:

Motion: I move that the Commission (or Board) recess for an executive session for the <specified position holder’s> annual evaluation.¹⁷ The justification for the executive session is to protect the privacy of the <specified position holder’s> personnel record and is provided by K.S.A. 75-4319(b)(1). The open meeting is to resume in this room at <specified time>.

¹³ Stephan, Robert T.: Attorney General Opinion 87-10, January 16, 1987

¹⁴ Stephan, Robert T.: Attorney General Opinion 87-169, November 23, 1987

¹⁵ Stovall, Carla J.: Attorney General Opinion 2000-63, December 15, 2000

¹⁶ Stovall, Carla J.: Attorney General Opinion 2002-28, June 13, 2002

¹⁷ Example: "I move that the Commission recess for an executive session for the mayor’s annual evaluation."

Although the identity of the person in the specified position may be determined easily, the motion is acceptable because it implies nothing positive or negative about the person's actual performance. Since the motion reassures the public that the Board is fulfilling a periodic obligation, this form is preferred over a motion stating only that the governing body is to discuss "an employee's performance" or "an employee's annual evaluation."

MOTIONS FOR FOR CONSULTATION WITH AN ATTORNEY UNDER (K.S.A. 75-4319(b)(2)):

The purpose of K.S.A. 75-4319(b)(2) is to allow a governmental body to seek and obtain legal advice without compromising its position in a pending or threatened legal action. Attorney General Opinion 92-56 explains that

K.S.A. 75-4319(b)(2) ... permits executive sessions for the purpose of "consultation with an attorney which would be deemed privileged in the attorney-client relationship." Thus, this specific exception contemplates the presence of a non-board member; the attorney for the body. The elements required to establish the existence of the attorney-client privilege include: (1) a communication; (2) made between privileged persons; (3) in confidence; (4) for the purpose of seeking, obtaining, or providing legal assistance for their client. ... It is not necessary that litigation be threatened or pending. ... In order to utilize this executive session authority, the attorney must represent the public body in question and must be present during the executive session held by that body. ... Staff for the attorney may also be present without destroying the privileged nature of the communication. ... There must be a consultation; the mere presence of an attorney does not, in itself, make the communication privileged. ... Not all communications between counsel and client are privileged. To be privileged, communication must relate to the business or transaction for which the attorney has been retained or consulted. ... Under Kansas law, the term "communication" is a statement transmitting information between a lawyer and a client. ... Such communication must be of a legal nature, but may include facts or questions from the client to the attorney or advice, questions or legal statements from the attorney to the client. The communication must be regarded by the client as confidential in nature. ... The presence of any non-client third party who is not an employee or official of [the governing body] will destroy the privileged nature of a communication with an attorney. ... Non-client third parties may not be included in executive sessions called pursuant to K.S.A. 75-4319(b)(2). [underlining present in the original]

We recommend the following motion:

Motion: I move that the Commission (or Board) recess for an executive session at <specific time> for the purpose of consultation with the Commission’s (or Board’s) attorney regarding <specific lawsuit>. The justification for the closed session is to avoid compromising the Board’s position in that lawsuit and is provided by K.S.A. 75-4319(b)(2). The open meeting is to resume in this room at <specified time>.

Some meaningful information about the subject(s) to be discussed should be included in the motion, for example, “Jones and Johnson v. the City of Centerville” or “an impending lawsuit.” Citing K.S.A. 75-4319(b)(2) is optional but adds clarity. The attorney must be present in the closed session.^{18, 19, 20} More than one attorney may be present.²⁰

Even though a letter from an attorney to his client containing advice may be a privileged communication, members of a public body cannot recess into an executive session to review and discuss among themselves a letter from their attorney. The attorney must be present.²¹

Consultation with an attorney or attorneys for the agency, as specified by K.S.A. 75-4319(b)(2) applies only to communications between the attorney and members of the governing body. These include members giving the attorney information and asking him or her questions and the attorney providing advice and perhaps asking additional questions. They do not include discussion among members of the governing body, except for the specific purpose of obtaining legal advice. To allow discussion of any subject among members merely because an attorney is present is contrary to the purpose of the *Open Meetings Act*. Consider the Court’s findings in *Hinsdale v. City of Liberal Kansas*²²

The mere attendance of an attorney at a meeting does not render everything done or said at that meeting privileged. For communications at such meetings to be privileged, they must have related to the acquisition or rendition of professional legal services. ... The party seeking to assert the privilege must show that the particular communication was part of a request for advice or part of the advice, and that the communication was intended to be and was kept confidential. ... The mere fact that a closed meeting was held does not automatically render all conversations in the closed session protected by the attorney-client privilege. ... the privilege does not protect discussions *among* commission members or the opinions, impressions, and conclusions of commission members based on events occurring during the closed session. [italics added]

¹⁸ Schneider, Curt T.: Attorney General Opinion 78-303, September 28, 1978.

