

Feb. 2, 2017

To: Sen. Jacob LaTurner, chairman of the Senate Federal and State Affairs Committee

From: Rick Nichols, editor, Oskaloosa Independent

Re: Testimony in favor of SB 70

I want to thank Sen. Marci Francisco, who represents most of Jefferson County in Topeka, for her support of Senate Bill 70, which would amend the Kansas Open Meetings Act to require public bodies bound by the provisions of KOMA to identify the particular subject or subjects, as the case may be, that are to be discussed during the course of an executive session.

Here is what Sen. Francisco had to say about the need for more transparency in government in her "News from the Capitol" report for Jan. 25: "We must all work to make our government accountable. The work of government is all our business. Too often city councils, county commissions, and school boards have called executive sessions and closed their doors without an adequate explanation of what they plan to discuss. With the help from a constituent, Dr. Alan Cowles, I have asked for the introduction of a bill to amend the Open Meetings Act and make the process more understandable. My proposal is one of a package introduced by Democrats to make government more accountable and efficient; others would prohibit using private email to conduct state business, limit legislative sessions, create a public database of state contracts, and limit lobbying."

While I was in Topeka on Feb. 4, 2016 for KPA Day at the Statehouse, Sen. Francisco and other legislators joined members of the Kansas Press Association for lunch. Before leaving to get ready for the Senate session scheduled for that afternoon, she gave me a copy of Cowles' two-page report titled "Governmental Business in Secrecy in Kansas - Summary," which basically sums up the findings contained in his 30-page report dated Oct. 21, 2015, "Governmental Business in Secrecy in Kansas."

Cowles is a member of the League of Women Voters of Lawrence-Douglas County, which has posted the full report at <http://lawrenceleague.com/MeetingMinutes.html>.

Here is the opening paragraph of the two-page report: "Examination of the 2014 minutes of the governing bodies of the 10 most populous counties and the 10 most populous cities of Kansas reveals that 631 closed sessions were held for a total of at least 240 hours. All of the governing bodies except for the Manhattan City Commission closed meetings at times without disclosing any meaningful information about the subjects they discussed, thereby conducting at least 200 hours of government business in complete secrecy. Meaningful information is information that would allow a member of the public to identify the issue or issues that prompted closing the meeting."

And the fifth paragraph of the report begins as follows: "The subjects to be discussed during closed sessions were most commonly described as 'personnel matters' or an equivalent or 'privileged communications.' Rarely in these cases was an informative subject disclosed (such as 'a situation in which an employee may have misused a County credit card' or the identity of a specific lawsuit)."

According to the 30-page report, personnel matters was the reason given for holding an executive session 44 percent of the time, legal matters 37 percent of the time, the possible acquisition of real property 9 percent of the time, labor negotiations 5 percent of the time, the protection of trade secrets 2 percent of the time, and security matters 2 percent of the time.

The longer report indicates that the Saline County Commission met privately for 40.5 hours and conducted governmental business in complete secrecy that entire time, the Riley County Commission met privately for 31.7 hours and conducted governmental business in complete secrecy for 19.8 hours, the Shawnee County Commission met privately for 24.7 hours and conducted governmental business in complete secrecy for 24.6 hours, the Leavenworth County Commission met privately for 13.1 hours and conducted governmental business in complete secrecy for 10.9 hours, the Wyandotte County Commission met privately for 9.8 hours and conducted governmental business in complete secrecy for 8.3 hours, the Johnson County Commission met privately for 9.5 hours and conducted governmental business in complete secrecy for 9.2 hours, the Reno County Commission met privately for 6.6 hours and conducted governmental business in complete

secrecy that entire time, the Butler County Commission met privately for 3.8 hours and conducted governmental business in complete secrecy that entire time, the Sedgwick County Commission met privately for 2.8 hours and conducted governmental business in complete secrecy that entire time, and the Douglas County Commission met privately for 1.4 hours and conducted governmental business in complete secrecy for 1.2 hours.

And here are the corresponding numbers for the governing bodies of the state's 10 most populous cities:

Salina, 31.3 hours and 31.3 hours; Olathe, 14.8 hours and .5 hour; Wichita, 13.9 hours and 12.5 hours; Kansas City, 9.8 hours and 8.3 hours; Topeka, 9.8 hours and 7.8 hours; Lawrence, 8.1 hours and 7.6 hours; Lenexa, 3.5 hours and 3.5 hours; Overland Park, 3.5 hours and .2 hour; Shawnee, 1.4 hours and .5 hour; and Manhattan, an even one hour and no complete secrecy.

I found the figures pertaining to the closed sessions of the county commissions particularly interesting in that during 2014, the Jefferson County Board of County Commissioners, which represents fewer than 19,000 people, met privately for a greater length of time than seven of these commissions did.

Is there something wrong with this picture ... or is it just my imagination?

According to the official minutes of the BOCC, the three-member body met privately for a total of 20 hours and 21 minutes that year. That time was divided between 75 executive sessions, 65 of which were held for the stated purpose of discussing personnel matters relating to non-elected personnel (17 hours and 40 minutes), seven of which were justified on the basis of the attorney-client privilege recognized in KOMA (2 hours and 8 minutes), and three of which involved security matters (33 minutes).

Of the 65 closed-door discussions held to deal with personnel matters, two of them consisted of an interview with a potential employee (1 hour and 57 minutes), and six of them involved an evaluation of an employee's performance (2 hours and 6 minutes). The eight perfectly legitimate sessions account for 4 hours and 3 minutes of the time spent beyond the range of public scrutiny, but that still leaves 13 hours and 37 minutes of time unaccounted for with respect to the disclosure of a specific subject to be discussed that would have enabled "John Q. Citizen" to identify the overarching issue or issues the county's leaders were trying to resolve at the time.

Last year, again according to the official minutes of the BCCC, the commissioners met privately for a total of 19 hours and 44 minutes, a figure that does not include the executive sessions held Sept. 1 and Sept. 4 to interview applicants for the position of Emergency Management director. That time was divided between 92 executive sessions, 71 of which were held to discuss personnel matters (14 hours and 28 minutes), 18, legal matters (3 hours and 58 minutes) and three, security matters (1 hour and 18 minutes).

Of the 71 closed-door discussions held to deal with personnel matters, one consisted of an interview (55 minutes) and four involved an evaluation (48 minutes). The five perfectly legitimate sessions account for 1 hour and 43 minutes of privacy, but that still leaves 12 hours and 45 minutes unaccounted for, time Cowles considers secrecy.

Generally speaking, more often than not a public official will simply refer to one of the seven general topics KOMA recognizes (e.g., personnel matters) and say no more in proposing that an executive session take place, thus keeping "John Q. Citizen" in the dark where many public officials apparently think he needs to be kept while potentially arousing suspicion and creating still more distrust in government.

Cowles pretty much hit the nail on the head when he used the evidence at hand to draw this conclusion in his summary: "Motions to close meetings have become a meaningless ritual that leave the public clueless as to what business is being conducted."

This should not be the case, and this needs to change and change soon! Modifying KOMA is very much in order!

Rick Nichols, editor, The Oskaloosa Independent