

REQUIREMENTS/EXPECTATIONS FOR EXECUTIVE SESSIONS

Recent changes to the Kansas Open Meeting Act (KOMA) occurred during the 2008 Legislative Session. While a "meeting" used to be defined as a "majority of a quorum" (equals 4 board members) discussing school business, the 2008 changes now require that the majority must be present to be considered a meeting. This change will allow a third board member to be involved in a 'committee' assignment such as negotiations without the necessity of providing notice of a "meeting" for those bargaining sessions. A copy of the changes in the KOMA follows as an appendix to this document.

Under KOMA, the board is expected to take actions in meetings that are 'open' to the public. In fact, no action of the board is permitted unless that action occurs within the confines of a meeting and is acted upon during 'open session' of the board.

Kansas Statutes do allow limited use of "executive sessions" for limited reasons. Those reasons include: validate

- discussions of non-elected personnel
- discussion of employee/employer negotiations
- consultation with the board attorney
- discussion confidential data relating to financial affairs or trade secrets of corporations
- matters relating to actions affecting a student
- discussion of issues concerning security or security systems
- preliminary discussions pertaining to the acquisition real property

Prior to entering an executive session, the board must state the reason for excluding the discussion from the public and must state the time the board will return to open session. No action may be taken in the executive session.

The confidentiality of the discussions that occur in executive session is critical. Divulging the discussion can jeopardize the board's position on an issue and could lead to adverse legal action. Needless to say, divulging the nature of an executive session discussion also has a 'chilling effect' upon future discussions if board members or staff cannot be assured that the confidentiality of the session will be maintained.

With the above stated, the board is asked to recognize that there are times when a reasonable person may infer the nature of discussion in executive session. Assume the example of an 'issue' involving a staff member with the board recessing into executive session and then emerging and taking a subsequent personnel action such as termination. It is easily understood that a reasonable person may conclude the board discussed the staff member and the 'issue' in the executive session. Even though the speculation may be correct, the confidentiality is necessary so that the board is not placed in the position of having to have the discussion become "discoverable" in court at a later date.

In a similar manner, the board is also asked to understand that there may be occasions when the 'nature' of the discussion but not the specific comments of an executive session will need to be shared. Consider the example of a board member observing a staff member in a public situation that demonstrated questionable behavior. Sharing and discussing the situation in executive session would be permissible under the statute. In the event that the administration confronted the individual following the executive session about the issue, it would be easy to understand how the staff member would conclude that he/she had been reported by a particular board member assuming that the staff member had seen the board member present when the behavior occurred. While no personally identifiable comments would be relayed in that situation, it is still likely that the 'revelation' would be attributed to a specific source.

With the above stated as 'ground rules' for executive session, a particular concern arose after the August 2008 meeting. During that meeting the board recessed into executive session to discuss personnel actions by the principals. These actions related to the acceptance and refusal to accept non-resident students in the district. Following the meeting, the parent of a student from a neighboring district contacted the superintendent and indicated the possibility of taking legal action based upon what he believed to be inaccurate and discriminatory comments made during the board's executive session. The parent indicated he had been informed of the discussion "by a board member" but did not reveal which member. While the comments the parent asserted were not direct quotations, they were general paraphrases of some of the discussion that occurred during that executive session. As the board's sole contact with other staff, I immediately admonished each administrator that had been in the executive session to respect the confidentiality of the session. All provided assurances that they had done so. It is my belief that their assurances coupled with the parent's statement that a board member had told him what had occurred leaves the situation in the hands of the board.

It is hoped that the board can understand the importance of maintaining the confidentiality of executive sessions. All administrators are expected to fully comply with requests for information from the board during executive sessions but also need to have the assurance that their comments will not be shared beyond the executive session by anyone.

QUESTIONS:

Does the board have any questions, comments, or suggestions concerning executive sessions?

KANSAS OPEN MEETINGS ACT

(Sample Motions for Executive Session)

I move that we go into executive session for _____ minutes to _____ (*subject*) _____ in order to _____ (*justification*), and that we return to open session in this room at the end of that time.

SUBJECT:

JUSTIFICATION:

Discuss personnel matters of nonelected personnel

Protect the privacy interests of the individual(s) to be discussed

Discuss matters affecting a student(s)

Protect the privacy interests of the individual(s) to be discussed

Discuss confidential financial data or trade secrets of a business

Protect the interests of the business to be discussed

Consult with our attorney on a matter protected by the attorney-client privilege

Protect the privilege and the board's position in (litigation, potential litigation, administrative proceedings, etc)

Discuss negotiations

Protect the public interest in negotiating a
Fair and equitable contract

Have preliminary discussions about the
acquisition of real property

Protect the public interest in obtaining
the property at a fair price

Discuss matters relating to the security
of a public body or agency, public building
or facility, or the information system of a
public body or agency

Protect the security of the facility,
computer, staff and students

Note: No binding action shall be taken during closed or executive session.

Sample motions on Reverse

Sample Motions for Executive Session

1. Personnel Matters

Motion to recess into closed session for _____ minutes to discuss personnel matters of nonelected personnel pursuant to the provisions of K.S.A. 75-4319 and to return to open session in this room at the end of that time. (Including...)

2. Student Matters

I move we go into executive session for _____ minutes to discuss matters affecting a student(s) to protect the privacy interests of the individual(s) to be discussed and that we return to open session in the board room at the end of that time. (Including...)

3. Financial Affairs or Trade Secrets

I move we go into executive session for _____ minutes to discuss matters concerning confidential financial data or trade secrets of a business and that we return to open session in the board room at the end of that time. (Including...)

4. Attorney-Client Relationship

I move we go into executive session for _____ minutes to consult with the attorney for the board on a matter protected by the attorney-client privilege to protect the privilege and the board's position in (litigation, potential litigation, administrative proceedings, etc.) and that we return to open session in the board room at the end of that time. (Including...)

5. Negotiations

Motion to recess into closed session for _____ minutes to discuss matters relating to employer-employee negotiations and return to open session in this room at the end of that time. (Including...)

6. Acquisition of Property

I move we go into executive session for _____ minutes to have preliminary discussions about the acquisition of real property to protect the public interest in obtaining a property at a fair price and that we return to open session in the board room at the end of that time. (Including...)

7. Security

Motion to recess into closed session for _____ minutes to discuss matters relating to the security of a public building or facility to protect the security of the facility, staff and students and that we return to open session in the board room at the end of that time. (Including...)

The superintendent [or other named individual(s)] may be invited to attend.