

## MINUTES

### SPECIAL COMMITTEE ON LOCAL GOVERNMENT

October 12-13, 2004  
Room 519-S—Statehouse

#### Members Present

Senator Barbara Allen, Chairperson  
Representative Jene Vickrey, Vice Chairperson  
Senator Mark Buhler  
Senator Kay O'Connor  
Representative Joe Humerickhouse  
Representative Lance Kinzer  
Representative Harold Lane  
Representative Jerry Williams

#### Staff

Mike Heim, Kansas Legislative Research Department  
Russell Mills, Kansas Legislative Research Department  
Martha Dorsey, Kansas Legislative Research Department  
Norm Furse, Revisor of Statutes Office  
Diana Lee, Revisor of Statutes Office  
Ken Wilke, Revisor of Statutes Office  
Nancy Kirkwood, Committee Secretary

#### Conferees

Charles L. "Chip" Wheelen, Executive Director, Kansas Association of Osteopathic Medicine  
John Campbell, Kansas Insurance Commissioner's Office  
Tim Madden, Senior Counsel to Secretary of Corrections  
John Robinson, Interim Executive Director for the Child Death Review Board  
Diane Glynn, Practice Specialist, Kansas Board of Nursing  
Mark Gleeson, Office of Judicial Administration, Family and Children Program Coordinator  
Judy Stork, Deputy Banking Commissioner  
Tom Bell, Kansas Hospital Association  
Heather Wilke, Staff Attorney, Kansas Department of Labor  
Yvonne Anderson, Kansas Department of Health and Environment  
Rod Bieker, Kansas Department of Education  
Sue Peterson, Kansas State University  
Kathy Olsen, Kansas Bankers Association

**October 12, 2004  
Morning Session**

Chairperson Barbara Allen called the meeting to order at 10:00 a.m. Norm Furse, Revisor of Statutes, continued the review of exceptions to the Kansas Open Records Act (Attachment 1):

- 75-104 Records of Governors - confidentiality relates to former Governors;
- 75-712 Records of Kansas Bureau of Investigation and the Attorney General, background checks for the Governor;
- 75-7b15 Relates to private investigators, security operators, and the Attorney General regulating these entities;
- 75-1267 Acquisition or maintenance of copies of certain documents by the Secretary of Administration, relating to correctional institutions and other facilities and other secured areas;
- 75-2943 Division of Personnel Services, Department of Administration, the Secretary may adopt rules and regulations that determine the extent of performance ratings of employees;
- 75-4332 The Department of Labor, relates to memorandums of agreement of public employers and their employees;
- 75-4361 Relates to drug-screening programs which may be established by the Director of Division of Personnel Services, Department of Administration;
- 75-5133 Director of Taxation is prohibited from providing any information relating to returns or reports filed under the provisions of any law imposing excise taxes;
- 75-5266 Department of Corrections, relates to psychiatric evaluation reports of inmates;
- 75-5665 Statewide trauma system plan under the Secretary of Department of Health and Environment;
- 75-5666 Relates to trauma registry; and
- 75-7310 Department on Aging, relates to all information, reports, and records received or developed by an ombudsman, related to a residential facility.

Martha Dorsey, Kansas Legislative Research Department, continued the review of the exceptions relating to taxation:

- 79-1119 Amount of income or other information from any report, statement, list, return, or on a federal income tax return;
- 791437f The contents of real estate sales validation questionnaires;
- 79-15,118 Kansas Estate Tax Act, the value of any estate or any particulars;
- 79-3234 Income tax, amount of income, or any particulars;

- 79-3395 Cigarette tax, regarding statements identifying all cigarettes sold, the supplier of the cigarettes, and persons involved in resale;
- 79-3420 Motor vehicle fuel tax, dealers, and others;
- 79-3499 LP gas users, dealers, and others;
- 79-34,113 Interstate motor fuel users, reports in compliance with motor tax law;
- 79-3614 Kansas retailers sales tax, returns filed under this act;
- 79-3657 Kansas retailers sales tax, return information;
- 79-4301 Interstate tax compact, information obtained by any audit; and
- 79-5206 Marijuana and controlled substances.

