

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

In the Matter of the)
Kanopolis City Council)
and Mayor Anthony Hopkins.)
_____)

Case No. 2018-OG-0003

CONSENT ORDER

NOW on this 27th day of November, 2018 this matter comes before the Attorney General for the purposes of resolving the above-captioned matter pursuant to the provisions of K.S.A. 2018 Supp. 75-4320(d)(a)(1), which grants the Attorney General authority to enter into consent orders.

In lieu of further legal proceedings concerning violation of the Kansas Open Meetings Act (KOMA), K.S.A. 75-4317 *et seq.*, the undersigned hereby knowingly and voluntarily agree as follows:

1. On or about September 13, 2018, the Attorney General's Office received a complaint alleging that the Kanopolis City Council, specifically Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede violated the KOMA. Following this reported violation, the Kansas Attorney General's Office conducted an investigation into allegations that the council reached a consensus during an executive session, then immediately terminated the appointment of the city clerk during the executive session without holding a public vote in violation of K.S.A. 2018 Supp. 75-4319(c), which prohibits a public body from taking binding action during an executive session.

2. The council is a public body that is subject to the requirements of the KOMA and must comply with the KOMA.

3. Investigation and/or statements provided by or on behalf of the council, as described in a letter dated October 25, 2018, to the council's attorney Patrick G. Hoffman, which is attached hereto and incorporated by reference as Exhibit A, confirm the following violation of the KOMA by a preponderance of the evidence:

- a. On or about August 4, 2018, the council held a special meeting. During the special meeting, it recessed into executive session. While in executive session, it reached a consensus to terminate the employment of City Clerk

Yvonne Stoppel. While still in executive session, the council told the city clerk her appointment was terminated, and to gather her belongings and leave. Thereafter the council resumed its open meeting, but failed to hold a public vote to terminate the city clerk's appointment. The council stipulates to these factual statements. The council thus took binding action during its executive session in violation of K.S.A. 2018 Supp. 75-4319(c). Board member Daniel Stroede was absent from this meeting and did not participate in the executive session.

4. Based upon the above information, Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede individually admit and agree that they violated the KOMA as set out in paragraphs 3.a. above concerning the August 4, 2018, executive session.

5. Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede now fully understand and agree that they fully intend to comply with the requirements of K.S.A. 2018 Supp. 75-4319(c), which requires binding action to be taken in an open meeting.

6. The Attorney General and Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede mutually desire to enter into this Consent Order in lieu of further adjudicative proceedings.

7. Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede 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. 2018 Supp. 75-4320a(a), 75-4320d(a)(2), or 75-4320f concerning this matter.

8. Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede waive any claim or assertion that the Kansas Judicial Review Act (KJRA), K.S.A. 77-601 *et seq.*, applies to agency actions that are governed by the provisions of K.S.A. 75-4317 *et seq.*, and amendments thereto, relating to open meetings (KOMA), and subject to an action for civil penalties or enforcement, and thus they do not have a right to appeal under the KJRA.

9. The Attorney General accepts the waivers and stipulations by Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede.

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 Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede be subject to this Order based on the provisions of K.S.A. 2018 Supp. 75-4320d(a)(1), which permits the Attorney General to impose conditions or requirements on a public body for violation of the KOMA in a Consent Order;

AND WHEREAS the Attorney General and Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede mutually desire to enter into a Consent Order in lieu of further adjudicative proceedings to resolve the violation.

NOW THEREFORE, Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede consent to the following terms and conditions, and the Attorney General orders that:

10. The council agrees and shall:
 - a. Ensure that the mayor and each council member individually obtains 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 ninety (90) days of the effective date of this Consent Order;
 - b. Provide the Attorney General's Office with a written statement confirming that each board member has obtained the required KOMA training within ten (10) days of receiving the training; and
 - c. Not engage in any future violations of the KOMA.

11. Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede 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. 2018 Supp. 75-4320d(c) and amendments thereto.

12. Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede understand and agree that if they engage in any future violation of the KOMA, the facts and statements contained herein may be considered in determining the appropriate enforcement action and remedy.

13. Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede agree and understand that this Consent Order does not resolve future and/or currently unknown unlawful 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. 2018 Supp. 75-4320b and/or enforcement proceedings conducted in accordance with K.S.A. 2018 Supp. 75-4320a(a), 75-4320d(a)(2), or 75-4320f.

14. In consideration of these admissions and agreements by Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede, and the above-agreed remedies, the Attorney General agrees to forgo further prosecution for the violations of the KOMA set forth herein.

15. Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede 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 Order shall operate as a complete release of all claims Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede may have against the Attorney General, his agents or employees, arising out of the investigation of this matter. Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede 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 Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede 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 Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede understand that this Consent Order shall be maintained and made available for public inspection pursuant to the provisions of K.S.A. 2018 Supp. 75-4320d(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 and Mayor Anthony Hopkins, and council members Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, and Marc Stroede consent to these provisions.

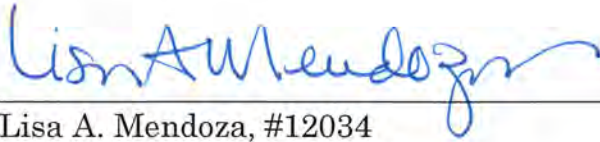
IT IS SO ORDERED.

OFFICE OF THE ATTORNEY GENERAL



Derek Schmidt
Kansas Attorney General

Prepared By:



Lisa A. Mendoza, #12034
Assistant Attorney General
Director, Open Government Enforcement Unit
Office of the Kansas Attorney General
120 SW 10th Avenue, Second Floor
Topeka, KS 66612-1597
Phone: (785) 296-2215

Approved By:



Patrick G. Hoffman, #73287
Sherman, Hoffman, Hipp LC
126 N. Douglas, PO Box 83
Ellsworth, KS 67439-0083
Phone: (785) 472-3186
Attorney for the City of Kanopolis

Kanopolis City Council:

Anthony Hopkins
Anthony Hopkins, Mayor

11-13-18
Date

Dustin Curnutt
Dustin Curnutt

11-16-18
Date

Gerry Gebhardt
Gerry Gebhardt

11/13/18
Date

Michelle Schwerdtfeger
Michelle Schwerdtfeger

11-13-18
Date

Marc Stroede
Marc Stroede

11-13-18
Date

ATTEST:

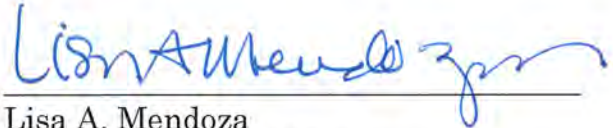
Debra S. Stroede-Kralik
_____, City Clerk

11-13-18
Date

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of November, 2018, a true and correct copy of the foregoing Consent Order was deposited in the United States mail, first class postage prepaid, addressed to:

Patrick G. Hoffman
Sherman, Hoffman, Hipp LC
126 N. Douglas, PO Box 83
Ellsworth, KS 67439-0083
Attorney for the City of Kanopolis



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
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
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October 25, 2018

Patrick G. Hoffman
Sherman, Hoffman & Hipp, LC
126 N. Douglas, PO Box 83
Ellsworth, KS 67439-0083

Re: KOMA Complaint – Kanopolis City Council and Mayor Anthony Hopkins

Dear Mr. Hoffman:

On September 13, 2018, we received a complaint from Yvonne Stoppel alleging that the Kanopolis City Council and Mayor Anthony Hopkins violated the Kansas Open Meetings Act (KOMA).¹ Specifically, she alleged that following an executive session held on August 4, 2018, the council terminated her appointment as city clerk without a public vote. As a remedy, she sought the following: “[O]ther – Fined and expelled [sic] All members of the council should be fined.”

The purpose of this letter is to inform you of the results of our review. We relied on the complaint and the council’s responses, as well as the provisions of the KOMA, relevant Attorney General Opinions and case law.

