

**BEFORE THE OFFICE OF THE KANSAS ATTORNEY GENERAL**  
**120 SW 10<sup>th</sup> Avenue, 2<sup>nd</sup> Floor**  
**Topeka, Kansas 66612-1597**  
**Shawnee County, Kansas**

In the Matter of the            )  
  )  
Wellington City Council.        )  
\_\_\_\_\_                          )

Case No. 2016-OG-0001

**CONSENT ORDER**

NOW on this 16<sup>th</sup> day of March, 2016, this matter comes before the Attorney General for the purposes of resolving the above-captioned matter pursuant to the provisions of K.S.A. 2015 Supp. 75-4320d(a)(1), which grants the Attorney General authority to enter into consent orders.

In lieu of further legal proceedings concerning a violation of the Kansas Open Meetings Act (KOMA), K.S.A. 75-3417 *et seq.*, the undersigned hereby knowingly and voluntarily agree as follows:

1. On or about November 18, 2015, Wellington city attorney Michael Brown submitted a self-report of a KOMA violation on behalf of the governing body of the City of Wellington. Following this reported violation, the Kansas Attorney General's Office conducted an investigation into allegations that the Wellington City Council held a meeting without giving notice as required by K.S.A. 2015 Supp. 75-4318(b).

2. The Wellington 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 gathering or assembly in person or through the use of a telephone or any other medium for interactive communication;
  - 2. By a majority of the city council;
  - 3. For the purpose of discussing the business or affairs of the City of Wellington.
- b. If a meeting of the city council occurs, notice of the meeting must be provided to any individual or group requesting notice under the

provisions of K.S.A. 2015 Supp. 75-4318(b), and amendments thereto.

- c. It is the duty of the presiding officer or other person calling the meeting, if the meeting is not called by the presiding officer, to furnish the notice required by K.S.A. 2015 Supp. 75-4318(c) and amendments thereto.

3. Investigation and/or admissions by Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts, as described in a letter dated February 15, 2016, to Wellington city attorney Michael Brown, which is attached hereto and incorporated by references as Exhibit A, confirm the following violation of the KOMA by a preponderance of the evidence:

- a. Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts personally attended a Town Hall meeting beginning at approximately 6:30 p.m. on Tuesday, October 13, 2015, at the City Administration Building, 317 S. Washington, Wellington, Kansas. These members constituted a majority of the governing body of the City of Wellington. The Town Hall meeting was held because “the Governing Body want[ed] to hear from everyone in the community regarding any issues or concerns they may have [sic]. . . .”
- b. During the October 13, 2015, Town Hall meeting, the mayor and city council members discussed city business. The subjects discussed included concern over utility increases, as well as a new parking lot going in at a city park. Additionally, the mayor addressed “rumors that have been circulating around town, specifically rumors regarding money allegedly being missing from the City of Wellington [sic],” and the city council’s transfer of money “from the utility reserves to the general fund.” This Town Hall gathering was a meeting as defined by K.S.A. 2015 Supp. 75-4317a.
- c. For the fiscal year beginning January 1, 2015, five (5) individuals requested notice of all 2015 meetings of the City Council, Wellington, Kansas. The presiding officer of the Wellington City Council or other person calling the meeting did not provide these individuals with notice of the meeting as required by K.S.A. 2015 Supp. 75-4318(b) and (c).

4. Based upon the above information and admissions, Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts individually admit and agree that on October 13, 2015, they violated the KOMA by:

- a. Holding a meeting as defined by K.S.A. 2015 Supp. 75-4317a without providing notice of the date, time and place of the meeting as required by K.S.A. 2015 Supp. 75-4318(b).

5. Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts agree that they now fully understand and agree that for each gathering or assembly in person or through the use of a telephone or any other medium for interactive communication by a majority of the membership of the Wellington City Council for the purpose of discussing the business or affairs of the public body, they intend to comply with the notice provisions set forth in K.S.A. 2015 Supp. 75-4318(b).

