

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:00 a.m. on February 8, 1994, in Room 531-N of the Capitol.

All members were present except: Sen. Feleciano

Committee staff present: Michael Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Duane Johnson, State Librarian
Julene L. Miller, Deputy Attorney General
Don Moler, League of Kansas Municipalities
Ben Coates, Kansas Press Association
Jim Reardon, Kansas Association of Counties

Others attending: See attached list

SB 427--Relating to grants-in-aid to libraries.

Staff explained that the bill amends the statute on grants-in-aid to libraries on page 2 which changes the requirement that distribution be made twice a year to once a year.

Duane Johnson, State Librarian, testified in support of the bill. (See Attachment 1) Mr. Johnson explained that the bill is largely a housekeeping item and would give the library more time to make the decision as to how to spend the money. Mr. Johnson had proposed amendments which are found in items 5 and 6 of his testimony.

Sen. Ranson commended Mr. Johnson for his efforts in finding a way to save money.

Sen. Ramirez made a motion to amend SB 427 by making it effective upon publication in the Kansas Register rather than publication in the statute book, Sen. Reynolds seconded the motion, and the motion carried.

Sen. Langworthy made a motion to conceptually amend SB 427 as recommended in items 5 and 6 of Mr. Johnson's testimony, Sen. Ranson seconded the motion, and the motion carried.

Sen. Ramirez made a motion to report SB 427 favorable for passage as amended, Sen. Langworthy seconded, and the motion carried.

HB 2784--Relating to the definition of open meetings.

Staff explained the bill clarifies what a meeting is and expands this to include telephone calls, written communications, or any other means of communication.

Julene Miller, Deputy Attorney General, testified in support of HB 2784. (See Attachment 2)

Sen. Reynolds asked Ms. Miller how enforcement regarding telephone calls could be accomplished. Ms. Miller answered that it could be done through checking telephone billings or by a witness reporting.

The Chairman asked Ms. Miller the reason the Attorney General felt it was important to outline evidence of a

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT, Room 531-N Statehouse, at 9:00 a.m. on February 8, 1994.

prearranged meeting in the bill as he feels this limits. Ms. Miller responded that the Attorney General did not want to prohibit the use of phone calls or conference calls. The Chairman further inquired if the Attorney General would object to the elimination of the requirement that it be prearranged. Ms. Miller said there would be no problem in removing this and agreed that if it were removed, Section 2 (b) dealing with evidence that a meeting is prearranged would not be needed.

Sen. Langworthy began a discussion regarding the problem of two board members or commissioners being seen together and the perception by others that they are discussing business. She felt that the burden of proof that business was being discussed is on the accuser. Sen. Downey stated that she feels people may refuse to be on a board because they feel whenever two board members are seen together in public, they always will be under fire even though it is a social meeting only. The Chairman reminded her that this occurs under current law, but the prearranged issue may be a stumbling block. He commented further that since the Kansas Open Meetings Act has worked so well, perhaps just adding telephone calls to the present statute would be enough. Ms. Miller said, in that case, perhaps language could be added regarding a pattern or practice with the understanding that a meeting is to occur.

Don Moler, League of Kansas Municipalities, testified in support of HB 2784 only insofar as the inclusion of telephone calls. He had concerns with other language in the bill. (See Attachment 3)

Ben Coates, Kansas Press Association, testified in full support of HB 2784. (See Attachment 4)

Final testimony was given by Jim Reardon, Kansas Association of Counties. Mr. Reardon expressed support for the inclusion of meetings held by electronic means but cautioned the committee to thoroughly study the other provisions. (See Attachment 5)

There being no further time, the Chairman announced that discussion of and action on HB 2784 would be continued to Thursday at 9:30 a.m.

The minutes of February 3 were approved.

The meeting was adjourned at 10:02 a.m.

The next meeting is scheduled for February 10, 1994.

Date: February 8, 1994

GUEST REGISTER

**SENATE
LOCAL GOVERNMENT**

NAME	ORGANIZATION	ADDRESS
Ben Cortes	KPA	Topeka
Don Moler	League of KS Municipalities	Topeka
Jim Rzeardov	Ks Assn of Counties	Topeka
JWene Miller	A.G.	Topeka
Nobuko Folmsbee	A.G.	Topeka
Michelle Peterson	Ks Gov Consulting	Topeka
Rita Noll		Topeka
Jean Barber	TIAC	Topeka
Wilko Martini	Sedgewick Co.	Wichita
Kathy Sexton	Topeka Div. of Budget	Topeka
JANE JOHNSON	State Library	Topeka
BEU BRADLEY	Ks Assoc of Counties	Topeka
Anne Smith	Ks. Assoc of Counties	Topeka

Senate Local Government Committee
Senator Mark Parkinson, Chair

February 8, 1994, 9:00 A. M.