Following our review, it is clear that the council is a public body or agency subject to the KOMA,² thus this office has jurisdiction to investigate any alleged violation and take action to enforce its provisions.³

We have limited our review to Ms. Stoppel’s specific complaint: the lack of a public vote to authorize the termination of her appointment as city clerk.

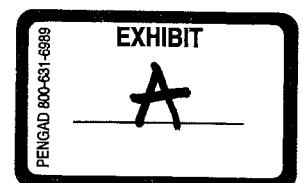
Binding action in executive session

The city council is comprised of the following: Mayor Anthony Hopkins, Dustin Curnutt, Gerry Gebhardt, Michelle Schwerdtfeger, Daniel Stroede, and Marc Stroede.

¹ K.S.A. 75-4317 *et seq.*

² K.S.A. 2018 Supp. 75-4318(a).

³ See K.S.A. 2018 Supp. 75-4320(a), 75-4320a, 75-4320b, 75-4320d, and 75-4320f.



The facts here are undisputed. On August 4, 2018, the city council held a special meeting. During the special meeting, the council held an executive session. The council reports that the mayor and council members Gebhardt, Curnutt, Marc Stroede, and Schwerdtfeger, as well as Ms. Stoppel, were present during the executive session. According to the council's meeting minutes, council member Daniel Stroede was absent.

The council reports the following events occurred during the executive session:

. . . Ms. Stoppel's appointment was discussed during the August 4, 2018 [sic] executive session. The consensus from the governing body was that Ms. Stoppel was not performing her duties in the manner directed by the city, that she had willfully disobeyed instructions, that her continued employment exposed the city to potential liability, and that termination of her employment was in the best interests of the City. Ms. Stoppel was called into the executive session and she was told by council member Marc Stroede that the council's decision was to terminate her employment with the city.

The city council did end that meeting without a vote following the executive session, however, it should be noted that the city attorney was unable to attend the meeting and so was not present. . . .

There was no delay in the implementation of the council's consensus; Ms. Stoppel's appointment as city clerk was terminated immediately. The council concedes that it did not vote publicly to terminate Ms. Stoppel's appointment. It also did not provide her with a letter terminating her appointment as city clerk.

The council reports that "[P]rior to the meeting, the City Attorney had reviewed with the city's insurance provider, ECM insurance, whether employees could be fired without a vote of the council; however, there was a failure to consider that this employee was also an appointed position, and that appointed positions required a vote by council [sic]. ECM Insurance told the City Attorney, and the City Attorney told the council, that no vote was required. The City Council believed based on their conference with their City Attorney that a vote was not required to terminate this employment. . . ." After further research, and review of K.S.A. 15-204 by the city attorney, on September 18, 2018, the city council made a motion "to ratify the termination of Yvonne Stoppel as done on August 4."

The City of Kanopolis is a city of the third class. K.S.A. 15-204 provides that in a city of the third class, the mayor, with the consent of the council, may appoint certain city officers, including a clerk. "Any officer may be removed by a majority vote of the total membership elected or appointed to the council and may be suspended at any time by the mayor."

Prior to Ms. Stoppel's termination, the city council had not received any training concerning the KOMA. On August 15, 2018, the city attorney provided the council with written directions for recessing into executive session.

The purpose of the KOMA is to ensure that government business is conducted "in the sunshine." It guarantees the public's right to observe governmental policy makers, such as school boards, city councils, and county commissions, making decisions that affect Kansas citizens on a daily basis. As stated by the Legislature: "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."⁴

While a public body's meetings must be open to the public,⁵ the public body may hold "closed or executive meetings."⁶ Such closed or executive meetings are also referred to as "executive sessions." An executive session may be held for the reasons identified in the statute.⁷ These reasons include the discussion of "personnel matters of nonelected personnel."⁸