6. The Attorney General and Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts mutually desire to enter into this Consent Order in lieu of further adjudicative proceedings.

7. Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts understand and waive all rights to further adjudication of facts and law that could be determined pursuant to other enforcement proceedings conducted in accordance with K.S.A. 2015 Supp. 75-4320a(a), 75-4320d(a)(2), or 75-4320f concerning this matter.

8. Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts acknowledge there is no right to appeal this matter pursuant to the Kansas Act for Judicial Review as provided by K.S.A. 77-603(c)(8).

9. The Attorney General accepts the stipulations and acknowledgments by Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts.

**WHEREAS**, the Attorney General finds that the above facts have been established by a preponderance of the evidence, and that it is proper that Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts be subject to this Order based on the provisions of K.S.A. 2015 Supp. 75-4320d(a)(1), which permits the Attorney General to impose conditions or requirements on a public body or agency for violation of the KOMA in a Consent Order;

**AND WHEREAS** the Attorney General and Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts mutually desire to enter into a Consent Order to resolve the violation.

**NOW THEREFORE**, Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts consent to the following terms and conditions, and the Attorney General orders that:

10. Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts agree to and shall:

- a. Obtain at least one (1.0) hour of training on the provisions of the KOMA to be presented by an attorney experienced in dealing with open meetings issues, within six (6) months of the date of this Consent Order;
- b. Provide the Attorney General's Office with a written statement confirming each has obtained the required KOMA training;
- c. Pay the cost of training individually, and not from public or city moneys, if there is any charge to obtain the required training; and
- d. Not engage in any future violations of the KOMA.

11. Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts understand and agree that if they fail to comply with the terms of this Consent Order, the Attorney General may take action to enforce its provisions as authorized by K.S.A. 2015 Supp. 75-4320d(c) and amendments thereto.

12. Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts understand and agree that if they engage in any future violation of the KOMA, including, but not limited to, holding a meeting without giving notice, the facts and admissions contained herein may be considered in determining the appropriate enforcement action and remedy.

13. Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts agree and understand that this Consent Order 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 may be subject to investigation proceedings as provided by K.S.A. 2015 Supp. 75-4320b and/or enforcement proceedings conducted in accordance with K.S.A. 2015 Supp. 75-4320a(a), 75-4320d(a)(2), or 75-4320f.

14. In consideration of these admissions and agreements by Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts, and the above-agreed remedies, the Attorney General agrees to forgo further prosecution for the violations of the KOMA set forth herein.

15. Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts agree that this Consent Order conforms to Kansas and federal law and that the Attorney General has the authority to enter into this Consent Order.

16. Except as provided in paragraphs 11 and 12, this Consent Agreement shall operate as a complete release of all claims the parties may have against each other and arising out of the investigation of this matter. Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts agree not to file, or cause to be filed, any litigation or claims in any federal or state court of law or federal or state administrative agency against the

Attorney General, the Office of the Attorney General, its agents or employees, individually or in their official capacity. Such litigation or claims include, but are not limited to, any K.S.A. Chapter 60 or Chapter 61 civil action regarding negligence and/or a 42 United States Code action and/or any administrative petition for redress. Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts agree that all actions in this matter were a bona fide use of discretion and authority granted to the Attorney General, the Office of the Attorney General, its agents and employees, which is a statutory exception to liability within the Kansas Tort Claims Act, K.S.A. 75-6104(b), (c) or (e).

17. Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts understand that this Consent Order shall be maintained and made available for public inspection pursuant to the provisions of K.S.A. 2015 Supp. 75-432d(e) and amendments thereto.

18. This Consent Order shall be a public record in the custody of the Office of the Attorney General.

19. This Consent Order constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by the parties. This Consent Order shall be interpreted in accordance with the laws of the State of Kansas.

20. This Consent Order shall become effective on the date indicated in the Certificate of Service.

**WHEREFORE**, the Attorney General, Mayor Shelley Hansel and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts consent to these provisions.

