

Kansas Open Meetings Act

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



City of Lawrence

Purpose of KOMA

In 1972, the Kansas Legislature adopted the Kansas Open Meetings Act to ensure that the business of governing is done in the full view of the public.

The law is intended to promote an informed electorate, to increase trust in government and to curtail corruption.

KOMA Applies When

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



Entities Subject to the Act

- The law applies to all political and taxing subdivisions in Kansas;
- Which receive or expend and are supported in whole or in part by public funds.

Meeting

3 conditions must be met for a “meeting” to occur. All 3 must be present:

1. A gathering of a majority of the members of the body;
2. Interactive communication; and
3. Discussion of the business or affairs of the body.

*Note, there is no requirement the meeting be pre-arranged, or even intended.

1. Majority of Membership

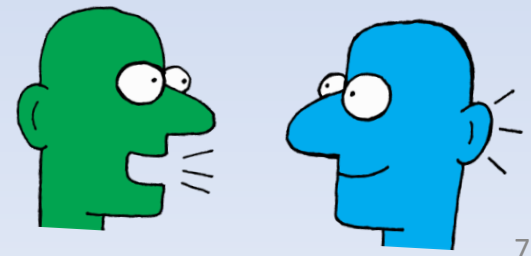
- For our five-member City Commission, a majority of the membership of the body is **three**.



2. Interactive Communication

Act applies when there is “interactive communication...”

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



3. Discussing the Business of the Body

- Discussion of public business is what triggers the application of KOMA (a vote or binding action is not necessary for the law to apply).
 - 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.

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 discussion may be considered a violation of KOMA because of its interactive nature.

E-mails

- 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.



Serial Meetings

A series of interactive communications of less than a majority is not permitted under KOMA.

A violation of KOMA may occur if:

- 1) Collectively the meetings involve a majority of the membership of the body (3);
- 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.

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
 - Members discuss 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 the Public

- Meetings must be held in places accessible to the general public.
- Meetings must be conducted so the public may observe or listen to the proceedings.



Notice

Notice of the date, time and place of any regular or special meeting must be given to any person requesting such notice.

- 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



City of Lawrence

*CITY COMMISSION
MEETING AGENDA
April 14, 2015 - 5:45 p.m.
(Posted on webpage at 4:50 p.m. on 04/09/15)*

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

Executive Sessions

- Meetings closed to the public (executive sessions) are permitted in limited circumstances.
- 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 matters; and
- Preliminary discussions relating to the acquisition of real property

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.
- Binding decisions are not made in executive session.

Possible ramifications for violation of KOMA requirements

- The District Attorney or Attorney General investigates potential KOMA violations.
- The Attorney General has stated that his office seeks compliance with the Act and his office wants to assure future violations do not occur. They may require the body to receive additional KOMA training.
- If there is a pattern of willful disregard for the law's requirements, the District Attorney or Attorney General may take individuals to court -
 - Civil penalties up to \$500 / violation
 - Court costs
 - Attorneys fees
 - Invalidation of actions
 - Removal from office (ouster or recall)
 - KOMA is a civil statute, not a criminal statute



Local Conflict of Interest Laws

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

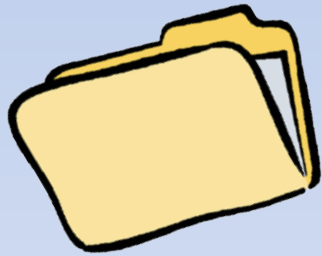
The Act requires the filing of Statements of Substantial Interest at various times set forth in the law.

What is a Substantial Interest?

- Ownership by individual or spouse of any business interest valued at more than \$5000 or 5% of any business, whichever is less;
- Receipt by an individual or spouse of \$2000 or more from any business or combination of businesses in the preceding calendar year;
- Holding the position of officer, director, partner or proprietor of any business regardless of compensation received (with special exception for positions held with certain tax exempt organizations);
- Receipt by an individual or spouse of a fee or commission of \$2000 or more in the preceding calendar year; or
- Acceptance of certain gifts having a value exceeding \$500.

Where To File Statements of Substantial Interest

- For city commissioners, Statements of Substantial Interest are filed with the City Clerk's Office.



The 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)

- Before acting in an official capacity upon any matter that will affect any business in which the officer or employee holds a substantial interest, an elected official must, before taking action on the item, have filed a statement of substantial interest reporting the nature of the interest *or*
- The officer may abstain from any direct or incidental action on the matter.

Penalties

- Failure to file a general or specific statement of substantial interest is a misdemeanor;
- If convicted for participating in the making of contracts in violation of the Act, the forfeiture of office will occur, and the act 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.

Kansas Governmental Ethics Commission

109 West Ninth Street, Suite 504
Topeka, Kansas 66612-1287

Telephone: (785) 296-4219