

Governmental Business in Secrecy in Kansas — Summary

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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. For more information, contact Alan L. Cowles, M.D., Ph.D., Lawrence, Kansas, 785-331-2334.