**IT IS SO ORDERED.**

**OFFICE OF THE ATTORNEY GENERAL**



Derek Schmidt  
Kansas Attorney General

**Prepared By:**



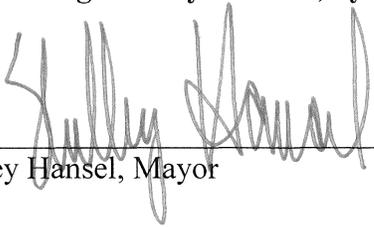
Lisa A. Mendoza, #12034  
Assistant Attorney General  
Office of the Kansas Attorney General  
120 SW 10<sup>th</sup> Avenue, Second Floor  
Topeka, KS 66612-1597

**Approved By:**



Michael C. Brown  
Michael C. Brown, P.A.  
1033 N. Rock Road, Suite 200  
Derby, Kansas 67037  
Wellington City Attorney

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

  
\_\_\_\_\_  
Shelley Hansel, Mayor

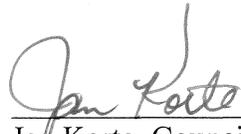
3-7-2016  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Kip Etter, Council Member

3/7/2016  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
James Valentine, Council Member

3/9/2016  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jan Korte, Council Member

3/7/2016  
\_\_\_\_\_  
Date

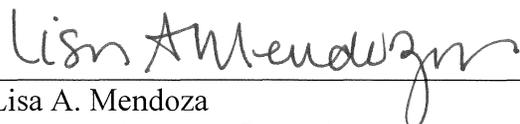
  
\_\_\_\_\_  
Bill Butts, Council Member

3.7.16  
\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of March, 2016, a true and correct copy of the foregoing Consent Order was deposited in the United States mail, first class postage prepaid, addressed to:

Michael C. Brown  
*Michael C. Brown, P.A.*  
1033 N. Rock Road, Suite 200  
Derby, Kansas 67037  
*Wellington City Attorney*

  
\_\_\_\_\_  
Lisa A. Mendoza  
Assistant Attorney General



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**DEREK SCHMIDT**  
ATTORNEY GENERAL

MEMORIAL HALL  
120 SW 10TH AVE., 2ND FLOOR  
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WWW.AG.KS.GOV

February 17, 2016

Michael C. Brown  
Michael C. Brown, P.A.  
1033 N. Rock Road, Suite 200  
Derby, KS 67037

RE: Self-Report of KOMA Violation by the Wellington City Council

Dear Mr. Brown:

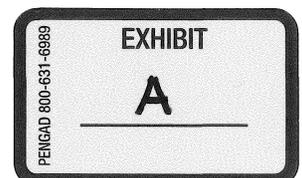
On November 23, 2015, we received your letter dated November 18, 2015, sent in your capacity as the city attorney for the City of Wellington. In your letter, you reported that certain members of the Wellington City Council violated the Kansas Open Meetings Act (KOMA), K.S.A. 75-4317 *et seq.*

This office has concurrent jurisdiction with the county/district attorney over investigation and enforcement of the KOMA. *See* K.S.A. 2015 Supp. 75-4320(a), 75-4320b and 75-4320d.

In addition to your letter self-reporting a violation on behalf of certain Wellington City Council members, you also provided this office with information in response to our inquiry. We relied on your submissions, additional information from the City of Wellington's website and contemporaneous news accounts, as well as the provisions of the KOMA and prior Attorney General Opinions as noted herein, in reviewing this matter.

The purpose of this letter is to inform you of the results of our review. For the reasons set forth in this letter, as well as a review of the relevant statutes and prior interpretations of the Attorney General, we have determined by a preponderance of the evidence that the Mayor and four (4) members of the Wellington City Council violated the KOMA on October 13, 2015, as further described below.

To assist the understanding of the parties, we describe the facts in some detail, and then discuss our conclusions.



