

CONSENT AGREEMENT

In lieu of further legal proceedings concerning violations of the Kansas Open Meetings Act (KOMA), K.S.A. 75-3417 *et seq.*, and the Kansas Open Records Act (KORA), K.S.A. 45-215 *et seq.*, the undersigned hereby understand and agree as follows:

1. At the request of and with the consent of Rush County Attorney Tony Rues, the Kansas Attorney General's Office conducted an investigation into allegations that the Liebenthal City Council improperly recessed into executive session on more than one occasion, and failed to comply with the statutory requirements for recessing into executive session as established by the KOMA. The Attorney General's Office also conducted an investigation into allegations that the Mayor, the City of Liebenthal and the Liebenthal City Council failed to comply with the requirements of the KORA.
2. The Liebenthal City Council is a public body that is subject to the requirements of the KOMA, and any meetings held by the Council must comply with the KOMA.
 - a. A meeting of the city council occurs any time the following elements set forth in K.S.A. 2015 Supp. 75-4317a are present:
 1. A majority of the City Council;
 2. Interactive discussion;
 3. Of the business or affairs of the City of Liebenthal.
 - b. If a meeting of the City Council occurs, the discussion must be conducted openly unless the body then properly convenes into an executive session, as provided for by K.S.A. 2015 Supp. 75-4319.
 - c. Only the topics set forth in K.S.A. 2015 Supp. 75-4319(b) may be discussed in executive session. All other discussions that constitute a meeting under the KOMA must occur in the open.
 - d. No binding action may be taken while in executive session.
3. Motions for executive sessions pursuant to K.S.A. 2015 Supp. 75-4319(a) require the following:
 - a. A formal motion, seconded and carried by members of the City Council.
 - b. A statement of the:

1. Justification for closing the meeting,
 2. Subjects to be discussed during the closed or executive meeting, and
 3. Time and place at which the open meeting shall resume.
- c. The language of the motion, including the required statement, must be recorded in the minutes of the meeting and maintained as a part of the permanent records of the public body or agency.
 - d. Discussion during the closed or executive meeting is limited to those subjects stated in the motion.
4. Investigation and/or admissions by the Mayor and the City Council confirm the following violations of the KOMA:
- a. The July 1, 2013, executive session did not meet statutory requirements for recessing into a closed meeting. The motion for executive session was not recorded in the minutes as required by K.S.A. 75-4318(a), and the justification, subject matter and time and place the open meeting would resume were also not recorded. Bill Stark was present at this meeting.
 - b. The November 4, 2013, motion for executive session did not meet the statutory requirements for recessing into a closed meeting because it did not contain the justification, subject matter, and place the open meeting would resume. Additionally, the exact language of the motion, including the required statements, was not recorded in the minutes. Medesa Sander and Bill Stark were present at this meeting.

During the November 4, 2013, meeting, the City Council used an executive session to discuss the process for filling the position of mayor. However, K.S.A. 75-4319(b) does not contain a provision that permits the use of executive session for this purpose; elected and appointed positions do not fall under the exception that permits the discussion of non-elected personnel in executive session.
 - c. The March 3, 2014, executive session did not meet statutory requirements for an executive session concerning the justification and place the open meeting would resume, and the exact language of the motion, including the required statement concerning the justification and place the open meeting would resume was not recorded in the minutes. The subject matter for this executive session was non-elected personnel, and was recorded in the minutes. Medesa Sander, Bill Stark, Barbara Matal, and Robert Tyron were present at this meeting.

5. Based upon the above information, Mayor Medesa Sander, Council President Bill Stark, and members Barbara Matal and Robert Tyron individually agree that on the described occasions they violated the KOMA by:
 - a. Making one or more motions for executive session that did not contain all the statutorily required elements as set forth in K.S.A. 2015 Supp. 75-4319(a); and
 - b. Formally adopting and approving minutes that did not meet the requirements of K.S.A. 2015 Supp. 75-4319(a).
6. Based on the above information, Mayor Medesa Sander and Council President Bill Stark individually agree that on November 3, 2013, they violated the KOMA by conducting an executive session for a purpose not authorized by K.S.A. 2015 Supp. 75-4319(b).
7. Mayor Medesa Sander, Council President Bill Stark, and council members Barbara Matal and Robert Tyron agree that they now fully understand and intend to follow each of the following principles concerning the KOMA:
 - a. All of the elements of a motion for executive session as set forth in K.S.A. 2015 Supp. 75-4319(a) and amendments thereto must be present before the council may enter into an executive session; and
 - b. The Liebenthal City Council must record the motion for executive session in the minutes approved and adopted by the Council.
8. Mayor Medesa Sander and Council President Bill Stark agree that the subject matter of an executive session shall be one enumerated in K.S.A. 2015 Supp. 75-4319(b) and amendments thereto.
9. The Kansas Open Records Act (KORA) requires that a public agency respond to a request for records within three (3) business days. *See* K.S.A. 45-218(d). The mayor, the City of Liebenthal and the Liebenthal City Council admit they did not respond to a November 7, 2013, request for records from [REDACTED] within three (3) business days.
9. The mayor, the City of Liebenthal, and the Liebenthal City Council admit that they did not comply with the requirements of K.S.A. 45-220(a) and (d) by adopting procedures to be followed in requesting access to and copies of public records to insure a timely response. This includes establishing reasonable hours for inspecting and copying public agency records for business days when it does not maintain regular business hours. They also admit they have not adopted procedures to comply with the provisions of K.S.A. 45-226 and 45-227. This includes designating a local freedom of information officer; providing assistance to the public in resolving disputes relating to the KORA; responding to inquiries relating to the KORA; and making available to the public a brochure

