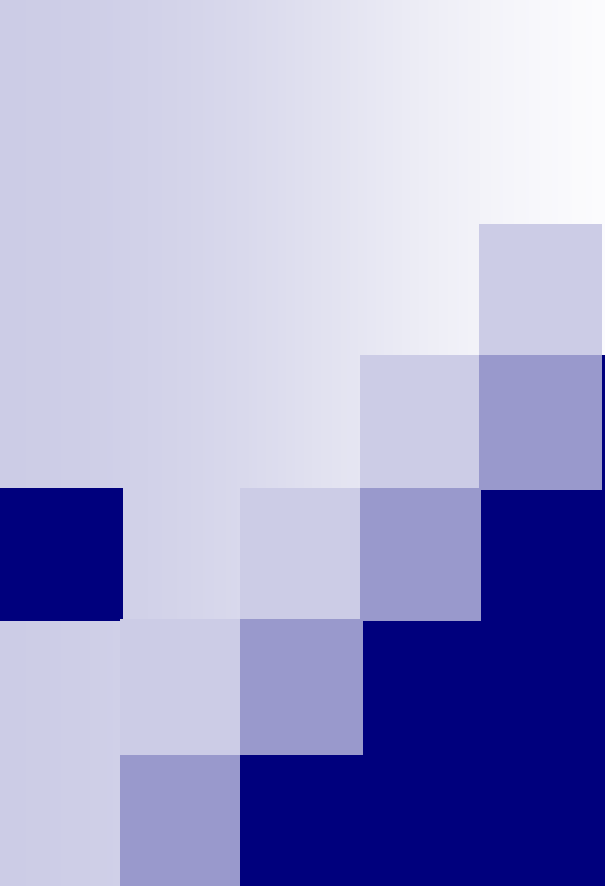




Kansas Open Meetings Act

K.S.A. 75-4317 *et seq.*



Open Meetings Principle

- The open meetings principle is based on the belief that the people have a right to know the public business; and
- Information is essential to the effective functioning of our democratic process.

Purpose of KOMA

- *“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.” K.S.A. 75-4317(a)*

KOMA

- The KOMA is to be interpreted liberally, and its exceptions construed narrowly, to carry out the purpose of the law.
- It regulates the conduct of public business.



KOMA applies when

- The body involved is a covered entity and
- There is a “meeting.”



Bodies Subject to the Act

- Applies to all legislative and administrative bodies, state agencies and political and taxing subdivisions;
- Which receive or expend and are supported in whole or in part by public funds.



Meeting Defined

- “As used in the open meetings act, ‘meeting’ means any gathering or assembly in person or through the use of a telephone or any other medium for interactive communication by a majority of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency.”



Elements of a “Meeting”

All three of the following must be met:

- Majority of the membership of the body;
- Interactive communication; and
- Discussing the business of the body.



Majority of Membership

- For our five-member City Commission, a majority of the membership of the body is three.



Interactive Communication

Act applies when there is “any gathering or assembly in person or through the use of a telephone or any other medium for interactive communication...”

- * clearly applies when members are in physical presence of one another
- * telephone calls, including conference calls
- * work sessions, staff briefings, video conferencing, online communications (when there is the opportunity for contemporaneous interaction)



Electronic Communications

- The Attorney General has indicated that the mere fact that a communication is electronic does not raise a KOMA issue.
- If, a majority of the body uses an electronic communication to engage in “interactive discussions” such contact *may* raise a KOMA issue.
- A single email sent to other members would likely not be considered a violation, but participation in an online chat room or instant message may be considered a violation of KOMA because of its interactive nature.



Emails

- Avoid initiating an on-line discussion with fellow commissioners through email.
- You may receive emails about a city matter and all other commissioners are also sent or copied on the email.
- Avoid the “REPLY ALL” function.

Discussing the Business of the Body

- It is not necessary for a vote or binding action to be taken. Discussion of public business is what triggers the application of KOMA.
- Individual members of governing bodies may gather for purposes other than discussing the business of the body.
 - Social gatherings are not subject to KOMA if there is no discussion of the business of the body;
 - Commissioners may attend conferences where items of general interest are discussed as long as specific business of the body is not discussed by a majority of the body.

Serial Meetings

- Certain serial meetings must be open.
- A series of *interactive communications** of less than a majority that:
 - (1) Collectively involve a majority of the membership of the body;
 - (2) Share a common topic of discussion concerning business or affairs of the body; and
 - (3) Are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the body or agency.

*K.S.A. 75-4318(f).

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- Members of the public may wish to schedule individual meetings with commissioners to discuss a topic of concern.
 - Individual meetings scheduled consecutively or close in time to one another may raise the *Serial Meeting* question.
 - When in doubt, a conservative approach is best.



Review: KOMA applies when...

- The body involved is a covered entity and
- There is a “meeting”
 - Majority of the membership of the body; and
 - Interactive communication; and
 - Discussing the business of the body



KOMA Requirements

- All meetings of entities covered by KOMA must be open to the public and proper notice must be given.



Meetings Open to Public

- Meetings must be held in places accessible to the general public.
- Secret ballots are not permitted.
- Use of cameras and recording devices cannot be prohibited, but such use may be subject to reasonable rules.

Notice

- “Notice of the date, time and place of any regular or special meeting of a public body...shall be furnished to any person requesting such notice.”
K.S.A. 75-4318(b)
 - KOMA requires the date, time & place be given (the method of providing notice is not specified).
 - KOMA does not require notice to be given within any particular time frame.
 - Notice must first be requested before a body is required to provide it.