### ***Town Hall Meeting***

In your November 18, 2015, letter, you reported that Mayor Shelley Hansel announced during the October 6, 2015, city council meeting that she would conduct a Town Hall meeting on October 13, 2015, at 6:30 p.m. Although you report she suggested no more than two (2) of the six (6) city council members be present along with her, “her advice fell on deaf ears.” You further report that at the October 13, 2015, Town Hall meeting, the mayor and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts were present. On October 13, 2015, you received a phone call from city manager Roy Eckert at approximately 7:00 p.m. stating that Kip Etter “was addressing the group about city business.” You advised Mr. Eckert to tell council member Etter “to cease any and all discussions,” but “my advice was rejected.” You further report that you “learned later that all 4 council members present spoke on matters about city business.” Finally, you advised “obviously there was a gathering, a quorum was present and business or affairs of the city were discussed. The council members in question have been made aware of the violation and that it is being reported.”

According to a contemporaneous news account, items discussed during the Town Hall meeting included “concern over recent utility increases, as well as the new parking lot going in at Worden Park.”<sup>1</sup> Additionally, the mayor addressed “rumors that have been circulating around town, specifically rumors regarding money allegedly being missing from the City of Wellington [sic],” and the city council’s transfer of money “from the utility reserves to the general fund.”<sup>2</sup>

In response to our inquiries, you advised that for the fiscal year beginning January 1, 2015, five (5) individuals requested notice of Wellington city council meetings. The individuals requesting notice included members of the news and broadcast media. These individuals completed a preprinted form that states, “I, \_\_\_\_\_, request that notice of all 2015 meetings of the City Council, Wellington, Kansas is provided to me by one of the following means . . . .” (Emphasis added). What follows on the form are check boxes for a series of options for receiving notice, including email, fax, and US mail.

We also asked you to provide copies of notice, if any, provided to individuals or groups for the October 13, 2015, Town Hall meeting. In response, you provided the following:

- Two (2) pages showing references to the Town Hall meeting from the *Sumner NewsCow*, [www.sumnernewscow.com](http://www.sumnernewscow.com).
- City council meeting minutes from May 19, 2015. These meeting minutes reference the mayor’s comments that “she hopes to carry on a tradition . . . of doing a monthly Town Hall meeting to make sure everyone is on the same page. Mayor Hansel said she would be talking to the other Governing Body members to come up with a time to hold a meeting that would be open to the public. Mayor Hansel said the Governing Body wants

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<sup>1</sup> *Town Hall Meeting Allows Public to Voice Concerns*, WELLINGTON DAILY NEWS, posted October 14, 2015, 3:35 p.m., <http://www.wellingtondailynews.com/article/20151014/NEWS/151019723/>, accessed February 6, 2016.

<sup>2</sup> *Id.*

to hear from everyone in the community regarding any issues or concerns they may have [sic]. . . .”

- City council meeting minutes from October 6, 2015. These meeting minutes report that the mayor “reminded everyone of the Town Hall meeting to be held on Tuesday, October 13, 2015, at the City Administration Building, 317 S. Washington, at 7:00 p.m. She said Council members are welcome because it is a public meeting.”

You provided no evidence or documentation showing that any of the five (5) individuals or groups who asked to be notified about city council meetings were actually notified of the October 13, 2015, Town Hall meeting.

The City of Wellington is a city of the second class,<sup>3</sup> and subject to the provisions of K.S.A. 14-101 *et seq.*, which concerns general laws applicable to cities of the second class. The governing body of the City of Wellington “shall consist of a mayor, to be elected at large, for a term of four years, and six council members to be elected as provided by Charter Ordinance Nos. 25 and 27.”<sup>4</sup> The mayor has the power to cast the deciding vote in favor of motions and resolutions when council members are equally divided, as well as recommend measures the mayor deems advisable; the mayor also has the power to approve or veto any ordinance “as the laws of the state shall prescribe.”<sup>5</sup>

The Wellington City Council meets on the first and third Tuesday of each month at 6:30 p.m.<sup>6</sup>

### ***KOMA Requirements***

The KOMA essentially requires two main things: open meetings and notice of the open meetings to those requesting notice as provided by the KOMA.<sup>7</sup>

The KOMA applies to “all legislative and administrative bodies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds.”<sup>8</sup> The KOMA applies when there are meetings of public bodies or agencies under the act.

