

Training for City of Wichita Advisory Boards

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June 26, 2018



TOPICS COVERED

- **Kansas Open Meetings Act**
- **Kansas Open Records Act**
- **City Ordinances applicable to boards and commissions**
- **Questions and discussion**

KANSAS OPEN MEETINGS ACT

- Public Policy that meeting be **open to the public** because:

“a representative government is dependent upon an informed electorate.” K.S.A. 75-4317

- To be interpreted liberally and exceptions narrowly construed to carry out the public purpose
- Enacted for the **public benefit** and therefore is construed broadly in favor of the public

KOMA, continued

- Applicable to advisory boards and committees
- Who is subject to KOMA under K.S.A. 75-4318:
 - 1) “All legislative and administrative bodies, and agencies of the state, and political and taxing subdivisions thereof
 - 2) Which receive or expend and are supported in whole or in part by public funds.”
- **Cities** are political and taxing subdivisions

KOMA, continued

- **Subordinate groups** are subject to KOMA.
- Who is a “subordinate group?” –
 - Bodies appointed by parent body to weigh options, discuss options, present recommendations or a plan of action – Kansas Supreme Court (1982)
 - Multiple Attorney General Opinions give guidance that advisory boards, including advisory boards for school districts, fire districts, etc. are subject to KOMA
 - Each of City of Wichita’s advisory boards qualify

KOMA – “Meeting”

- State law defines “meeting” as:
 - ***“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 the body***
 - ***For purpose of discussing the business or affairs of that body”***

KOMA – “Meeting”

- “Gathering or assembly” can mean:
 - Meeting by phone, email, Skype, through third parties, etc.
 - Informal discussions before, after or during recesses of meeting itself
 - Serial communications outside of a noticed meeting

KOMA – “Meeting”

- What are “serial communications” and how do they become a meeting?
 - **Collectively involve a majority of the body,**
 - **Share common topic of the business of the body, and**
 - **Are intended by any or all participants to reach agreement on matter that would require a vote (binding action) by the body**

KOMA – “Meeting”

- “Majority of Membership of the Body”
- **For example, Advisory Board has 7 members. A majority (and a quorum) is four members. Three members will be able to meet together on a topic without it being considered as a “meeting.”**

KOMA, “Meeting”

- What triggers KOMA? – **Discussion**
- What about social or happenstance gatherings?
- What about location?

KOMA – Notice of meetings

- What notice is required?
 - Notice can be written or oral, but made directly to person requesting it
 - One-time notice is sufficient for regularly-scheduled meetings
 - Must be given in “reasonable time” prior to meeting
 - City may give the public courtesy notices
 - Duty only arises when a request for notice has been received.

KOMA – Agendas and Minutes

- No requirement for body to create an agenda or to keep minutes (unless Executive Session)
- If agenda is created, must include topics planned for discussion that are known at the time and provided to anyone requesting it prior to the meeting
- KOMA does not prohibit agenda from being amended during meeting

KOMA - Meetings

- Any person may attend
- Voting must be conducted openly during the meeting
- Public must be able to hear or see how members voted

KOMA Violations/Penalties

- There is no requirement of intent to violate KOMA
- There is no defense to having committed the prohibited acts, if acts were done on purpose
- Kansas Attorney General or District Attorneys can investigate complaints; action of body can be voided
- Civil penalties are assessed against individuals, not the body
- Penalties may be up to \$500 include costs of enforcement

Kansas Open Records Act

- Applicable to public agencies; City and County are subject to KORA
- Requests for records under KORA should go to City or County
- City or County staff will handle KORA requests

KORA, continued

- Statutory presumption that public records shall be open for inspection by any person unless otherwise provided.
- KORA shall be liberally construed and applied to promote such policy
- 55 statutory exceptions under KORA; other statutes apply
- Records “*made, maintained and kept by or in the possession of the public agency*” are subject to KORA
- Includes emails, correspondence, etc.

City Code 2.04.051

Representing the City

- “No member of the City Council, employee of the city or **council appointee** shall state a position or policy of the city until said position or policy has been adopted by an affirmative motion, ordinance or resolution of the council.
- No restraint on individual expression is hereby intended, so long as the City Council Member, city employee or **council appointee** clearly indicates that the position expressed is his or her individual opinion and not the policy or position of the City.”

