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November 7, 2019

To: Senator Susan Wagle
4 Sagebrush
Wichita, Kansas 67230

Re: Kansas Supreme Court Nominating Committee
October 17-18, 2019 Selection Process

Senator Wagle,

What follows is my report detailing the investigation and conclusions regarding your complaint of November 4, 2019 concerning the Kansas Supreme Court Nominating Commission.

Background

On November 4, 2019 the Office of the Kansas Attorney General, Derek Schmidt, received a complaint pursuant to *Kansas Statutes Annotated* (K.S.A.) 75-4320b and 75-4320e from the President of the Kansas Senate, Susan Wagle, detailing her concerns that the Kansas Supreme Court Nominating Committee's selection of three candidates to fill the vacancy of retired Kansas Supreme Court Justice, Lee Johnson violated the Kansas Open Meetings Act. Namely, Senator Wagle expressed concern that the public was not made aware of the specific votes cast on paper ballots by members of the Commission prior to the final vote.

Two of the three nominees submitted by the Commission to Governor Laura Kelly on October 18, 2019, are current employees of the Office of the Kansas Attorney General. Given

the ensuing conflict of interest, the Office of the Attorney General requested the Office of the District Attorney, 18th Judicial District, Sedgwick County, Kansas examine the complaint. Upon acceptance of this request, the District Attorney of the 18th Judicial District and a Deputy District Attorney were each appointed as a Special Assistant Attorney General to handle the matter.

Immediately upon acceptance of the same, investigators with the Office of the District Attorney began the investigation. Pursuant to K.S.A. 75-4320, any action taken to void "binding action" taken by a public body must be brought "within 21 days of the meeting."

Supreme Court Nominating Commission

The Supreme Court Nominating Commission is an independent body created by the Kansas Constitution Article 3, § 5(a).

> Any vacancy occurring in the office of any justice of the supreme court and any position to be open thereon as a result of enlargement of the court, or the retirement or failure of an incumbent to file his declaration of candidacy to succeed himself as hereinafter required, or failure of a justice to be elected to succeed himself, shall be filled by appointment by the governor of one of three persons possessing the qualifications of office who shall be nominated and whose names shall be submitted to the governor by the supreme court nominating commission established as hereinafter provided.

The Nominating Commission is also governed by K.S.A. 20-119 *et seq.*, which details the process for selection of the commission, selection of the chairperson, and so on.

During the 2016 Legislative Session, Senate Bill 128, Sec. 5 amended K.S.A. 20-123(b)(1) to make clear that the Kansas Supreme Court Nominating Commission is a "public body" subject to the Kansas Open Meetings Act, at K.S.A. 75-4518:

> *(b) (1) The supreme court nominating commission shall be and is hereby deemed to be a public body and shall be subject to the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto.*
>
> *(2) Except as provided further, the commission shall not recess for a closed or executive meeting for any purpose. The commission, in accordance with K.S.A. 75-4319, and amendments thereto, may recess for a closed or executive meeting only for the purpose of discussing sensitive financial information*

contained within the personal financial records or official background check of a candidate for judicial nomination.

(3) Nothing in this subsection shall be construed to supersede the commission's discretion to close a record or portion of a record submitted to the commission pursuant to any applicable exception to public disclosure under the open records act.

Notably, the meeting in question, held October 17 and 18, 2019 by the Kansas Supreme Court Nominating Commission, was the first since the 2016 amendments.

Supreme Court Rules

Supreme Court Rule 1101 addresses the "confidentiality" of the Judicial Nominating Commission Records.

(a) **Judicial Nominating Commission Records**. All records of a judicial nominating commission are confidential and not subject to disclosure to anyone not a member of the commission or assisting the commission. The following information regarding judicial applicants may be disclosed by the commission, in a form within its discretion: names, current employment positions, educational degrees received, previous employment or positions, and cities of residence.
(b) **Disclosure to the Governor**. Nothing in this rule prohibits disclosure by a commission of information to the Governor as needed for consideration of nominated candidates.
(c) **Records Defined**. For purposes of this rule, and Rule 1102, the term "records" includes, but is not limited to, all application materials submitted to a judicial nominating commission; all information collected or recorded by members or agents of the commission regarding a judicial applicant; the minutes of a commission meeting; and any other information, regardless of form, characteristics, or location, which members or agents of the commission have prepared, recorded, or collected and is related to the functions, activities, programs, or operations of the commission.
History: New rule effective August 31, 2005; Am. effective February 2, 2017