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<sup>3</sup> League of Kansas Municipalities, Directory of Kansas Public Officials, Wellington, <http://www.lkm.org/directory/cities.php?ID=86>, accessed February 6, 2016.

<sup>4</sup> Wellington City Code, Article II, Governing Body, Sec. 2-19. – Membership, [https://www.municode.com/library/ks/wellington/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH2AD](https://www.municode.com/library/ks/wellington/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD), accessed February 6, 2016.

<sup>5</sup> Wellington City Code, Article II, Governing Body, Sec. 2-20. – Mayor, [https://www.municode.com/library/ks/wellington/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH2AD](https://www.municode.com/library/ks/wellington/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD), accessed February 6, 2016.

<sup>6</sup> Wellington City Code, Article II, Governing Body, Sec. 2-23. – Meetings, [https://www.municode.com/library/ks/wellington/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH2AD](https://www.municode.com/library/ks/wellington/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD), accessed February 6, 2016.

<sup>7</sup> Attorney General Opinion 95-112, <http://ksag.washburnlaw.edu/opinions/1995/1995-112.htm>, accessed February 6, 2016.

<sup>8</sup> See K.S.A. 2015 Supp. 75-4318(a).

The KOMA only applies when a public body or agency subject to the KOMA holds a meeting as defined by the KOMA. Under the KOMA, a meeting “means any gathering or assembly in person or through the use of a telephone or any other medium for interactive communication by a majority of the membership of a public body or agency subject to this act for the purpose of discussing the business or affairs of the public body or agency.”<sup>9</sup>

A meeting may also occur by means of a serial communication.<sup>10</sup> There is no evidence that serial communications are an issue in this matter.

Notice of the date, time and place of any meeting held by a public body or agency subject to the KOMA “shall be furnished to any person requesting such notice.”<sup>11</sup> These notice requirements apply to any regular or special meeting<sup>12</sup> held by the public body or agency.<sup>13</sup> “It shall be the duty of the presiding officer or other person calling the meeting, if the meeting is not called by the presiding officer, to furnish the notice” required by the KOMA.<sup>14</sup>

There is no requirement under the KOMA to provide notice of meetings to the general public or to publish such notice in newspapers, and so forth.<sup>15</sup> And, of course, no notice is required where there is no meeting under the KOMA.

The City of Wellington is a public body subject to the KOMA,<sup>16</sup> including its provisions concerning open meetings and notice.<sup>17</sup>

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<sup>9</sup> K.S.A. 2015 Supp. 75-4317a.

<sup>10</sup> K.S.A. 2015 Supp. 75-4318(e) (“ . . . interactive communications in a series shall be open if they collectively involve a majority of the membership of the public body or agency, share a common topic of discussion concerning the business or affairs of the public body or agency, and are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the public body or agency.”).

<sup>11</sup> K.S.A. 2015 Supp. 75-4318(b).

<sup>12</sup> “Regular meetings of the council shall be held at such times, not less than once in each month, as shall be prescribed by ordinance. Special meetings may be called by the mayor or acting mayor, on the written request of any three members of the council, specifying the object and purpose of such meeting, which request shall be read at the meeting, and entered at length on the journal. In all cases, it shall require a majority of the councilmen elect to constitute a quorum to do business. . . .” K.S.A. 14-111. We note that even if the city council did not comply with the requirements for a regular or special meeting, their October 13, 2015, Town Hall forum essentially turned into an impromptu special meeting subject to the KOMA.

<sup>13</sup> K.S.A. 2015 Supp. 75-4318(b).

<sup>14</sup> K.S.A. 2015 Supp. 75-4318(c).

<sup>15</sup> Attorney General Opinion 81-15, <http://ksag.washburnlaw.edu/opinions/1981/1981-015.pdf>, accessed February 6, 2016; *see also* Attorney General Opinion 95-112, <http://ksag.washburnlaw.edu/opinions/1995/1995-112.htm>, accessed February 6, 2016.

