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December 28, 2017

ATTORNEY GENERAL OPINION NO. 2017-20

The Honorable Blaine Finch  
State Representative, 59<sup>th</sup> District  
101 W. Second St.  
Ottawa, KS 66067

Re: State Departments; Public Officers and Employees—Public Officers and Employees; Open Public Meetings—Closed or Executive Meetings; Recess; Adjourn

Synopsis: The term “recess,” as used in K.S.A. 2017 Supp. 75-4319(a), means a suspension of an open meeting. The term “adjourn,” as used in K.S.A. 2017 Supp. 75-4319(a), means ending an open meeting. A public body or public agency may only recess an open meeting to enter into a closed or executive meeting if the closed or executive meeting occurs contemporaneously with the open meeting. A public body or public agency has the discretion to designate the location of a closed or executive meeting if the location of the closed or executive meeting allows the public body or public agency to conduct the closed or executive meeting contemporaneously with the open meeting. Cited herein: K.S.A. 2017 Supp. 75-4317; K.S.A. 2017 Supp. 75-4317a; K.S.A. 2017 Supp. 75-4319.

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Dear Representative Finch:

As the State Representative for the 59<sup>th</sup> District, you ask our opinion on issues related to the Kansas Open Meetings Act (KOMA).<sup>1</sup> In your letter, you ask for “the meaning of the terms ‘recess’ and ‘adjourn’ as used in K.S.A. 2016 Supp. 75-4319(a).” Additionally, you ask

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<sup>1</sup> K.S.A. 75-4317 *et seq.*

whether a public body or public agency may recess a closed or executive meeting to another time and place, and, if yes, whether a public body or public agency may conduct more than one closed or executive meeting during that recess.

The purpose of the KOMA is stated as follows: “In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public.”<sup>2</sup> The KOMA is interpreted liberally with exceptions narrowly construed to carry out the public purpose of the law.<sup>3</sup>

The KOMA provides a mechanism by which a public body or public agency subject to the KOMA may recess an open meeting and enter into a closed or executive meeting.

Upon formal motion made, seconded and carried, all public bodies and agencies subject to the open meetings act may *recess, but not adjourn*, open meetings for closed or executive meetings. Any motion to recess for a closed or executive meeting shall include: (1) A statement describing the subjects to be discussed during the closed or executive meeting; (2) the justification listed in subsection (b) for closing the meeting; and (3) the time and place at which the open meeting shall resume.<sup>4</sup>

Thus, any motion to enter into a closed or executive meeting which includes the requirements listed above complies with the requirements of K.S.A. 2017 Supp. 75-4319(a).

The KOMA does not define the terms recess or adjourn. In the absence of a legislative definition, we presume that the Legislature uses words in their ordinary and common meaning.<sup>5</sup> Recess is defined as “[a] motion that suspends but does not end a meeting, and that usu. [usually] provides for resumption of the meeting.”<sup>6</sup> Adjourn is defined as “[t]o end or postpone (a proceeding).”<sup>7</sup> Black’s Law Dictionary distinguishes between the terms recess and adjourn. “The motion to recess, which merely suspends the meeting, differs from the motion to adjourn which ends the meeting.”<sup>8</sup>

In Attorney General Opinion (AGO) 1996-14, we provided an opinion on the meaning of the terms recess and adjournment while rejecting the idea that an open meeting could be “recessed” for multiple days:

[I]t is our opinion that in the open meetings context the term recess is used to denote a short break in a meeting occurring on the same day (perhaps to allow members or attendees some time to do other things or relax) while the word

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<sup>2</sup> K.S.A. 2017 Supp. 75-4317(a).

<sup>3</sup> *State ex rel. Murray v. Palmgren*, 231 Kan. 524, Syl. ¶ 4 (1982).

<sup>4</sup> K.S.A. 2017 Supp. 75-4319(a) (emphasis added).

<sup>5</sup> *Rogers v. Shanahan*, 221 Kan. 221, 223-24 (1976).

<sup>6</sup> Black’s Law Dictionary (10<sup>th</sup> Ed. 2014) (defining “recess”).

<sup>7</sup> *Id.* (defining “adjourn”).