¹⁹ Stephan, Robert T.: Attorney General Opinion 82-247, November 19, 1982.

²⁰ Stephan, Robert T.: Attorney General Opinion 92-56, April 23, 1992.

²¹ Stephan, Robert T.: Attorney General Opinion 86-162, November 20, 1986.

²² *Daniel D. Hinsdale v. City of Liberal Kansas*, 961 F.Supp. 1490 (1997)

Discussion of liability avoidance in general with an attorney should be carried out in open meetings because the principles involved are already in the public domain (described in publicly-available documents) and therefore cannot be privileged.

With members of the public unable to attend closed sessions, the attorneys for boards and commissions have a special ethical obligation to inform their board and commission members of the distinction between privileged communications and those that are not privileged and to avoid non-privileged communications in sessions closed under K.S.A. 75-4319(b)(2). Board members are still allowed to discuss other subjects specified by the *Act* under K.S.A. 75-4319(b), such as the evaluation of an employee's performance, as long as those subjects and the justifications are specified in the motion closing the meeting. Citing K.S.A. 75-4319(b)(2) is optional but adds clarity.

MOTIONS FOR LABOR NEGOTIATIONS (K.S.A. 75-4319(b)(3)):

The Kansas Legislature has declared that “the people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees”

it is the purpose of this act to obligate public agencies, public employees and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to conditions of employment, acting within the framework of law.²³

The purpose of the *Open Meetings Act* exemption for discussion of employer-employee negotiations under K.S.A. 75-4319(b)(3) is to enable employers and employees (or their representatives) to negotiate labor contracts without the posturing and grandstanding that many would feel compelled to engage in if the negotiation were public.

Also,

A [governing body] may recess an open public meeting and go into closed or executive session to consult with its representative in employer-employee negotiations. During such consultation, the [governing body] and its representative may discuss any facet of such negotiations. However, when the terms of a complete contract have been tentatively agreed upon by the representative of both the employer and the employees, and said contract is submitted to the [governing body] for ratification, the vote on such

²³ K.S.A. 75-4321(a)(1) and K.S.A. 75-4321(b)

ratification must be made during an open public meeting.²⁴

We recommend the following motion:

Motion: I move that the Commission (or Board) recess for an executive session at <specific time> for the purpose of employer-employee negotiations with <name of specific labor organization>. The justification for the closed session is to facilitate said negotiations and is provided by K.S.A. 75-4319(b)(3). The open meeting is to resume in this room at <specified time>.

Identify the specific the labor organization with which the Commission (or Board) will be negotiating. Citing K.S.A. 75-4319(b)(3) is optional but adds clarity.

MOTIONS FOR THE DISCUSSION OF CONFIDENTIAL DATA RELATING TO THE FINANCIAL AFFAIRS OR TRADE SECRETS OF CORPORATIONS, PARTNERSHIPS, TRUSTS, AND INDIVIDUAL PROPRIETORSHIPS UNDER K.S.A. 75-4319(b)(4):

Discussion in closed sessions under the authority of K.S.A. 75-4319(b)(4) is applicable only if the information to be discussed is confidential and relates to the financial affairs or a trade secrets of a corporation, partnership, trust or individual proprietorship (business entity). These discussions should not be conducted in private simply because the governmental body is transacting business with a private concern. We recommend the following:

Motion: I move that the Commission (or Board) recess for an executive session at <specific time> for the purpose of discussing confidential data relating to <name of specific business entity>. The justification for the closed session is to maintain the confidentiality of <name of specific business entity>'s data and is provided by K.S.A. 75-4319(b)(4). The open meeting is to resume in this room at <specified time>.

As a general rule, governmental bodies should determine in advance of closed sessions whether or not the business requests a closed session and whether or not the information to be discussed is confidential.^{25,26}

The *Kansas Uniform Trade Secrets Act* defines “trade secrets”

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) derives independent economic value,

²⁴ Stephan, Robert T.: Attorney General Opinion 79-125, June 26, 1979.

