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MEMORADUM

To: Joint Committee on Arts and Cultural Resources
From: David Wiese, Assistant Revisor
Date: September 25, 2012
Re: Disclosure of the Kansas Arts Foundation's records under the Kansas Open Records Act.

Under the Kansas Open Records Act, K.S.A. 45-215 et seq., public records shall be open for inspection by any person unless otherwise provided by the act. The term "public record" is defined in the Kansas Open Records Act at K.S.A. 45-217(g)(1) and means:

"Any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency..."

A "public agency" is defined by K.S.A. 45-217(f)(1) as "the state or any political or taxing subdivision of the state or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by the public funds appropriated by the state or by public funds of any political or taxing subdivision of the state."

The Kansas Arts Foundation does not meet the definition of "public agency" set out above, it is 501(c)(3) private charitable organization and is funded solely by private donations. The Kansas Arts Foundation must be treated as a private entity for purposes of the Kansas Open Records Act.

K.S.A. 45-217(g)(2) states that: "Public record' ***shall not include records which are owned by a private person or entity*** and are not related to functions, activities, programs or operations funded by public funds or records which are made, maintained or kept by an individual who is a member of the legislature or of the governing body of any political or taxing subdivision of the state." (emphasis added)

The Kansas Arts Foundation, as a privately-funded entity, is not a public agency and therefore its records are not considered "public records." Thus the Kansas Arts Foundation is not required to disclose any records in its possession pursuant to the Kansas Open Records Act.