Prior to 2017 the previous version of Rule 1101 at §(a) stated that records of the commission "shall be confidential." In 2017 that was amended to the current statement that "all records of the judicial nominating commission are confidential." Additionally, the definition of "records" in §(c), which had previously read simply, "'records' refers to recorded information," was amended to include the detailed definition set forth above.

Supreme Court Rule 1102 addresses the retention of records generated by the Supreme

Court Nominating Commission:

> **(a) Retention Period.** Except for the minutes of a judicial nominating commission meeting, all records relating to a commission's selection of nominees or a district magistrate judge must be retained for 3 years after the commission's decision. If a commission receives notice of a legal action challenging the commission's decision prior to the expiration of the 3-year period, the records will be retained until the expiration of the 3-year period or until the legal action becomes final, whichever occurs later. The minutes of a judicial nominating commission meeting must be retained indefinitely.
>
> **(b) Official Custodians.** For purposes of complying with the Kansas Open Records Act, K.S.A. 45-215 *et seq.*, the public information director for the Kansas Supreme Court is the official custodian of all district judicial nominating commission records, and the clerk of the Kansas appellate courts is the official custodian of all Supreme Court nominating commission records.
> [Adopted effective February 2, 2017.]

Kansas Open Meeting Act

K.S.A. 75-4317 makes clear that the public policy underlying the Kansas Open Meetings Act is to promote an informed electorate:

> (a) 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.
> (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 as pronounced in subsection (a).

The primary requirements of the Kansas Open Meeting Act are set forth in detail at K.S.A. 75-4318:

> Meetings of state and subdivisions open to public; exceptions; secret ballots; notice; agenda, cameras, photographic lights, recording devices. (a) Subject to the provisions of subsection (g), all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies 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 shall be open to the public and ***no binding action*** (emphasis added) by such public bodies or agencies shall be by ***secret ballot***. (emphasis added) Meetings of task forces, advisory committees or subcommittees of advisory committees created pursuant to a governor's executive order shall be open to the public in accordance with this act.

(b) Notice of the date, time and place of any regular or special meeting of a public body or agency designated in subsection (a) shall be furnished to any person requesting such notice, except that:
(1) If notice is requested by petition, the petition shall designate one person to receive notice on behalf of all persons named in the petition, and notice to such person shall constitute notice to all persons named in the petition;
(2) if notice is furnished to an executive officer of an employees' organization or trade association, such notice shall be deemed to have been furnished to the entire membership of such organization or association; and
(3) the public body or agency may require that a request to receive notice must be submitted again to the public body or agency prior to the commencement of any subsequent fiscal year of the public body or agency during which the person wishes to continue receiving notice, but, prior to discontinuing notice to any person, the public body or agency must notify the person that notice will be discontinued unless the person resubmits a request to receive notice.
(c) 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 subsection (b).
(d) Prior to any meeting mentioned by subsection (a), any agenda relating to the business to be transacted at such meeting shall be made available to any person requesting the agenda.
(e) The use of cameras, photographic lights and recording devices shall not be prohibited at any meeting mentioned by subsection (a), but such use shall be subject to reasonable rules designed to insure the orderly conduct of the proceedings at such meeting.
(f) Except as provided by section 22 of article 2 of the constitution of the state of Kansas, 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.
(g) The provisions of the open meetings law shall not apply:
(1) To any administrative body that is authorized by law to exercise quasi-judicial functions when such body is deliberating matters relating to a decision involving such quasi-judicial functions;
(2) to the prisoner review board when conducting parole hearings or parole violation hearings held at a correctional institution;
(3) to any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives; and
(4) if otherwise provided by state or federal law or by rules of the Kansas senate or house of representatives.

