

SETTLEMENT AGREEMENT
between
THE CITY OF LAWRENCE, KANSAS
and
INDIVIDUAL MEMBERS OF THE LAWRENCE CITY COMMISSION
and
PAUL J. MORRISON, KANSAS ATTORNEY GENERAL

We, the undersigned, Paul J. Morrison, Kansas Attorney General, and all members of the Lawrence City Commission along with the city of Lawrence, in lieu of further legal proceedings concerning the alleged violations of the Kansas Open Meetings Act (KOMA, K.S.A. 75-4317 *et seq.*, hereby agree as follows:

1. Meetings of a majority of a quorum of members of the Lawrence City Commission are subject to the requirements of the KOMA.
 - a) Pursuant to K.S.A. 75-4317a, a meeting of the Lawrence City Commission takes place any time the following three things occur:
 - (1) A majority of a quorum of the City Commission;
 - (2) Interactively discusses;
 - (3) The affairs of the body.
 - b) If a meeting of the City Commission takes place, the discussion must be conducted openly, unless the body then properly convenes into an executive session, as provided for by K.S.A. 75-4319.
 - c) Only the topics listed in K.S.A. 75-4319(b) may be discussed in an executive session. All other meetings, wherein a majority of a quorum of the City Commission discusses topics concerning the affairs of the City, must be conducted openly.
2. On September 20, 2007, the Lawrence City Commission held a meeting, during which the City Commission went into an executive session.
 - a) The motion made at this meeting, to go into executive session, stated two exceptions listed in K.S.A. 75-4319(b): acquisition of real estate and attorney-client privilege.
 - b) The attorney-client exception was relied upon in order to discuss the proposed agreement with a company known as Deciphera.
 - c) The acquisition of real estate topic was unrelated to the alleged violation of the KOMA and the contract with Deciphera.
3. K.S.A. 75-4319(b)(2) allows executive sessions in order for the client public body to consult with attorneys for the City if the conversation would be deemed privileged as part of the attorney-client relationship.

4. Those persons present during the September 20, 2007 Lawrence City Commission executive session called under K.S.A. 75-4319(b)(2) were: Mayor Sue Hack, City Commissioners Mike Amyx, Mike Dever, Dennis Highberger and Rob Chesnut, City Manager David Corliss (who is also an attorney), Director of City Legal Services Toni Wheeler, and the Chamber of Commerce President Lavern Squier.
5. No binding action was taken during the September 20, 2007 executive session. Rather, the proposed agreement with Deciphera was discussed.
6. The President of the Chamber of Commerce was invited into the September 20, 2007 executive session in order to update the City Commissioners on the status of the negotiations with Deciphera and the terms to which that company would agree.
7. As discussed in Attorney General Opinion No. 92-56, when K.S.A. 75-4319(b)(2) is relied upon in conducting an executive session discussion, the persons present in that closed discussion may only include the attorney (or attorneys) representing the public body, and the client (members of the public body itself and their agents/staff). No other persons may be present during such attorney-client privileged communications.
8. There is no evidence that supports characterizing the President of the Chamber of Commerce as a client of the attorneys present during the September 20, 2007 executive session.
9. The September 20, 2007 executive session inclusion of a person who was not an attorney for City, nor a client of those attorneys, constituted a waiver of the attorney-client communication privilege.
10. The City Commission understands and agrees that use of K.S.A. 75-4319(b)(2) requires that the discussion only persons who are attorneys for the City or who qualify as clients of those attorneys.
11. The executive session discussion on September 20, 2007, called under K.S.A. 75-4319(b)(2), should have either excluded all persons other than the City's attorneys and client(s) or the discussion should have been conducted openly.
12. In relying upon K.S.A. 75-4319(b)(2), but nevertheless allowing a person who was not an attorney for the body or a member of the client base into the September 20, 2007 executive session, the Lawrence City Commission violated the KOMA.
13. In consideration of these admissions by the undersigned Lawrence City Commission members and the following agreed remedies, the Attorney General agrees to forgo prosecution for the alleged violations of the KOMA, as set forth herein.
14. Each of the Lawrence City Commission members agrees;

- a) To obtain at least two hours of training on the provisions of the KOMA, to be presented by an attorney of their choosing, within 4 months of the date of this agreement, and on or before February 14, 2008, and they agree that after they receive that training, they will provide the Attorney General with a written statement confirming they obtained the KOMA training. Any costs incurred by reason of obtaining this additional training shall be paid for by the individuals, and not from public moneys.
- b) To engage in no future violations of the KOMA;
- c) That should they engage in any future breach of the KOMA, this agreement shall become null and void and the District Attorney or Attorney General may institute prosecution based upon the facts and admissions contained herein, and may seek all penalties available under the KOMA; and
- d) That this agreement does not apply to future and/or currently unknown conduct that may occur or be brought to the attention of the Attorney General or any other prosecutor, and any such alleged violations of the KOMA may be prosecuted.

14. Each party agrees to bear its own costs.

PAUL MORRISON
Kansas Attorney General

Date: _____

The City of Lawrence by:

Mayor Sue Hack

Date: _____

Members of the City Commission:

Mayor Sue Hack

Date: _____

Commissioner Dennis Highberger

Date: _____

Commissioner Rob Chestnut

Date: _____

Commissioner Mike Amyx

Date: _____

Commissioner Mike Dever

Date: _____

Approved by Gerald L. Cooley
Attorney for the City of Lawrence

Date: _____