<sup>8</sup> *Id.* (defining “recess”).

adjourn is used when the body concludes the meeting or hearing for a given day.<sup>9</sup>

While a recess may mean a short break suspending an open meeting for a reason other than entering into a closed or executive meeting, the Legislature used the term “recess” when prescribing the procedure for suspending the open portion of a meeting in order to hold a closed or executive meeting. After the issuance of AGO 1996-14, the Legislature did not take action to define the terms recess and adjourn as used in the KOMA or, more specifically, in K.S.A. 2017 Supp. 75-4319(a).<sup>10</sup> Based on the plain language of K.S.A. 2017 Supp. 75-4319(a), it is clear that a public body or public agency may recess an open meeting in order to hold a closed or executive meeting. We find no support, however, for the conclusion that a public body or public agency may take an extended recess and, at any time of its choosing during such an extended recess, hold a closed or executive meeting.

We therefore conclude that a public body or public agency may only recess an open meeting to enter into a closed or executive meeting if the closed or executive meeting occurs contemporaneously with the open meeting. To opine otherwise would be inconsistent with the ordinary and common meanings of recess and adjourn as used in K.S.A. 2017 Supp. 75-4319(a), as well as the KOMA’s definition of “meeting,” which requires “a 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 . . . .”<sup>11</sup>

For example, if a public body or public agency adopts a motion to enter into a closed or executive meeting that begins two days in the future, the closed or executive meeting would not be held contemporaneously with the open meeting and would not constitute a recess of an open meeting. Furthermore, the members of the public body or public agency would presumably disperse in the interim, thereby dissolving the “gathering or assembly . . . [of] a majority of the membership of a public body or agency.”

We do not mean to suggest that a closed or executive meeting may never be held on a different day than the day an open meeting began. For example, if an open meeting begins on one day and continues past midnight, the public body or public agency could recess into a closed or executive meeting on the day after the open meeting began. In this circumstance, the closed or executive meeting would be held contemporaneously with the open meeting.

Your letter also asks whether a closed or executive meeting may be recessed to another location. The KOMA contains no provision mandating the location of a closed or executive meeting. The KOMA only requires that the motion to recess into a closed or executive meeting state the time and place the open meeting will resume,<sup>12</sup> and that the location of the

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<sup>9</sup> Kan. Atty. Gen. Op. 1996-14 (page 3). We note that Kan. Atty. Gen. Op. 1996-14 addressed the provisions of K.S.A. 75-4318 regarding notice of meetings subject to the KOMA and did not address the exact issue presented in this opinion.

<sup>10</sup> Attorney General Opinions are advisory only. However, when a longstanding judicial interpretation of a statute has not been overturned by a subsequent statutory amendment, the Legislature is presumed to agree with that interpretation. See, e.g., *Bergstrom v. Spears Mfg. Co.*, 289 Kan. 605, 613-14 (2009).

<sup>11</sup> K.S.A. 2017 Supp. 75-4317a.

<sup>12</sup> K.S.A. 2017 Supp. 75-4319(a).

resumed meeting affords the public the opportunity to observe the meeting.<sup>13</sup> Thus, a public body or public agency has the discretion to designate the location of a closed or executive meeting as long as the location allows the public body or public agency to conduct the closed or executive meeting contemporaneously with the open meeting. For example, while many public bodies and public agencies conduct a closed or executive meeting at the location of the open meeting and require public attendees to leave the room, other public bodies and public agencies may instead move to a nearby conference room so that public attendees are not inconvenienced. Both arrangements are allowed under the KOMA.

Because we conclude that a recess may not stretch across multiple days, and that a closed or executive meeting must be held contemporaneously with an open meeting, we do not reach an answer as to whether multiple closed or executive meetings may be held during such a recess. However, looking at the plain language of K.S.A. 2017 Supp. 75-4319(a), we find it difficult to imagine a circumstance where multiple closed or executive meetings could be held without violating the requirement to make a proper motion in an open meeting prior to recessing into a closed or executive meeting.

In summary, the term recess, as used in K.S.A. 2017 Supp. 75-4319(a), means a suspension of an open meeting. The term adjourn, as used in K.S.A. 2017 Supp. 75-4319(a), means ending an open meeting. A public body or public agency may only recess an open meeting to enter into a closed or executive meeting if the closed or executive meeting occurs contemporaneously with the open meeting. A public body or public agency has the discretion to designate the location of a closed or executive meeting if the location of the closed or executive meeting allows the public body or public agency to conduct the closed or executive meeting contemporaneously with the open meeting.

Sincerely,

/s/Derek Schmidt

Derek Schmidt  
Attorney General

/s/Cheryl L. Whelan

Cheryl L. Whelan  
Assistant Attorney General

DS:AA:CW:sb

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<sup>13</sup> See K.S.A. 75-4317(b) (“It is declared hereby to be against the public policy of this state for any such meeting to be adjourned to another time or place in order to subvert the policy of open public meetings . . .”).