<sup>16</sup> Attorney General Opinion 90-047, <http://ksag.washburnlaw.edu/opinions/1990/1990-047.pdf>, accessed February 6, 2016; *see also* Wellington City Council Meeting Minutes, August 18, 2015, <http://cityofwellington.net/images/content/files/council/minutes/2015/08182015.pdf>, accessed February 6, 2016, p. 1677, discussing the adoption of an ordinance approving, adopting and appropriating the budget for the City of Wellington beginning January 1, 2016.

<sup>17</sup> K.S.A. 75-4318(a) and (b).

***The October 13, 2015, Town Hall was a meeting under the KOMA***

From the facts we have gathered, it is clear that the October 13, 2015, Town Hall was a meeting as defined by the KOMA. A majority<sup>18</sup> of the City of Wellington's governing body gathered in person at a Town Hall for Wellington citizens and others. Although they may have initially been present as mere observers and simply listening to citizens discuss city business or other concerns, ultimately those members of the governing body who were present discussed city business. The city business discussed included the use and transfer of money from the city's utility reserve fund to the general fund, the addition of a parking lot to a park, and utility increases. These are all matters within the purview of the governing body.

The concerns raised by the mayor, and later by you, were not unwarranted. By attending a Town Hall meeting being held to "hear from everyone in the community regarding any issues or concerns they may have" without giving KOMA notice to those individuals or groups who requested it, the mayor and council members in attendance placed themselves in an untenable position. It is difficult for an elected official to sit without comment in such a forum, especially if a question is addressed to him or her, or an issue arises about which the elected official wishes to make their position known. Thus, the outcome here was virtually inevitable—the mayor and all four (4) of the city council members ultimately addressed those who were present about city business. Once this occurred, the Town Hall meeting went from a gathering of citizens commenting to their elected officials about their city to a meeting as defined by the KOMA and subject to all its requirements, including the notice provisions. Because no notice was provided to those requesting it, the members of the governing body who were present crossed over the line into a KOMA violation.

It is not a violation of the KOMA for a majority of the members of a public body—without giving notice to those requesting it—to attend a meeting concerning city business so long as the members do not engage in the discussion.<sup>19</sup> But the temptation to speak in such instances is much too great, and we strongly urge public bodies to use caution in such instances.

Where, as here, a majority of a public body gathers in person and discusses city business, it violates the KOMA if it does not give KOMA notice to those who have requested notice.

***Penalties under the KOMA***

The KOMA provides civil penalties not to exceed \$500.00 for each violation of the KOMA.<sup>20</sup> Additionally, completion of training concerning the requirements of the KOMA may also be required.<sup>21</sup> Any member of a public body or agency subject to the KOMA who knowingly

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<sup>18</sup> Although you referenced a quorum in your letter, the KOMA refers to a "majority of the membership of the body" when determining whether there is a meeting. K.S.A. 14-111 makes clear that a majority of the council members constitute a quorum to do business.

<sup>19</sup> See Attorney General Opinion 2000-64, <http://ksag.washburnlaw.edu/opinions/2000/2000-064.htm>, accessed February 6, 2016.

<sup>20</sup> K.S.A. 2015 Supp. 75-4320(a).

<sup>21</sup> K.S.A. 2015 Supp. 75-4320a(a).

violates any provisions of the act or intentionally fails to furnish information as required by K.S.A. 2015 Supp. 75-4318(b) concerning notice may be subject to these penalties.

Of concern to this office is that once city council members began to discuss city business, you directed them, through the city manager, to stop. However, they did not heed your warning and continued the discussion of city business. Thus, the damage was done, and the slide down the slippery slope<sup>22</sup> to a KOMA violation was complete. The decision to ignore your advice and continue the discussion of city business suggests the violation here was intentional.