Only members of the public body have the right to attend an executive session.⁹ Mere observers may not attend executive sessions.¹⁰ Staff, agents for the body or other non-public body individuals do not have an absolute right to be present during executive sessions.¹¹ However, persons who aid the body in its discussions may be discretionarily admitted by the public body.¹² Individuals may attend executive sessions upon the invitation of the public body only if each such person is present to provide information to the body on a permissible topic or participate in its discussion.¹³

A public body may reach a "consensus" or general agreement on a matter requiring binding action during an executive session. However, "[N]o binding action shall be taken during closed or executive recesses, and such recesses shall not be used as a subterfuge to defeat the purposes of this act."¹⁴ There is no exception to this provision, thus a majority of a public body must take formal binding action in an open meeting.¹⁵ Under the KOMA, taking binding action means voting publicly to approve or deny a

⁴ K.S.A. 2018 Supp. 75-4317(a).

⁵ K.S.A. 2018 Supp. 75-4318(a).

⁶ K.S.A. 2018 Supp. 75-4319(a) and (b).

⁷ K.S.A. 2018 Supp. 75-4319(b)(1) through (15).

⁸ K.S.A. 2018 Supp. 75-4319(b)(1).

⁹ Attorney General Opinion 92-56, citing Attorney General Opinion 86-143, <http://ksag.washburnlaw.edu/opinions/1992/1992-056.pdf>, accessed October 18, 2018.

¹⁰ *Id.*, citing Attorney General Opinions 92-51 and 82-176.

¹¹ *Id.*, citing Attorney General Opinions 87-170 and 86-143.

¹² *Id.*, citing Attorney General Opinion 91-31.

¹³ *Id.*, citing Attorney General Opinion 92-51 and 82-176.

¹⁴ K.S.A. 2018 Supp. 75-4319(c).

¹⁵ K.S.A. 2018 Supp. 75-4318(a) and 75-4319(c). See also Attorney General Opinion 1993-055, <http://ksag.washburnlaw.edu/opinions/1993/1993-055.htm>, accessed October 18, 2018.

particular request or matter.¹⁶ A consensus may constitute binding action and violate the KOMA if a public body fails to follow up on a consensus reached during an executive session by taking a formal public vote on a decision that would normally require a vote by the public body.¹⁷

Here, it is clear that on August 4, 2018, the council entered into an executive session to discuss and take action to terminate the appointment of the city clerk. During the executive sessions, the council admits that it reached a consensus, or general agreement, to terminate Ms. Stoppel's appointment as city clerk. This decision was implemented immediately; Ms. Stoppel was told to gather her belongings and leave. Notwithstanding the fact that Ms. Stoppel told the council a public vote was required to terminate her appointment as city clerk, the council did not take a public vote. The council did eventually ratify the termination of Ms. Stoppel's appointment as city clerk at its September 18, 2018, meeting. However, this was *well after* the mayor and council member Marc Stroede told Ms. Stoppel her appointment as city clerk was terminated and the council announced its action during its August 4, 2018, open meeting.

There are two instructive Kansas cases discussing situations where a public body reached a consensus in executive session. The first case is *O'Hair v. U.S.D. No. 300*.¹⁸ The second case is *City of Topeka v. Watertower Place Development Group*.¹⁹

O'Hair v. U.S.D. No. 300 involved a situation where a board of education reached a consensus in executive session, but voted in open meeting to non-renew a tenured teacher's contract. It appears the public vote occurred immediately after the board returned to open meeting at the conclusion of the executive session. Unlike the present case, there was no intervening action to carry out the board's consensus, and no delay in the public vote. Thus, the court found no violation of the KOMA.

City of Topeka v. Watertower Place Development Group involved a contract termination. In *Watertower Place*, the city attorney informed the city council in an executive session that Watertower "had breached the contract and he would terminate the contract unless one of the council members directed him not to. No council member objected. The city attorney sent the termination notice by letter the next day." The city council never voted in open meeting to terminate the contract. The court found that "the termination decision did occur during an executive session in violation of the KOMA."