Agendas

- KOMA does not require an agenda be created.
- If a body creates one, it should include the topics planned for discussion.
- Agendas can be amended.
- If agendas exist, copies must be available to those who request them.



Executive Sessions

- Meetings closed to the public (executive sessions) are permitted in limited circumstances.
- Binding action cannot be taken during a closed session.
- Executive sessions are useful for discussing the topics permitted by law to be discussed, while protecting important privacy interests.



Subjects That May Be Discussed in Executive Session

KOMA specifies 16 topics that may be discussed in an executive session. Of the 16 permitted topics, the City Commission most commonly meets in executive session to discuss:

- Personnel matters of nonelected personnel;
- Consultation with the body's attorney which would be deemed privileged in the attorney-client relationship;
- Employer-employee negotiation related matters;
- Preliminary discussions relating to the acquisition of real property;
- Confidential data relating to trade secrets or financial affairs of a private business.



Procedures for Recessing into Executive Session

- Before going into an executive session, the body must first convene in an open meeting.
- There must be a formal motion, seconded and carried, that contains a statement of:
 - (a) the justification for closure;
 - (b) the subject to be discussed; and
 - (c) the time and place where the meeting will resume.
- The process must be recorded in the minutes of the meeting and maintained as a part of the permanent record of the public body.



Possible legal ramifications for violation of KOMA requirements

- Injunction
- Mandamus
- Civil penalties up to \$500 / violation
- Court costs
- Attorneys fees
- Invalidation of actions
- Removal from office (ouster or recall)



Local Conflict of Interest Laws

K.S.A. 75-4301a *et seq.*



Purpose

- The Kansas law attempts to achieve a fair balance to ensure that public office is not used for private gain.

Statements of Substantial Interest (K.S.A. 75-4301a)

The Act requires the filing of Statements of Substantial Interest:

- **Candidates for local office – within 10 days after filing deadline;**
- By individual appointed on or before April 30th to fill vacancy, between April 15 and April 30 of that year;
- By individual appointed after April 30th to fill a vacancy, within 15 days after the appointment;
- **For office holders, between April 15th and 30th, if during the preceding year, any change occurred in the individual's substantial interests**



What is a substantial interest?

K.S.A. 75-4301a

- (a)(1) if an individual or an individual's spouse, either individually or collectively, has owned within the preceding 12 months a legal or equitable interest exceeding \$5,000 or 5% of any business, whichever is less;

What is a substantial interest?

K.S.A. 75-4301a

- (a)(2) If an individual or an individual's spouse, either individually or collectively, has received during the preceding calendar year compensation which is or will be required to be included as taxable income on federal income tax returns of the individual or spouse in an aggregate amount of \$2,000 from any business or combination of businesses;

What is a substantial interest?

K.S.A. 75-4301a

- (a)(3) If an individual or an individual's spouse, either individually or collectively has received in the preceding 12 months, without reasonable and valuable consideration, goods or services having an aggregate value of \$500 or more from a business or combination of businesses;

What is a substantial interest?

K.S.A. 75-4301a

- (a)(4) If an individual or an individual's spouse holds the position of officer, director, associate, partner or proprietor of any business, other than an organization exempt from federal taxation of corporations under section 501(c) (3), (4), (6), (7), (8), (10) or (19) of chapter 26 of the United States code, irrespective of the amount of compensation received by the individual or the individual's spouse;

What is a substantial interest?

K.S.A. 75-4301a

- (a)(5) If an individual or an individual's spouse receives compensation which is a portion or percentage of each separate fee or commission paid to a business or combination of businesses, the individual has a substantial interest in any client or customer who pays fees or commissions to the business or combination of businesses from which fees or commissions the individual or individual's spouse, either individually or collectively, received an aggregate of \$2,000 or more in the preceding calendar year



Where To File Statements of Substantial Interest

- In the office where declarations of candidacy are required to be made.
- For city commissioners, Statements of Substantial Interest are filed with the City Clerk's Office.
- City Clerk then forwards them to the Douglas County Clerk's Office.



Abstain on certain contracts (K.S.A. 75-4304)

- The Kansas act requires public officials to abstain from making or participating in the making of any contract with any business in which the official is employed or has a substantial interest.



Abstention is not required for:

- Contracts let after competitive bidding has been advertised for by published notice; and
- Contracts for property or services for which the price or rate is fixed by law.



Action on other matters

(K.S.A. 75-4305)

- No officer or employee who has not filed a statement of substantial interest may act in an official capacity upon any matter that will affect any business in which the officer or employee holds a substantial interest, unless:
- Before taking action the officer or employee files with the county clerk a written report of the nature of the interest or
- The officer or employee abstains from any direct or incidental action on the matter.



Penalties

- Failure to file a general statement of substantial interest is a misdemeanor;
- Upon conviction for violation of the law prohibiting participation in the making of contracts will result in the forfeiture of office and is a misdemeanor;
- Failure to file specific statement of interest is a misdemeanor.



Advisory opinions

K.S.A. 75-4303a

- Written requests for advisory opinions on the interpretation or application of the act can be made to the Governmental Ethics Commission.
- The Act provides that any person who requests and receives an advisory opinion and who acts in accordance with its provision is presumed to have complied with the law.



Kansas Governmental Ethics Commission

- 109 West Ninth Street
Topeka, Kansas 66612-1287
Telephone: (785) 296-4219