



Kansas Press Association, Inc.

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Oct. 27, 2009

The Honorable Stephen M. Howe
Johnson County District Attorney
100 N. Kansas
Olathe, KS 66061

Dear District Attorney Howe:

In mid-summer 2009, former Johnson County Community College Trustee Benjamin Hodge asked your office to review a potential violation of the Kansas Open Meetings Act.

As we understand the facts of the complaint, earlier in 2009 Johnson County Community College President Dr. Terry A. Calaway shared a 64-item list of possible budget cuts near the end of a closed meeting that was held in order to evaluate Calaway's job performance. Calaway had prepared the list prior to the closed meeting, and he shared it voluntarily. Calaway then instructed the board not to share the list.

Following an investigation of the Hodge complaint, you ruled that Johnson County Community College had not violated the Kansas Open Meetings Act.

Subsequent to your action, State Sen. Steineger and Reps. Brown, Donohoe and Gordon asked Kansas Attorney General Steve Six for a hypothetical opinion based on the facts of the Johnson County Community College complaint.

On Sept. 23, 2009, Attorney General Six published his opinion, which is summarized below: *KOMA does not generally permit the review of agency policies and directives in executive session. However, the Kansas courts have considered the situation when two topics are intertwined, one permitted in executive session and the other permissible only in an open meeting. The court adopted the policy that if segregating discussion of the topics "would have been burdensome and impractical, if not impossible, due to the common thread of the connection of the [employees], whose privacy should be protected," the entire discussion could take place in executive session.*

AG Six added: *"Within an executive session, the governing body or agency, their staff and attorney should remain vigilant and engage in self-policing to assure compliance with KOMA."*

Clearly it was not "burdensome" or "impossible" for Calaway to wait until an open meeting to share his 64-item list of possible budget cuts. He in fact appears to have deliberately used the closed session to discuss policy matters that are not allowed under KOMA.

The opinion of the Kansas Attorney General appears to be in conflict with your ruling on the JCCC Open Meetings complaint.

Consequently, the undersigned representatives of the Kansas Press Association, Kansas Association of Broadcasters and the Kansas Sunshine Coalition for Open Government respectfully request you to review the original complaint in light of the information from the Attorney General's office that indicates a violation may have taken place.

We await your response.

Sincerely,

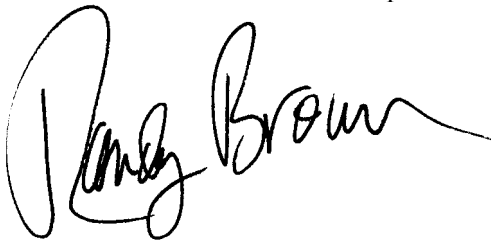
Doug Anstaett
Executive Director
Kansas Press Association



Kent Cornish
Executive Director
Kansas Association of Broadcasters



Randy Brown
Executive Director
Kansas Sunshine Coalition for Open Government



cc: This letter is being sent as a PDF to Kansas Attorney General Steve Six; Assistant Attorney General Michael Smith; Jim Sullinger, Barb Shelly and Yael Abouhalkah, Kansas City Star; John Hanna, Associated Press, Topeka bureau; Tim Carpenter and Ric Anderson, Topeka Capital-Journal; Bob Sigman, Sun Newspapers; Rhonda Humble, Gardner News; Rep. Lance Kinzer; Sen. Tim Owens