²⁵ Smoot & Clothier, 20 *Washburn Law Journal* 241-288, page 277 (1981)

²⁶ Stephan, Robert T.: Attorney General Opinion 88-148, October 13, 1988.

actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.²⁷

The Kansas Supreme Court has held that

Some factors to be considered in determining whether given information is one's trade secret are: (1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.²⁸

The Court of Appeals of Kansas has recommended a two-step process in determining whether or not information which a party contends is a trade secret is actually a trade secret:

We hold that, when deciding whether to publicly disclose information which the Commission has found to be relevant and necessary for its proceedings and which a party contends to be in the nature of a trade secret of confidential research, development or commercial information, the Commission should proceed as follows: First, it should determine whether the information is a trade secret or confidential commercial information. In considering this matter, the burden is on the party seeking to prevent disclosure. Secondly, the Commission should weigh the competing interests. In doing so, it should consider, *inter alia*, the financial or competitive harm to the party seeking to prevent disclosure; whether disclosure will aid the Commission in its duties; whether disclosure serves or might harm the public interest; and whether alternatives to full disclosure exist.²⁹

The name of the business entity should always be disclosed. Citing K.S.A. 75-4319(b)(4) is optional but adds clarity.

MOTIONS TO DISCUSS MATTERS RELATING TO ACTIONS ADVERSELY OR FAVORABLY AFFECTING A PERSON AS A STUDENT, PATIENT OR RESIDENT OF A PUBLIC INSTITUTION UNDER K.S.A. 75-4319(b)(5):

²⁷ K.S.A. 60-3320(4).

²⁸ Mann v. Tatge Chemical Co., Inc., 201 Kan. 326; 440 P.2d 640 (1968). See also the Restatement of Torts § 757 (1939) and Koch Engineering Co. v. Faulconer, 227 Kan. 813, Syl 2,3 ¶¶ (1980).

²⁹ Southwestern Bell Tel. Co. v. Kansas Corporation Commission. 6 Kan. App. 2d 444 (1981) 629 P.2d 1174 opinion filed June 12, 1981. See also Stephan, Robert T. Attorney General Opinion 86-48, April 3, 1986.

The student-patient-resident exemption (K.S.A. 75-4319(b)(5)) allows the discussion of matters relating to the specified individuals in closed sessions. It applies to discussion of individual person and its purpose is to protect the privacy of specified persons. Although there is no requirement in the *Open Meetings Act* that the discussion of these individuals be carried out in a closed session, common expectations of privacy should be considered carefully before discussing individual students, patients or residents in an open meeting.

Motion: I move that the Commission (or Board) recess for an executive session at <specific time> for the purpose of discussing a <student, patient or resident> of <named public institution>. The justification for the executive session is to protect the privacy of the <student's, patient's or resident's> record and is provided by K.S.A. 75-4319(b)(5). The open meeting is to resume in this room at <specific time>.

The name of the institution should always be disclosed. Citing K.S.A. 75-4319(b)(5) is optional but adds clarity.

MOTIONS TO DISCUSS THE ACQUISITION OF REAL PROPERTY UNDER K.S.A. 75-4319(b)(6):

The purpose of allowing “preliminary discussions relating to the acquisition of real property” is to protect governmental bodies from the adverse effects of publicity when public knowledge of a governmental land purchase would increase the price of the property at the taxpayer’s detriment.³⁰

We recommend the following motions:

Motion: I move that the Commission (or Board) recess for an executive session at <specific time> for the purpose of discussing the acquisition of <specific piece or property> or property for <specific purpose>. The justification for the closed session is to minimize the cost of the property to the taxpayer and is provided by K.S.A. 75-4319(b)(6). The open meeting is to resume in this room at <specified time>.

Citing K.S.A. 75-4319(b)(6) is optional but adds clarity.

Since the intent of the *Act* is to protect the public motions closing meetings for the discussion of the acquisition of real property, the governmental body should identify the property being acquired to the extent that public knowledge will not increase the cost of the property for the taxpayer.

³⁰ Smoot and Clothier, *Open Meetings Profile: The Prosecutor’s View*, 20 Washburn Law Journal 241, page 278 (1981)

However, the *sale* of real property is not to be discussed in closed sessions. Consider Attorney General Opinion 87-91,

It is our opinion that a public body may not go into an executive session to discuss the sale of publicly owned property. The exceptions to the KOMA are to be strictly construed. Had the legislature intended to allow public bodies to discuss the sale of realty in private, it would have so provided.³¹

Discussions of the acquisition or sale of real property in general, without concern for any particular real property or purpose, are not proper subjects for closed meetings.