However, in mitigation, we note that this matter was self-reported. No member of the public or the media lodged a complaint alleging a violation of the KOMA related to the Town Hall meeting. Significantly, no individual or group requesting notice lodged a complaint alleging a violation of the KOMA. We also did not identify any prior substantiated violations of the KOMA by the Wellington City Council.<sup>23</sup> The announced purpose of the Town Hall meeting was certainly laudable—"the Governing Body wants to hear from everyone in the community regarding any issues or concerns they may have [sic]. . . ." The Town Hall was publicly announced; there was no attempt to hold it in secret and anyone could attend. Although city business was discussed, there were no votes or other formal action by those present. Thus, we cannot say that the public's right to know about the conduct of governmental affairs and the transaction of governmental business in the City of Wellington was effectively denied. Unfortunately, however, in attempting to be accessible to its citizens, the mayor and the council members present failed to recognize their continuing obligations under the KOMA.

### ***Conclusion***

In light of the foregoing, we find by a preponderance of the evidence that the following members of the governing body of the City of Wellington violated the KOMA: Mayor Hansel, and council members Kip Etter, James Valentine, Jan Korte, and Bill Butts.

After due consideration of all the available facts, we have determined to seek voluntary compliance with the KOMA through the means of a consent order as provided for by K.S.A. 2015 Supp. 75-4320d(a)(1). On the facts of this case, and because this violation was self-reported, we have determined not to impose a civil penalty as authorized by K.S.A. 2015 Supp. 75-4320d(a)(1)(A)(ii). However, we are seeking the agreement of the above individuals that they will comply with the requirements of the KOMA. Additionally, we believe the mayor and the council members present at the Town Hall meeting would benefit from KOMA training as a timely reminder about the requirements of this important law.

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<sup>22</sup> See Attorney General Opinion 2000-64, <http://ksag.washburnlaw.edu/opinions/2000/2000-064.htm>, accessed February 6, 2016.

<sup>23</sup> We note, however, in the Annual Report required by K.S.A. 75-753, for the Fiscal Year covering July 1, 2010 through June 30, 2011, the Sumner County Attorney reported that, "[T]he City of Wellington self-reported that it possibly had violated KOMA when city council members came together at a public town hall meeting. Upon investigation, it was determined that no violation had occurred." [https://ag.ks.gov/docs/default-source/documents/2011-\(fy\)-county-koma-kora-report.pdf?sfvrsn=6](https://ag.ks.gov/docs/default-source/documents/2011-(fy)-county-koma-kora-report.pdf?sfvrsn=6), accessed February 6, 2016.

Letter to Michael Brown

February 17, 2016

Page 7

We have enclosed a Consent Order for the mayor's and the city council's review. Please note that we are not seeking the signatures of Kelly Green and Vincent Wetta on this Consent Order, as they were not present when the violation occurred. Additionally, although they may find it useful and informative to attend the KOMA training mandated by the Consent Order, because they did not violate the KOMA, council members Green and Wetta are not required to attend the training or to provide a statement of attendance.

Our offer of a Consent Order as authorized by K.S.A. 2015 Supp. 75-4320d(a)(1), is effective up to and including **Friday, March 18, 2016**. Because the Wellington City Council meets on the first and third Tuesday of each month, we believe this will offer you sufficient time to confer with the governing body about this matter. If additional time is needed to discuss this matter, the governing body may wish to call a special meeting as permitted by K.S.A. 14-111.

If the Consent Order is approved, please return it to me and I will obtain the necessary signatures and provide a copy for your files.

If we do not receive the signed Consent Order by **Friday, March 18, 2016**, we will consider our offer of settlement to be declined, and proceed as authorized by K.S.A. 2015 Supp. 75-4320a, 75-4320d and/or 75-4320f.

We look forward to hearing from you. Please feel free to contact me at (785) 296-2215 or [lisa.mendoza@ag.ks.gov](mailto:lisa.mendoza@ag.ks.gov) with any questions or concerns.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
DEREK SCHMIDT

A handwritten signature in black ink, appearing to read "Lisa A. Mendoza". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Lisa A. Mendoza  
Assistant Attorney General  
Director, Open Government Enforcement Unit

Enclosure (Consent Order)