containing basic information about a requester's rights, the public agency's responsibilities, as well as the procedures for inspecting and obtaining a copy of public records under the KORA. In February 2015, Ordinance No. 2015-2 was adopted to set city fees for requesting records. The mayor, the City of Liebenthal and the Liebenthal City Council have not taken any other action to meet these requirements.

10. Mayor Medesa Sander, Council President Bill Stark, and council members Barbara Matal and Robert Tyron agree:
 - a. To obtain at least one and one half (1.5) hours of training on the provisions of the KOMA and the KORA, to be presented by an attorney experienced in dealing with open meetings issues, within six (6) months of the date of this Consent Agreement;
 - b. To provide the Attorney General's Office with a written statement confirming each has obtained the required KOMA / KORA training;
 - c. That should there be any charge to obtain this training, that cost shall be borne by each of them individually and shall not be paid from public or city moneys;
 - d. To comply with the requirements of K.S.A. 45-220, 45-226 and 45-227, and to provide a copy of the procedures adopted in compliance with these statutes within 90 days of the date in the Certificate of Service below;
 - e. To not engage in any future violations of the KOMA or the KORA;
 - f. That should they engage in any future breach of the KOMA concerning executive sessions, or the KORA concerning timely response and compliance with the requirements of K.S.A. 45-220, 45-226, and 45-227, this agreement shall become null and void and the Attorney General may institute prosecution based upon the facts and admissions contained herein; and
 - g. That this agreement does not apply to future and/or currently unknown conduct that may occur or be brought to the attention of the Attorney General or any other prosecutor, and any such alleged violations of the KOMA or KORA may be prosecuted.
11. In consideration of these admissions and agreements by Mayor Medesa Sander, Council President Bill Stark, and members Barbara Matal and Robert Tyron, and the above-agreed remedies, the Attorney General agrees to forgo prosecution for the alleged violations of the KOMA and KORA, as set forth herein.

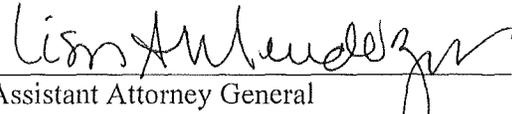
12. Each party agrees to bear its own costs.



Attorney General Derek Schmidt

11/6/2015

Date



Assistant Attorney General

11/6/2015

Date

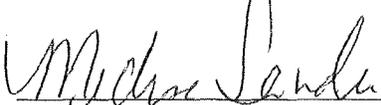


Liebenthal City Attorney

11-2-15

Date

The Liebenthal City Council by each individual involved in a violation of the KOMA:



Medesa Sander, Mayor

11-2-15

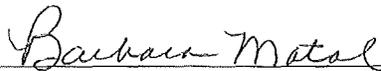
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Bill Stark, Council President

11-2-15

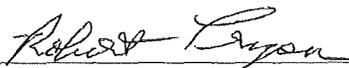
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Barbara Matal, Council Member

11-2-15

Date

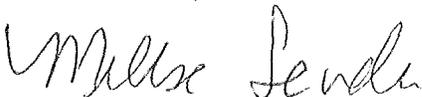


Robert Tyron, Council Member

11-2-15

Date

And for the City of Liebenthal concerning the KORA violation:



Medesa Sander, Mayor

11-2-15

Date

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of Nov, 2015, a true and correct copy of the foregoing Consent Agreement was deposited in the United States mail, first class postage prepaid, addressed to:

E. Jay Deines
Liebenthal City Attorney
110 N. Main
WaKeeney, KS 67672
City Attorney



Lisa A. Mendoza
Assistant Attorney General