MOTIONS TO DISCUSS MATTERS RELATING TO PARIMUTUEL RACING PERMITTED TO BE DISCUSSED IN A CLOSED OR EXECUTIVE MEETING PURSUANT TO K.S.A. 74-8804, AND AMENDMENTS THERETO; UNDER K.S.A. 75-4319(B)(7):

This exemption to the *Open Meetings Act* is for the benefit of the Kansas Racing and Gaming Commission. According to the Commission’s web site, on July 20, 2018, “At the present time, all pari-mutuel licenses for horse and dog racing in Kansas have lapsed and been revoked. No pari-mutuel racing has been conducted in Kansas since August 2008.”³²

We recommend the following:

Motion: I move that the Commission (or Board) recess for an executive session at <specific time> for the purpose of discussing <parimutuel racing>. The justification for the executive session is provided by K.S.A. 75-4319(b)(7). The open meeting is to resume in this room at <specific time>.

Citing K.S.A. 75-4319(b)(7) is optional but adds clarity.

The Commission is still entitled to discuss other matters as allowed by the *Open Meetings Act* in executive sessions.

MOTIONS TO DISCUSS MATTERS RELATING TO THE CARE OF CHILDREN PERMITTED TO BE DISCUSSED IN A CLOSED OR EXECUTIVE MEETING PURSUANT TO K.S.A. 2017 SUPP. 38-2212(D)(1) OR 38-2213(E), AND AMENDMENTS THERETO UNDER K.S.A. 75-4319(B)(8):

³¹ Stephan, Robert T.: Attorney General Opinion 87-91, June 19, 1987.

³² <http://www.krgc.ks.gov>. Last checked on 11/28/2019.

This exemption to the *Open Meetings Act* is for the benefit of citizen review boards defined by K.S.A. 38-2207 and the Kansas Department for Children and Families. We recommend the following:

Motion: I move that the Board recess for an executive session at <specific time> for the purpose of discussing the care of <a child or children> at <named institution>. The justification for the executive session is to protect the privacy of the child's records and is provided by K.S.A. 75-4319(b)(8). The open meeting is to resume in this room at <specific time>.

Citing K.S.A. 75-4319(b)(8) is optional but adds clarity.

MOTIONS TO DISCUSS MATTERS RELATING TO THE INVESTIGATION OF CHILD DEATHS PERMITTED TO BE DISCUSSED IN A CLOSED OR EXECUTIVE MEETING PURSUANT TO K.S.A. 22A-243(J), AND AMENDMENTS THERETO UNDER K.S.A. 75-4319(B)(9):

This exemption is for the State Child Death Review Board, a part of the Office of the Attorney General, defined by K.S.A. 22a-243. The Board examines trends and patterns that identify risk factors in the deaths of children, from birth through 17 years of age. We recommend the following:

Motion: I move that the Board recess for an executive session at <specific time> for the purpose of discussing the death of <named child or children>. The justification for the executive session is to protect the privacy of the <child or children's> records and is provided by K.S.A. 75-4319(b)(9). The open meeting is to resume in this room at <specific time>.

Citing K.S.A. 75-4319(b)(9) is optional but adds clarity.

MOTIONS TO DISCUSS MATTERS RELATING TO PATIENTS AND PROVIDERS PERMITTED TO BE DISCUSSED IN A CLOSED OR EXECUTIVE MEETING PURSUANT TO K.S.A. 39-7,119(G), AND AMENDMENTS THERETO UNDER K.S.A. 75-4319(B)(10):

This exemption is for the Kansas Medicaid Drug Utilization Review Board, a division of the Kansas Department of Health and Environment, created by K.S.A. 39-7,119 and is for the consideration of matters relating to identifiable patients or providers. We recommend the following:

Motion: I move that the Board recess for an executive session at <specific time> for the purpose of discussing drug utilization by identifiable patients or providers. The justification for the executive session is to protect the privacy of the patients' or providers' records and is provided by K.S.A. 75-4319(b)(10). The open meeting is to resume in this room at <specific time>.

Citing K.S.A. 75-4319(b)(10) is optional but adds clarity.

