



Kansas Press Association, Inc.

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5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

Feb. 6, 2013

To: Sen. Jeff King, chairman, and members of the Senate Judiciary Committee

From: Doug Anstaett, executive director, Kansas Press Association

Re: SB 81

Mr. Chairman and members of the Committee:

I am Doug Anstaett, executive director of the Kansas Press Association.

The Kansas Press Association has a long-standing tradition of fighting hard for open government, so we closely review any bills that attempt to shut down the public's access to the kinds of records that will help citizens make informed decisions about how their government is performing.

While we question why there is a need for any exception for law enforcement officers, judges, attorney general's office employees and others — after all, where will it end? — we also know there are those who comb public records for nefarious reasons. Even so, there often is not an overriding public interest in closing such records, and where someone lives is generally common knowledge in most communities.

Because this is a slight modification to what already exists, however, we raise no particular objection to the changes sought in SB 81, so we will not oppose that part of the bill that refers to Exceptions 51 and 52.

We do ask as part of your consideration of this new language that you also contemplate trying to streamline the Kansas Open Records Act by placing similar exceptions together under the same number. For instance, all the criminal investigation records not subject to disclosure fall under exception (10). We have references to “security information, procedures and measures” in a number of exceptions, including Exceptions 12, 45, 47, 50, 51, 52 and 53.

We would prefer these be placed under a single “security” exception. This streamlining might be for another day, but it should happen sooner rather than later.

Our main objection to this bill is contained in Exception (13). Last year, without a public hearing, the Senate Ways & Means Committee on a lark included an amendment adding just two words that seriously undermine KORA. The words “or disposal” were added. Apparently it made sense to those on the committee, but it wreaked havoc on a long-standing understanding under KORA and the Kansas Open Meetings Act.

Previously, public agencies have been able to discuss the “acquisition” of property in secret to keep the price of said property from skyrocketing. We understand that if a landowner knows the

state, city, county, school district or other entity is interested in a tract of his or her land, the price will go up or negotiations will become much more difficult if that information is released. That would be bad for taxpayers.

However, under KOMA and under KORA as well, discussions and records that pertained to the “disposal” of property have been considered open records for decades.

Why? To protect the integrity of such transactions and to keep them above-board.

Here’s what happened last year in a small Kansas county. It’s typical of the kinds of decisions that undermine the public’s trust in its elected officials. I’m purposely being vague with the location, but I would be happy to share that with the chair if someone wants to check it out.

A local school board voted to sell property it owned without informing the public or seeking an appraisal. A small acreage was sold without bids to a friend of a school board member.

Citizens in the community, according to the local newspaper publisher, exploded when they discovered what had happened. One school board member who opposed the decision resigned over it. We understand once he discovered the travesty, an adjacent landowner offered twice as much per acre for the land, but it was too late.

An after-the-fact appraisal of the land, which should have been done before any contract for sale was considered, showed the board got less than one-third of what the land was worth. Public property was sold at a bargain basement, brother-in-law price.

That board should have announced there was land for sale so anyone in the community could have placed a bid on it. After all, it was the “public’s” land. An appraisal should have been done in advance to guide the board in what the land was really worth.

Had they followed the rules of good government, there would have been no public uproar, no hard feelings, no resignations.

It is not in the best interests of state or local government entities or of the citizenry for this kind of business to be done in secret. Underhanded deals can be made; land can be bought and sold for pennies on the dollar. It can end up dividing communities and it’s just bad business.

While we can live with these modifications to Exceptions 51 and 52, we ask that you right this wrong that was done last year without a hearing, without proper vetting and certainly without the best interests of the citizens of the state of Kansas in mind.

How this occurred is not in keeping with Kansas’ long-standing tradition of transparency, open government and citizen participation in the process.

As you can see, the two words “or disposal” are in italics as well. They must be removed from the bill. It is purely and simply bad law and must be reversed.

Thank you for your attention.