Facts

On September 18, 2019, the Kansas Office of Judicial Administration announced that on

October 17 and 18, 2019, the Kansas Supreme Court Nominating Commission would be interviewing applicants to fill the vacancy on the Kansas Supreme Court created by the retirement of Justice Lee Johnson. The public release noted,

> Interviews will be in a meeting room on the first floor of the Kansas Judicial Center, 301 SW 10th Ave., Topeka. Interviews will start at 9 a.m. October 17 and 8:30 a.m. October 18. Interviews are open to the public.

The release further added,

> The nominating commission will conduct its work in accordance with the Kansas Open Meetings Act, the Kansas Open Records Act, and Kansas Supreme Court Rules 1101 and 1102.
>
> By a majority vote, the commission can recess into closed session to discuss sensitive financial information contained in the personal financial records or official background checks of the applicants.

On Thursday October 17, 2019 and Friday, October 18, 2019 the Kansas Supreme Court Nominating Commission met in Shawnee County, Kansas at the Kansas Judicial Center to select the 3 applicants to be sent to Governor Kelly from which she would chose the replacement for Justice Johnson.

Mikel Stout, Chair of the Commission, and Doug Shima, Clerk of the Kansas Supreme Court, were each interviewed as part of this investigation. They independently confirmed that the Commission met on October 17 and 18, 2019 in Topeka, Kansas consistent with the public notice sent out in September. Mr. Stout estimated that 20-30 members of the public attended the meeting at the Kansas Judicial Center.

They each confirmed that the 9 commission members were present and that interviews were conducted of each of the applicants beginning the first day of the meetings. Subsequent to the interviews, the Commission members discussed the applicants and ultimately votes were cast to winnow the pool down to 3. All such discussions took place in an open meeting.

K.S.A. 20-123 provides, in pertinent part: "The commission shall have power to adopt

such reasonable and proper rules and regulations for the conduct of its proceedings and the discharge of its duties as are consistent with this act and the constitution of the state of Kansas."

When the time came to vote, the procedure adopted by the Commission was as follows: votes were initially cast on paper ballots given to each respective Commission member. Each member of the Commission indicated their vote in writing and signed their name to their respective paper ballot. Each ballot was then submitted, at which time the number of votes received by each nominee was read aloud by Mr. Shima. The applicant receiving the vote was announced but not the name of the Commission member who voted for the applicant. Mr. Shima confirmed that this process of utilizing paper ballots to winnow the number from 19 applicants to 3 took 5 separate votes from the Commission.

When the paper ballot process winnowed the applicant pool to 3, each Commission member was asked to vote on the final 3 applicants. This final vote was cast by a show of hands from each Commission member in the public setting, in view of the public. The final vote in this instance was unanimous.

When contacted, staff for Senator Wagle, the complainant herein, referred our investigator to Josh Ney, Jefferson County Attorney. Mr. Ney confirmed that he attended the Commission meeting both days as a private citizen. He described the procedure employed at the meeting consistent with the description offered by Mr. Stout and Mr. Shima. Mr. Ney added that members of the public attending the meeting were provided a vote tally sheet, which he produced for the investigator.

Mr. Shima confirmed that after each round of paper ballot voting, the paper ballots cast by each Commissioner were maintained. As the records custodian for these documents, pursuant to Supreme Court Rule 1102, Mr. Shima reported that he has already received and approved

requests for production of the Commissioner's paper ballots pursuant to the Kansas Open Records Act.

Analysis

The threshold question posed by the complaint in this instance is when did the Supreme Court Nominating Commission undertake "binding action," as that term is set forth in K.S.A. 75-4318, the Kansas Open Meeting Act?

The written complaint submitted by Senator Wagle focuses on the paper ballot process utilized by the Commission to winnow the number of candidates to the final 3.

> . . . neither the public nor any individual Commissioner was able to ascertain each Commissioner's vote when the votes were tallied after each round. The public was thus unable to determine how each Commissioner voted during the ballot rounds. K.S.A. 75-4318 [The Kansas Open Meetings Act] states that meetings of public agencies shall be "open to the public and no binding action by such public bodies or agencies shall be by secret ballot."

As set forth above, votes were cast by the members of the Commission on paper ballots that were in turn submitted to the Commission chair, the results of which were read aloud (but not how respective Commission members voted on each ballot) and maintained by the Clerk of the Supreme Court. This was accomplished in an open meeting. A process of 5 separate votes winnowed the list of applicants to the 3 ultimately approved.