Mike Heim, Kansas Legislative Research Department, continued the review of Chapter 76 exceptions:

- 76-355 University of Kansas Medical Center, identity of patients who are used in reports, movies, teaching devices;
- 76-359 Same as above;
- 76-493 Kansas State University - Veterinary Medical Center peer review; records;
- 76-12b11 Records of any proposed resident, or former resident, of a former state institution for the mentally retarded;
- 76-3305 Kansas University Medical Center Board of Directors, proprietary information in possession of third parties who have agreed to keep it confidential.

Mike Heim continued with the Open Records Act exemptions ([Attachment 2](#)). See “*Open Records Act (KSA 45-221) Exceptions Summary*.” The Kansas Open Records Act was amended three times in 2004. There are now 44 exceptions contained in KSA 45-221. Mr. Heim reviewed the first 14 exceptions:

- (a)(1) Closed records required by state and federal law;
- (a)(2) Privilege records, such as attorney-client;
- (a)(3) Information privileged under rules of evidence, unless the holder of the privilege consents to disclosure;
- (a)(4) Personnel records - performance ratings, but not names, positions, salaries, lengths of service;
- (a)(5) Law enforcement, identity of undercover agents or informants;

- (a)(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual - Department of Administration, any other agency with employees;
- (a)(7) Library, archive, and museum materials contributed by individuals to extent anonymity is a condition of contribution;
- (a)(8) The identity of an individual making a donation to a public agency, if anonymity of the donor is a condition of the donation;
- (a)(9) Schools, colleges, and universities, agencies administering professional exams;
- (a)(10) Criminal investigation records;
- (a)(11) Agencies involved in administrative adjudications or civil litigation;
- (a)(12) Records of emergency plans if disclosure would jeopardize the security of the agency, building, or facility;
- (a)(13) The contents of appraisals or engineering or feasibility estimates or evaluation made by or for a public agency relative to the acquisition of property, prior to the awarding of formal contracts; and
- (a)(14) Correspondence between a public agency and a private individual, unless to give notice of action or specifically in response to communication from a private individual.

Ken Wilke, Revisor of Statutes Office, continued the review of KSA 45-221:

- (a)(15) Records involving employer-employee negotiations;
- (a)(16) Software programs for electronic data processing;
- (a)(17) Applications, financial statements, other information submitted in connection with applications for student financial assistance;
- (a)(18) Plans, designs, drawings prepared by a person other than an employee of a public agency for records which are the property of a private person;
- (a)(19) Well samples, logs, or surveys which are required by the Corporation Commission;
- (a)(20), (a)(21), and (a)(22)  
Each of these exceptions deals with records that are closed except if the records are publicly cited or identified in an open meeting or the agenda of an open meeting;
- (a)(23) Library patron and circulation records - identifiable to specific individuals; and
- (a)(24) Records that are compiled for census or research purposes.

Norm Furse, Revisor of Statutes, continued with the exceptions:

- (a)(25) Relates to agencies that employ attorneys and protect the work product of an attorney;

- (a)(26) Maintaining public service records - pertaining to individually identifiable residential customers;
- (a)(27) Information in regard to competitive bidding by agencies;
- (a)(28) Agencies receiving bids;
- (a)(29) Correctional institutions - pertaining to identifiable inmates ;
- (a)(30) Agencies - maintaining records containing personal information of a private nature, health records, disability information, personal records;
- (a)(31) Records pertaining to prospective business or industrial location;
- (a)(32) Engineering or architectural estimates made by or for any public agency relative to public improvements;
- (a)(33) Agencies maintaining records containing financial information submitted by contractors and qualification statements;
- (a)(34) State educational institutions;
- (a)(35) Medical care facility - risk management;
- (a)(36) Agency maintaining records of a precise location of archeological sites;
- (a)(37) Agencies maintaining railroad company financial or traffic data;
- (a)(38), (a)(39), and (a)(40) in the original 2000 statute, but were repealed by the Legislature in 2004;
- (a)(41) Insurance company financial analysis ratios and examinations;
- (a)(42) Records restricted from disclosure by state tribal gaming compacts; and
- (a)(43) Records of KU Medical Center giving competitors an unfair advantage.

Charles L. "Chip" Wheelen, Kansas Association of Osteopathic Medicine ([Attachment 3](#)), addressed some of the Committee's questions raised during the September meeting concerning confidential medical records.

### **Afternoon Session**

The meeting reconvened at 1:40 p.m.