Room 531- N

Statement of Duane Johnson, State Librarian, in support of Senate Bill 427

Senator Parkinson and members of the Local Government Committee:

Thank you for your consideration of this relatively uncomplicated amendment to the Grants-In-Aid to Libraries statute.

1. Senate Bill 427 would amend K. S. A. 75-2556 to consolidate the payment of the Grants-In-Aid to Libraries to a single payment on February 1, rather than the two payments on April 1 and June 1 now required by the statute.

2. The change will, 1) reduce the time required to administer the Grants-In-Aid to Libraries, 2) reduce by half the number of warrants required to complete the annual payment, and 3) reduce by half the mailing and postage expense necessary to complete the payment.

3. With the single payment, we can project savings of:

44 hours of staff time, by conservative estimate	-	\$ 485.84
postage and mailing supplies	-	\$ 320
Accounts and Reports warrant expenses	-	\$8,000
(A and R expenses - 320 warrants @ \$25 = \$8,000)		
annual savings	-	\$8,805.84

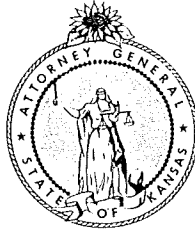
4. Local libraries would have about three additional months to complete the expenditure of the grant prior to the end of the federal fiscal year - September 30, following the payment. (Part of the fund being allocated is federal money, causing the deadline for the entire amount.)

5. To bring the Grant-In-Aid act into alignment with this proposed change in the payment date, K. S. A. 75-2557, which directs the allocation information to be certified to the director of accounts and reports by March 15, would need to be changed to an earlier date. January 15 would appear to be the appropriate earlier date.

*Senate Local Gov't
2-8-94
Attachment 1*

6. The definition of public library in K. S. A. 75-2554 needs to be expanded to include the statutes identifying the Topeka and Shawnee County Public Library and the Kansas City KS Public Library. *(a technical error)*

I would be pleased to answer questions from the committee. Thank for the opportunity to present this information.



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Testimony of Julene L. Miller
Deputy Attorney General
Before the Senate Committee on Local Government
Re: House Bill No. 2784
February 8, 1994

Mr. Chairman, Members of the Committee:

Thank you for providing me with the opportunity to comment on House Bill No. 2784 which proposes to amend two sections of the Kansas open meetings act. As you are aware, the Kansas supreme court ruled last month that telephone communications between a majority of a quorum of a public body are not covered by the open meetings act. The court held that defining the term "meeting" as "a prearranged gathering or assembly" requires the physical presence of a majority of a quorum of the body for the open meetings act to apply.

Pursuant to this ruling, public bodies will be free to discuss the business and affairs of the body in telephonic or other non-face-to-face meetings which are not open to the public. This creates a significant loophole in the open

*Senate Local Gov't
2-8-94
Attachment 2*

meetings act, and severely hampers any ability to enforce the act. House Bill No. 2784 is an attempt to clarify that a majority of a quorum of a public body may not discuss business over the telephone or otherwise except when such discussion occurs in the open. Attorney General Stephan strongly supports the concept of this bill.

Section 2(b) was added the bill at the Attorney General's request. He believes this language adds clarity to the prohibition against any communications between a majority of a quorum of any public body for the purpose of discussing the business of the body outside the parameters of an open meeting. The prohibition includes the discussion of business in chance encounters, at social gatherings and during telephone calls that are not scheduled as to time and place.

The Attorney General believes the policy of open government will be better served through enactment of these amendments. Absent the amendments, the court's recent ruling renders the open meetings act relatively meaningless.



League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 S.W. 7TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

TO: Senate Committee on Local Government

FROM: Don Moler, General Counsel

DATE: February 8, 1994

RE: HB 2784--Open Meetings

Thank you for the opportunity to appear on HB 2784, concerning the subject of open meetings. The League staff shares the surprise of many others that the existing open meetings law does not extend to telephone communications. For years we have advised city officials that telephone communications could constitute a "prearranged gathering" of a majority of a quorum of the governing body. As a result, we believe that HB 2784 should do no more than make such an interpretation abundantly clear--an approach with which we certainly have no objection and we feel is consistent with the current law.

We have serious concerns, however, with the approach taken in some of the language found in HB 2784.

(1) The inclusion of language concerning "electronic communication or written communication." With the exception of interactive media, these items should be controlled under the Open Records Act, not the Open Meetings Act.

(2) There would be an inherent conflict between the Open Records Act and the Open Meetings Act. In K.S.A. 45-217(f)(2) records maintained by a member of the governing body would be closed, however, the proposed language in HB 2784, in which "written records" become "public meetings" would have to be opened under the proposed language.

(3) Next we must ask if every time a communication is circulated among members of a governing body whether we really want to require that a notice of an open meeting must be circulated to comply with K.S.A. 75-4318? We think not.