The final vote to approve the 3 candidates whose names were ultimately submitted to the Governor Laura Kelly was cast in the open meeting by a show of hands from each Commissioner. The vote was unanimous.

The Open Meetings Act is silent as to a specific definition of the term "binding action" as set forth in K.S.A. 75-4318(a). Likewise, several references to the term appear in appellate cases, but no effort has been made by the appellate courts to define the same. The most dispositive source of guidance available comes from Kansas Attorney General's Opinion, No.

81-106 (May 12, 1981),

> Although the Kansas Open Meetings Law does not define 'binding action,' and we are unaware of any Kansas case law specifically construing such term, we have no hesitation in concluding that an election of an officer of a city's governing body constitutes 'binding action' of that body. To conclude otherwise would ignore the purposes of these statutory provisions. 'One apparent purpose is to make public every official's vote on the public's business.' *Olathe Hospital Foundation, Inc., v. Extendicare*, 217 Kan. 546, 562 (1975). Within this context, it is apparent that the selection of the person who, in the absence of the mayor and council president, is to preside over the governing body and, as you stated in your letter, 'to conduct the affairs of the City without undue delay,' is certainly the public's business.
>
> Finally, we note that one commentary on the Kansas Open Meetings Act has impliedly suggested that 'binding action' is the equivalent of 'final action,' and '[i]n other states the phrase 'final action' is often used and has been broadly construed 'to connote finality within the scope of the powers delegated' to the bodies subject to those statutes.' *Smoot and Clothier, Open Meetings Profile: The Prosecutor's View*, 20 W.L.J. 241, 270 (1981). Applying this test to your inquiry leads to the same conclusion. Having the authority under city ordinance to elect a member of the city council as acting president thereof, we believe the council's selection of such officer constitutes final action within the scope of the powers delegated to the council in this regard.
>
> Therefore, it is our opinion that the provisions of K.S.A. 1980 Supp. 75–4318 preclude the election of the acting president of the City Council of Merriam by secret ballot.

Since 1981, this assessment that "binding action" is synonymous with "final action" has remained unchanged and unchallenged.

In the instant matter, the final/binding action of the Commission was the vote to approve the final 3 names to be submitted to the Governor for her consideration. The final 3 applicants were approved by each Commissioner by a show of hands in an open meeting. The vote was unanimous. This final action, i.e., "binding action," was in compliance with the Open Meetings Act.

The question remains whether the procedure utilized by the Commission to winnow the applicants from a list of 19 names to a list of 3 by way of paper ballots was in compliance with

the Open Meetings Act. Insofar as the final hand vote was required to approve the final list of 3 names, it follows that the prior paper ballots were therefore not "binding action."

The more difficult question is whether the paper ballots constituted a "secret ballot," which is prohibited by the Open Meetings Act. Are paper ballots that were dispersed, voted upon, collected, the results read and the documents maintained in full view of the public "secret ballots"?

A separate Attorney General's Opinion from 1992 offered the following observation,

> It is an oxymoron to say that you can conduct an open discussion on closed documents without opening those documents. It runs counter to the mandatory openness dictated by the KOMA to read the KORA to allow discretionary closure of records openly reviewed and discussed or officially acted upon by a public body at an open meeting. To read these two acts in such opposite manners is to permit the KOMA to be thwarted by the KORA to the point of allowing public meetings to be conducted in code; e.g. "Madam chair, I move we vote 'yes' on document A and 'no' on document B." Such a "discussion" violates the intent, spirit and letter of the KOMA. By discussing the record openly, the public body exercises its discretion in favor of opening the matter, and thus, the record. In taking binding action on a matter, the public body must reveal the nature of the vote and the matter approved. If a public body wishes to close a public record, it must do so only in accordance with statutory authority and should refrain from waiving such closure authority through open discussion of the record.
>
> Thus, it is our opinion that, if a public record is voluntarily discussed and reviewed by a public body at an open meeting, such a record mandatorily becomes an open public record despite possible discretionary authority under K.S.A.1991 Supp. 45–221. This is especially true if the public body takes official action on such a document. XXVI Kan. Op. Att'y Gen. 92-132 (1992)