Norm Furse, Revisor of Statutes, presented the Committee with the following: "Information Not Subject to Subpoena or Discovery"; "Trade Secrets"; and "Exceptions Designated for Further Review."

Mr. Furse reviewed the "Trade Secrets" handout (Attachment 4). Kansas has a Uniform Trade Secrets Act. He included in the back the definition of "trade secret." There are two aspects of a trade secret: one is the economic, and the second is reasonable efforts made to maintain its secrecy.

Mr. Furse noted he had drafted a bill to make the definition of the "trade secret" uniform throughout the statutes as the term is defined in the Uniform Trade Secrets Act.

Mr. Furse presented the handout "Information Not Subject to Subpoena or Discovery," which contains 35 statutes that make confidential data not subject to subpoena or discovery (Attachment 5).

Mr. Furse then reviewed the handout "Exceptions Designated for Further Review." This was prepared to answer questions the Committee had at the September meeting. The Committee was asked to review this handout, as this list of exceptions will be reviewed at the meeting on October 13.

The meeting adjourned at 2:20 p.m.

### **October 13, 2004 Morning Session**

Chairperson Allen called the meeting to order at 9:00 a.m.

John Campbell, Kansas Insurance Commissioner's Office, addressed Committee concerns regarding certain open records exceptions dealing with insurance companies (Attachment 6).

Tim Madden, Senior Counsel to Secretary of Corrections, asked the Committee to consider what information should be open to anyone for any reason. He said that KSA 45-221 sets out a very detailed outline of what information anyone can receive for any reason relative to inmates and parolees. Before the government can take any action against an individual, they have to comply with due process. If private information is released about individuals, there is no due process of law.

Jane Nohr, Assistant Attorney General, submitted a statement on behalf of Attorney General Phill Kline regarding criminal investigation records. (See Attachment 7).

John Robinson, Interim Executive Director for the Child Death Review Board, answered questions regarding open records exceptions and the Child Death Review Board (Attachment 8). He noted that there is a provision protecting the Board and the information from subpoena. He said if records were discoverable by subpoena, then Board members would be dragged into court for criminal or civil matters. If records were open, it would hinder the Board's ability to receive records from hospitals, schools, health providers, and law enforcement agencies.

Diane Glynn, Practice Specialist for the Kansas State Board of Nursing, addressed the Committee. She said KSA 65-1135 protects the consumer who reports a nurse.

Rod Bieker, General Counsel for the Kansas State Department of Education, spoke concerning KSA 72-8903, part of a school disciplinary statute that requires due process for any student being subjected to long-term suspension or expulsion. This law is consistent with federal confidentiality requirements in education and policies.

Sue Peterson, Kansas State University, informed staff the Board of Veterinary Examiners would be submitting a letter to the Committee on exceptions contained in KSA 47-844 and KSA 47-1709. (See Attachment 9).

Mark Gleeson, Office of Judicial Administration, Family Children Program Coordinator, discussed KSA 5-512 and KSA 23-605 regarding mediation and confidentiality.

Kathy Olsen, with the Kansas Bankers Association, addressed the purpose of KSA 9-1137 – bank compliance review, and KSA 17-832 – savings and loan compliance review. She explained that the internal work document of the Compliance Review Committee is very candid and this is protected from discovery in a lawsuit. The privilege is designed to keep the Audit Committee's work from being used against it in a lawsuit.

Judy Stork, Deputy Banking Commissioner, addressed Committee concerns regarding bank compliance review committees (Attachment 10).

Tom Bell, Kansas Hospital Association, addressed questions regarding certain health care provider open records exceptions (Attachment 11).

Melissa Wangemann, Kansas Secretary of State's Office, submitted written testimony regarding cemeteries, trust funds, and franchise taxes (Attachment 12).

Heather Wilke, Staff Attorney, Kansas Department of Labor, explained KSA 44-714, dealing with employment security law benefits hearings. She stated if information is allowed to be subpoenaed, it violates federal law (Attachment 13).

Yvonne Anderson, General Counsel, Kansas Department of Health and Environment, addressed the Committee. She noted the agency gets private health information for statistical reports and studies. She also noted that KSA 60-3333 encourages industry in Kansas to do environmental audits and these audits are not to be used or subject to any kind of discovery by a third party.

Prepared by Nancy Kirkwood  
Edited by Mike Heim

Approved by Committee on:

December 30, 2004

(date)