(4) Are we changing the scope of the entire act with the extensive modification of the definition of "meeting" for the purposes of the KOMA and is that truly the intent of the legislature?

(5) Finally, do we truly wish to include language in the KOMA which is so broad as to discourage **ALL** communication between governing body members and be so wide-open that another 50 opinions will be requested of the Attorney General in attempting to determine what "No chance meeting, social meeting, telephone call or other electronic communication or written

*Senate Local Gov't
2-8-94
Attachment 3*

communication shall be used in circumvention of the spirit or requirements of this act"?

RECOMMENDATION: We believe HB 2784 should be amended by removal of the language concerning written or electronic communication as well as the language referring to the "spirit of the act." We believe these items change the focus of the act and add a tremendous amount of confusion to the issue. We strongly urge the committee remove these proposed amendments which are far more than simply a response to the Kansas Supreme Court Opinion in **Kansas v. Seward County**.

Thank you for your consideration of the League's views.

**Kansas Press Association
Inc.**

5423 S.W. 7th St., Topeka, KS 66606 (913) 271-5304, Fax (913) 271-7341

Testimony before

Senate Local Government Committee
on House Bill No. 2784
February 7, 1994

Mr. Chairman and members of the committee my name is Ben Coates. I am an employee and lobbyist for the Kansas Press Association, a trade association representing the 250 daily and weekly newspapers in Kansas.

The KPA highly endorses legislation to fix the hole in the Kansas Open Meetings Act. We firmly believe the clarifications and definitions in House Bill No. 2784 plug the existing holes in KOMA.

The KPA praises the House for its' swift action on this problem and we urge the Senate to give equally prompt consideration to this bill.

Senate Local Gov't
2-8-94
Attachment 4



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John T. Torbert, CAE

To: Senate Committee on Local Government

From: Jim Reardon
Director of Legal Services

Date: February 8, 1994

RE: HB 2784

KAC Supports requiring meetings of governmental bodies to be held in sessions which are open to the public. We consider meetings held by electronic means to be governed by KOMA and support their inclusion. **However, KAC urges caution in passing HB 2784.**

This bill has been introduced in response to a ruling by the Supreme Court of Kansas in Stephen v Board of Seward Co. Commissioners (No. 68,695, January 22, 1994). In this decision the Supreme court ruled that the definition of "meeting" contained in K.S.A 75-4317a is construed not to include telephone calls.

The court noted that in 1977, **SB 5** was introduced that would have added the following wording to K.S.A. 75-4317a:

"No chance meeting, social meeting or electronic or written communication shall be used in circumvention of the spirit or requirements of this act."

Because this wording was rejected by the 1977 legislature the court deduced that these four alternative opportunities for communication were **not** contemplated to be within the term "meeting" in K.S.A. 75-4317.

The word "prearranged" had also never been contained in the definition and the following language was added in 1977:

"As used in this act 'meeting' means any prearranged gathering or assembly by a majority of a quorum 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."

This language became codified as K.S.A. 75-4317a.

*Senate Local Gov't
2-8-94
Attachment 5*

Because the legislature had the opportunity to expand the term "meeting" to include telephone calls but instead chose to include only a prearranged gathering or assembly; the court determined that "meeting" requires the gathering or assembly of persons in the physical presence of each other. Clearly, said the court, a telephone call is not a "meeting" as defined under this statute.

HB 2784 seeks to introduce the exact language of **SB 5** rejected by the 1977 legislature plus additional language. Parts of this language is vague and perhaps deserved to be rejected by the legislature in 1977:

1. Do we really want to consider a brief written communication from another elected official to be a "meeting" in contravention of this act?
2. How do you have a "chance meeting" in contravention of this act?
3. How do you circumvent the "spirit" of this act?
4. How do we determine at what point "the first opportunity" presents itself to terminate a discussion of business or affairs of a governing body?

In Stephen vs Seward Board of County Commissioners the Supreme Court urged caution in crafting language to amend KOMA:

"If the legislature does amend KOMA, hopefully, such amendments will clearly spell out what conduct is to be prohibited by the act. K.S.A. 75-4320a(b) places the burden of proof on the public body or agency to sustain its action...." (Pg 13)

"Public officials need to know just what conduct is proscribed by KOMA. Uncertainty is not in the best interest of either the public or public officials subject to KOMA. We note over 50 Attorney General Opinions have been issued to answer various questions raised by KOMA. Considerable confusion obviously exists as to what KOMA requires." (Pg. 14)

HB 2784 has been hastily crafted and rushed to the floor of the legislature at the urging of the press to stop the perceived threat of government bodies holding "secret" meetings by telephone (or by mail?). We urge you to give this matter the study it deserves.

Thank you for your consideration of our concerns.