

Recommended Motions for Closing Meetings in Kansas
July 18, 2017

In the interest of helping boards and commissions in complying with the new Kansas *Open Meetings Act*, we recommend the following motions for closing open meetings in Kansas. The current motions should cover over 95% of cases. Additional motions are to be added later. Please send your questions and suggestions to AlanCowles@outlook.com.

TO DISCUSS PERSONNEL MATTERS (K.S.A. 75-4319(b)(1))

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 <specified time>.

Comment: Some meaningful information about the subject(s) to be discussed should be included in the motion. 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 an individual. And nothing untrue is said. Citing K.S.A. 75-4319(b)(1) is optional but adds some clarity. "Board" can be used in place of "Commission," as appropriate.

OR

I move that the Commission (or Board) recess for an executive session for the <specified position holder's> annual evaluation. 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>.

Comment: 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."

The personnel exemption (K.S.A. 75-4319(b)(1)) applies to discussion of individual employees. It does NOT include discussion of general categories of employees or other "personnel matters" such as personnel policy, personnel reorganization, the addition or elimination of job functions or positions, 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).

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

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 or specific issue>. 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>.

Comment: 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 some clarity. The attorney must be present in the closed session. 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.

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

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>.

Comment: 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 some clarity.

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

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>.

Comment: 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) can state that the issue to be discussed is a “personnel security issue” or a “property security issue.”

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