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**OFFICE OF THE THOMAS COUNTY ATTORNEY
15th JUDICIAL DISTRICT
Opposition Testimony HB2219**

Rachel Lamm, Thomas County Attorney, Bird City Attorney

February 18, 2019

Good Afternoon, Honorable Chairman Patton and Members of the House Judiciary Committee,

Today as the Thomas County Attorney and the Bird City Attorney I offer the following testimony in opposition to the current language set forth in HB 2219.

My opposition is not to open and transparent government. After reviewing the changes to K.S.A. 75-4318, I have concerns for the implementation for smaller communities— my communities. While the amendment is only a small paragraph that may not affect many of the densely populated areas of Kansas that are already recording and publishing their meetings, places like Thomas County, Kansas and Bird City, Kansas will feel a larger impact.

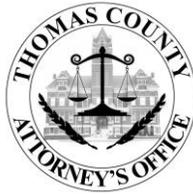
Kansas Open Meeting Act Public Bodies and Agencies:

HB 2219 is currently written to require any public body or agency to record and maintain audio or video recordings of their meetings. This includes the 105 boards of county commissioner and all township boards, that in rural western Kansas may only have the three board members present in a member's garage or shop. Compliance with the amendment will impact these public bodies in drastically different ways, as I explain below.

Cost:

Implementation of HB 2219 may initially be minimal, the cost of getting an audio recorder of decent quality is under \$50.00. The costs start to accrue with the language in the second portion of the amendment, “[the public body] shall make such audio or video recording accessible to the public within 24 hours after such meeting.” What does “accessible to the public” mean? How long will the recording need to be “accessible to the public.” In what medium does the recording need to be “accessible to the public.”

As a County and City Attorney of small jurisdictions I may have a different perspective than a larger jurisdiction. Colby is the county seat and largest city in Thomas County, Kansas. The population of Thomas County is 7,900 per the 2010 census. Thomas County, the most populated county for approximately 100 miles in any direction, hired its first, Information Technology Employee May 2016. Brent Mariman, IT Director, of a one-man department stated that the amendment to this bill would create an added burden on his department. Mariman, a salaried employee, is



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working 50 hours for Thomas County Departments. For Mariman to develop means to make “such audio or video recording accessible to the public within 24 hours after such meeting” would cause an undue burden. It would likely require the creation of an additional position.

Bird City, Kansas, a city of the third class, has a population of 447 per the 2010 census. Bird City has three fulltime and one part time employee: City Clerk, City Superintendent, Systems Operator, and Treasurer (Part time).

According to Jill Paugh, Bird City City Clerk, current job duties are listed in exhibit 1, attached for your review.

The City Superintendent and Systems Operator are conscientious of any additional hours that would be considered overtime due to budget limitations. The City Clerk and Treasurer are not allowed overtime, barring exceptional circumstances. Bird City would not be able to comply with HB 2219 without hiring additional part time staff. The Bird City City Council discussed auditing the City Superintendent’s and Systems Operator’s hours worked and tasks completed at the meeting February 5, 2019. The audit would be necessary to determine if the budget could even allow for an additional employee to remediate the work load and prevent overtime.

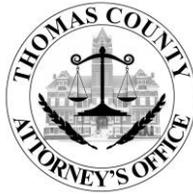
In Thomas County, there are 13 township boards. There are usually no employees for a township. The burden to record, store, and make accessible would be a substantial burden for the townships and to what end.

Technology, Storage, and Retention:

Unanswered questions remain in regard to recording method, storage method, and storage duration. Which public body or agency is making the recording and how will we determine the necessary storage capacity? For example, Thomas County Commissioners generally meet 4 times a month for regularly scheduled meetings of 2-3 hours in length. In contrast, regularly scheduled Bird City City Council Meetings are once a month and last 3 hours.

The necessary data storage capacity for these meetings will be different if they are audio or video. Bird City would likely opt for an audio recording to save on cost of equipment, data storage, and ability to publish if ever needed.

In an attempt to ascertain the length of retention, I went to the Kansas Historical Society’s Website. A search for “Board of County Commissioners” returns 12 results. Each result referenced K.A.R. 53-2-119, see exhibit 2 attached for convenience. I then attempted to research K.A.R. 53-2-119, but it is no longer current, see exhibit 3 attached for convenience. I then attempted to search “Local Government Records. General Schedule/All Offices.” All 111 records reference a second of K.A.R. 53-2-xx, which per exhibit 3 does not currently exist. Without clear



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guidance from the legislature, it is hard as a government attorney to advise a governing board on the Kansas Open Records Act as it applies to a retention schedule.

Accessibility and Timeframe:

HB 2219 states that, “such audio or video recording accessible to the public within 24 hours after such meeting.” In review of K.S.A. 75-4318, there is not a definition of accessibility. Accessibility must be defined. It could be as simple as the record existing, or as complex specific medium and format requirements. The more complex, or mandated definition of accessibility will likely create a larger burden on the smaller communities that do not have IT personnel. Further, *within 24hours* is also not fully explained. The Kansas Open Meeting Act et. al. the words “hour,” “weekend,” and “business day” appear zero times. As a County Attorney, I have many statutory deadlines. Depending on the action necessary each statute is specific about how time is calculated. Does it include weekends? Does it include holidays when the court is not in session? When does the time calculation start? These are all questions that need answered in order to stay compliant with HB 2219.

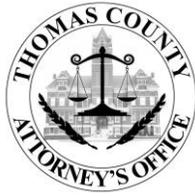
Current Status of Audio or Video Recording Meetings:

The respective local newspapers attend, and audio record the Thomas County Board of County Commissioner Meetings and Bird City City Council Meetings. There is nothing prohibiting said recording and it is seen as normal procedure for both governing bodies. As stated in the introduction, my opposition to HB 2219 is not a to dissuade open-government. Rather, it is to protect the smaller communities from an unforeseen KOMA violation due to a technical difficulties, financial burden, or mistake in unclear laws.

Conclusion:

I, as the Thomas County Attorney, Bird City, City Attorney, and a resident of rural Kansas ask that you take the unique burden that would affect many public bodies and agencies into consideration. The Status Quo provides for the open-government that is sought but does not shift an unclear and unforeseen burden onto smaller governing bodies.

Respectfully submitted,



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