This opinion reflects the public policy that a "public body" should conduct its business in full view of the public and that the use of unidentified documents to obsfucate procedures and "binding action" violates the spirit of the Open Meetings Act. However, unlike the scenario discussed in the opinion directly above, the subject being voted on by the Commission in October of 2019 utilizing the paper ballots was clear; each ballot was signed by the respective Commissioner, thereby memorializing their respective vote; the results of each "round" were

read aloud; and each ballot was collected and maintained. At the meeting, it was announced that the ballots would be available to the public via the Kansas Open Records Act after the adjournment of the meeting.

To determine whether the paper ballots constituted a "secret ballot" prior to the "binding action" taken with the final hand vote, Attorney General's Opinion No. 79-167 offers the opinion that paper ballots are implicitly secret:

> Our research indicates the Kansas Open Meetings Law, although prohibiting certain actions authorized by "secret ballot," does not define this crucial term. Similarly, although discussed by Kansas courts as early as 1895, it is not defined by case law. Taylor v. Leakley, 55 Kan. 1, 8 (1895). Article 4, section 1 of the Kansas Constitution states: "All elections by the people shall be by ballot." **This provision implies secrecy of voting, securing to a voter at popular elections absolute secrecy how he voted** (emphasis added). State ex rel v. Beggs, 126 Kan. 811, 814 (1928). Kansas, in recognizing the 'Austrialian' or 'secret' ballot, K.S.A. 25–601, et seq., subscribes to the general practice, using '[a]n official ballot in which the names are printed. Its use is accompanied by safeguards designed to maintain secrecy in voting.' Black's Law Dictionary, 168 (4th Ed. 1951).
>
> While the classic Australian ballot system is not employed by the Council, the secret voting for publicly nominated candidates, in our opinion constitutes a secret ballot. Although elections may be unanimous, thus giving rise to only a technical violation of the Kansas Open Meetings Law, such procedures contradict both the letter and spirit of the declared policy of this state, as set out in K.S.A. 75–4317: "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."

An article in the Journal of the Kansas Bar Association in 2003, while in no way binding authority, does offer reasoned commentary. In her article, "Kansas Sunshine Law; How Bright Does It Shine Now? The Kansas Open Meetings Act," published in the Kansas Bar Journal June/July 2003, at page 34, 40, Theresa Marcel Nuckolls cited Kansas Attorney General's Opinions, No. 86-176; 79-167; 81-106; 65-167 and 93-55 as supportive of the notion that "[t]he public must be able to ascertain how each member [of a "public body"] voted." She added that

"while a paper ballot is allowed, the public must be given access to the ballots so that they may determine how each member voted." In footnote 108 of the article, she endorsed the position that "as long as the document or more detail is later made available to the public, the KOMA's prohibition against secret votes is probably not implicated."

This position that KOMA is not violated by the use of paper ballots that are signed by each voting member reflecting his or her vote and subsequently made available to the public is further supported by Attorney General's Opinion 86-176:

> Synopsis: The annual meeting of the State Board of Agriculture (Board) and the caucus meetings held by the agricultural districts are public bodies subject to the provisions of the Kansas Open Meetings Act (KOMA). Under the open meetings law, no binding action can be taken by secret ballot. The purpose of this provision is to make public every official's vote on the public's business. A 'secret ballot,' then, is one in which the voter's choice or decision is not known. The procedure which has been followed in electing members of the Board violates the KOMA as the public has no way to determine how each delegate voted. Delegates may, however, vote by paper ballot if each delegate signs his or her name to the ballot and the ballots are open for public inspection.
>
> . . .
>
> The argument is made that the balloting procedure used by the caucuses is not 'secret' because the pieces of paper used for the election are opened and made available for public inspection. This does not, however, make the casting of such ballots 'not secret.' The Kansas Supreme Court has said that the purpose of the secret ballot prohibition 'is to make public every official's vote on the public's business.' Olathe Hospital Foundation, Inc. v. Extendicare, 217 Kan. 546, 562 (1975). We must conclude that the voting procedure currently employed by the district caucuses violates the open meetings law as the public has no way to determine how each delegate voted.