MOTIONS TO DISCUSS MATTERS REQUIRED TO BE DISCUSSED IN A CLOSED OR EXECUTIVE MEETING PURSUANT TO A TRIBAL-STATE GAMING COMPACT UNDER K.S.A. 75-4319(B)(11):

This exemption is for negotiations between the Kansas State Gaming Agency and specific tribes. The name of the tribe should be stated in the motion closing the meeting. We recommend the following:

Motion: I move that the Commission (or Board) recess for an executive session at <specific time> for the purpose of discussing the gaming compact between the State of Kansas and <specific tribe>. The justification for the executive session is to protect the privacy of the negotiations and is provided by K.S.A. 75-4319(b)(11). The open meeting is to resume in this room at <specific time>.

Citing K.S.A. 75-4319(b)(11) is optional but adds clarity.

MOTIONS FOR THE DISCUSSION OF SAFETY AND SECURITY UNDER K.S.A. 75-4319(b)(12):

The purpose of the Open Meetings Act exception for the discussion of security is to allow the governing body to discuss a security problem without encouraging anyone to take advantage of the specific problem. Not much can be said in motions closing meetings for discussion of security problems without aggravating the specific security problem. At times, the Commission (or Board) may be able to state that the issue to be discussed is a “personnel security issue” or a “property security issue.”

We recommend the following:

Motion: I move that the Commission (or Board) recess for an executive session at <specific time> for the purpose of discussing a matter involving <personnel / property> security. The justification for the closed session is to avoid aggravating the security issue and is provided by K.S.A. 75-4319(b)(12). The open meeting is to resume in this room at <specified time>.

Citing K.S.A. 75-4319(b)(12) is optional but adds clarity.

MOTIONS TO DISCUSS MATTERS RELATING TO MATERNITY CENTERS AND CHILD CARE FACILITIES PERMITTED TO BE DISCUSSED IN A CLOSED OR EXECUTIVE MEETING PURSUANT TO K.S.A. 65-525(D), AND AMENDMENTS THERETO UNDER K.S.A. 75-4319(B)(13):

This is for the prevention of the public release of records in the possession of the Department of Health and Environment or its agents regarding child care facilities or maternity centers in a manner that would identify individuals. However, the individual names of licensees, applicants, facilities and maternity centers may be released. We recommend the following:

Motion: I move that the Commission (or Board) recess for an executive session at <specific time> for the purpose of discussing <maternity OR child care> at <named institution>. The justification for the executive session is to protect the privacy the records of individuals and is provided by K.S.A. 75-4319(b)(13). The open meeting is to resume in this room at <specific time>.

Citing K.S.A. 75-4319(b)(13) is optional but adds clarity.

MOTIONS TO DISCUSS MATTERS RELATING TO THE OFFICE OF INSPECTOR GENERAL PERMITTED TO BE DISCUSSED IN A CLOSED OR EXECUTIVE MEETING PURSUANT TO K.S.A. 2017 SUPP. 75-7427, AND AMENDMENTS THERETO; UNDER K.S.A. 75-4319(B)(14):

This exemption is for discussing the Office of the Inspector General of the Department of Health and Environment. That office operates under the Office of the Attorney General. We recommend the following:

Motion: I move that the Commission (or Board) recess for an executive session at <specific time> for the purpose of discussing matters relating to the office of the Inspector General. The justification for the executive session is to protect the confidentiality of matters relating to that office and is provided by K.S.A. 75-4319(b)(14). The open meeting is to resume in this room at <specific time>.

Citing K.S.A. 75-4319(b)(14) is optional but adds clarity.

MOTIONS FOR THE GOVERNOR'S DOMESTIC VIOLENCE FATALITY REVIEW BOARD TO CONDUCT CASE REVIEWS UNDER K.S.A. 75-4319(B)(15):

Under the direction of the Governor, the Domestic Violence Fatality Review Board is charged with reviewing all adult domestic violence-related fatalities in Kansas, describing trends and patterns regarding the facts and circumstances of these fatalities, recommending improvements to prevent future fatalities, and determining if adequate resources and trainings are in place for those who respond to domestic violence crimes. This exemption allows the Board to review cases without making the review public. We recommend the following:

Motion: I move that the Commission (or Board) recess for an executive session at <specific time> for the purpose of reviewing the death of <named person>. The justification for the executive session is to protect the privacy of the individuals involved and is provided by K.S.A. 75-4319(b)(15). The open meeting is to resume in this room at <specific time>.

Citing K.S.A. 75-4319(b)(15) is optional but adds clarity.

Suggestions and Questions

Questions and suggestions for the improvement of this publication should be directed to Alan L. Cowles, M.D., Ph.D. at AlanCowles@outlook.com.