City Code - Boards and Commissions

- City Code 2.12.010 sets for qualifications and obligations for appointees
- City Code 2.12.020 sets for organization structure and rules for appointed boards

Board and committee obligations

- Voting requirements
- Conflict of Interest
- Allowing public participation
- Attendance requirements
- Regular schedule of meetings

Boards and Commissions - Obligations

- *“Voting. All city boards and commissions shall discharge the responsibility of their appointive office and shall vote on all matters coming before the board or commission, except in those particular cases of conflict of interest approved by the presiding officer, in which case a member may request permission and may be authorized to pass his vote.” 2.12.010(7)*

Voting, continued

- *“Unless a member of the board or commission votes audibly to the contrary, or unless a member of the board or commission is granted permission by the presiding officer to pass his vote on a particular matter, his silence in voting shall be recorded as an affirmative vote.”*
2.12.010(7)

Board and Committees – Conflict of Interest

- **Conflict of Interest.** Each board or commission member of the city shall refrain from violating any of the statutes of the state (K.S.A. 75-4301, et seq.) which regulate conflicts of interest of public officers and employees, where such statutes are applicable to the board or commission members. -- City Code 2.12.010(8)

Conflict of Interest, continued

- Neither City ordinance nor K.S.A. 75-4301, et seq., defines “conflict of interest.”
- Instead, K.S.A. 75-4301, states:
“Local officers are required to disclose substantial interests by statements filed pursuant to, and in accordance with, K.S.A. 75-4302a.”

Conflict of Interest, continued

- K.S.A. 75-4306 (this is only for contracts)

*“No local governmental officer or employee shall, in the capacity of such an officer or employee, make or participate **in the making of a contract** with any person or business by which the officer or employee is employed or in whose business the officer or employee has a substantial interest.”*

Conflict of Interest, continued

- K.S.A. 75-4305 (a) requires **disclosure** by a local government official before participating in actions **other than contracts** which may affect his or her private business interests:
- *"Any local governmental officer or employee who has not filed a disclosure of substantial interests shall, before acting upon any matter which will affect any business in which the officer or employee has a substantial interest, file a written report of the nature of the interest with the county election officer of the county in which is located all or the largest geographical part of the officer's or employee's governmental subdivision."*

Board obligations – Schedule of Meetings

- *“A regular schedule of meetings shall be established by each board or commission, with appropriate notice to the public, and with a minimum schedule providing for meetings to be held not less than once each month and more often as the work load requires, and with the appropriate provisions that meetings may be called by any one of the principal officers (president or vice-presidents) or by any majority of the members.” 2.12.020(5)*

Board and committee obligations, continued

- Attendance requirement:

*“Any member of a board or commission shall be removed from office by the City Council after due notice and hearing for **nonattendance at three consecutive meetings, or for absence of more than fifty percent of the meetings held during any twelve-month period of time**” -- 2.12.020(8)*

Conflict of Interest, again

City Code 2.12.020(9):

- *“Each member of any board or commission **shall disclose any conflict of interest** as may arise in connection with matters being considered by the board or commission of which he is a member, and shall refrain from discussing or voting on any such matters.”*

Board and Committee obligations, continued

- ***“Public Participation.*** *It is the policy of the city to allow public participation on items coming before each board and commission in open meeting. Following the presentation of each item on the agenda, the matter shall be opened for discussion from the floor by members of the public. **Each public member shall be subject to a limitation of five minutes for each presentation unless extended by a vote of the majority of the board or commission.**”* City Code 2.12.010(9)

Board and Committee obligations, continued

- *“Any members of the public shall be allowed to submit items for the agenda, except for items pertaining to personnel, litigation, and other matters subject to executive session. Members of the public desiring to so present matters to the board or commission shall submit a request in writing stating the name of the individual(s) desiring to be heard and the matter to be presented, which request shall be submitted in the time and matter provided by such board or commission for placing items on its agenda.” -- City Code 2.12.010(9)*

Oath of Office for board members

- I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the State of Kansas, and faithfully discharge the duties of my office or employment. So help me God.

Discussions and questions