The issue at hand in this opinion from 1986 was the delegates to the State Board of Agriculture's utilization of a paper ballot without signing their names to memorialize the final, binding action. The subsequent public disclosure of the paper ballots utilized to render the binding action was insufficient to cleanse the violation, because the public would still be unable to discern how each delegate voted. Had the delegates signed their respective ballots that were

later made public, there would not have been a violation of the Open Meeting Act: "Signing one's name to his or her ballot which is open for public inspection precludes secrecy in voting."

An alternative point of view was recently expressed by the Ohio Supreme Court in January of 2019, when it addressed the issue as applied to the Ohio Open Meetings Act, *State ex rel. More Bratenahl v. Bratenahl,* Slip Opinion No. 2019-Ohio-3233. In that case, a "village council" conducted its first meeting of the year and as its first order of business needed to select a President pro tempore. The decision was made to cast the votes by "secret ballot." After two unsuccessful votes, the third vote resulted in a selection. The slips of paper reflecting the members' votes were subsequently produced pursuant to an open records request.

The Ohio Supreme Court, guided by what it described as a "broader reading" of their statute, held that the availability of concealed information through a public-records request does not retroactively make a meeting with secret votes "open to the public. . . the availability of secret-ballot **slips** as a public record does not retroactively make a meeting compliant with the act."

While instructive, the opinion of the Ohio Supreme Court is not controlling authority in Kansas and is further distinguishable given the significant distinctions between Kansas and Ohio law.

Conclusion

a. Binding Action

As set forth above, there is no authority in Kansas appellate case law, Kansas statute or Kansas Attorney General's Opinion to suggest that the paper ballots constituted "binding action." The "binding action" taken by the Commission was the selection of the final 3 applicants. Because this was accomplished during an open meeting, in the presence of members of the public, by a show of hands, there was no violation of the Kansas Open Meeting Act by the

Kansas Supreme Court Nominating Commission on October 17 and 18, 2019 with respect to the final vote.

b. Secret Ballots

The complaint raised in the instant matter echoes the observation recently espoused by the Ohio Supreme Court's that, if documents are public documents – a self-evident conclusion if they are subsequently available by way of an Open Records request—there is a strong public policy to support the notion that the added burden of seeking what should be public documents (the paper ballots) by way of an open records request violates at the very least the spirit of Open Meetings laws.

However, in Kansas the most authoritative text on the subject is found in Attorney General's Opinion 86-176, at page 6:

> Ballots are secret when a voter's choice is not disclosed. The fact that a piece of paper is used in voting does not necessarily make an election by "secret ballot." If a delegate's choice is made known, the ballot is not secret. Signing one's name to his or her ballot which is open for public inspection precludes secrecy in voting. It is our opinion that the open meetings law is not violated if delegates to the annual meeting of the State Board of Agriculture vote for board members by writing their choice on a piece of paper and sign their names thereto.
>
> In summary, the annual meeting of delegates and district caucuses are public bodies subject to the open meetings laws. It is our opinion that the voting procedure that has been used to elect members to the state Board violates the provision in the KOMA which prohibits binding action by secret ballot. Under the Act, a "secret ballot" is one in which each member's vote or decision is not known. The KOMA would not be violated, then, if delegates voted for board members by writing their choice on a paper ballot and signed their names thereto.

The use of unsigned paper ballots that are never made public to conduct final "binding action" would not be allowed. In this situation however, the preliminary paper ballots were signed by the respective Commissioners, were subsequently maintained by the Clerk of the Kansas Supreme and are now available for public inspection by way of a Kansas Open Records Request to the Clerk of the Supreme Court, Mr. Shima. Based on the guidance set forth in

Attorney General's Opinion, 86-176, the procedure utilized in the instant matter is in compliance with the Open Meeting Act.

K.S.A. 75-4320d states that if the attorney general determines "by a preponderance of evidence after an investigation that a public body or agency has violated" the Open Meeting Act, action to void the proceeding must be taken pursuant to K.S.A. 75-4320 within 21 days. Based on the authority set forth above, there is no violation of the Kansas Open Meetings Act.

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