Although the facts set forth in the complaint are not identical to *Watertower Place*, they are sufficiently similar to warrant further discussion. As in *Watertower Place*, the council discussed a matter in executive session. Unlike *Watertower Place* where the city council essentially stood silent, the council here discussed the matter and *reached a*

¹⁶ Attorney General Opinion 84-50, <http://ksag.washburnlaw.edu/opinions/1984/1984-050.pdf>, accessed October 18, 2018.

¹⁷ *City of Topeka v. Watertower Place Development Group*, 15 Kan.App.2d 52, 805 P.2d 40, 65 Ed. Law Rep. 895 (1990).

¹⁸ 15 Kan.App.2d 52, 805 P.2d 40, 65 Ed. Law Rep. 895 (1990).

¹⁹ 265 Kan. 148, 959 P.2d 894 (1998).

consensus to terminate Ms. Stoppel's appointment as city clerk. A council member then told Ms. Stoppel *during the executive session* that she was terminated, and to gather her belongings and leave. The council did not vote on this consensus decision upon return to its open meeting. It apparently publicly announced this decision at during its August 4, 2018, open meeting, then immediately adjourned. Like *Watertower Place*, the council did not hold a public vote to approve the termination of this appointment, even though it reached a consensus in executive session. This consensus was ultimately ratified when the council voted to approve its action during its September 18, 2018, meeting.

The council essentially argues that it relied on the advice of the city attorney when it concluded that no public vote to approve the termination of Ms. Stoppel's appointment was necessary. However, it is clear that the KOMA required a public vote on any binding action taken by the council. Additionally, the plain language of K.S.A. 15-204 required a public vote to terminate the appointment of the city clerk. Thus, notwithstanding the council's eventual ratification of the termination of Ms. Stoppel's appointment as city clerk, the consensus the council reached during its August 4, 2018, executive session became binding action because its decision was effectively carried out immediately when council member Marc Stroede and the mayor told Ms. Stoppel to gather her belongings and leave, and it was immediately announced publicly when the council resumed its open meeting. This is a violation of the KOMA.

Although we believe the council violated the KOMA by taking binding action in executive session as described above, our analysis does not end there. We must consider whether this is more than a technical violation²⁰ of the KOMA. "Technical violation" is a term of art adopted by courts in discussing KOMA violations. "Our courts will look to the spirit of the law, and will overlook mere technical violations where the public body has made a good faith effort to comply and is in substantial compliance with the KOMA, and where no one is prejudiced or the public right to know has not been effectively denied. [Citations omitted]."²¹

Although the council reached a consensus in executive session to terminate Ms. Stoppel's appointment as city clerk, it appears that the council relied on faulty legal advice that no public vote was required. It relied on this advice notwithstanding Ms. Stoppel's warning as an experienced city clerk that a public vote was required. Following the council's consensus decision in executive session, the mayor and a council member called Ms. Stoppel into the executive session and verbally conveyed the termination decision to her, telling her to gather her belongings and leave. The termination was immediately announced when the council resumed its open meeting. Ms. Stoppel's appointment as city clerk was in fact terminated immediately. Ms. Stoppel did not directly address whether there was any prejudice arising from the consensus reached in executive session, other than to state that she was wrongfully terminated. However, under the KOMA, the harm is to the public, especially considering the stated public

²⁰ See *Stevens v. City of Hutchinson*, 11 Kan.App.2d 290, 291, 726 P.2d 279 (1986).

²¹ *Id.*

policy that the transaction of governmental business be open to the public. While the public may not be entitled to know all the details leading to the decision to terminate the appointment of a city officer, under the KOMA the public does have a right to know about the transaction of governmental business, such as the decision to terminate the appointment of a city officer. This right to know was effectively denied when the council reached a consensus in executive session to terminate the appointment of the city clerk, and then failed to follow up with a prompt vote when it returned to its open meeting.

In mitigation, we note that the council ultimately ratified its decision to terminate Ms. Stoppel's appointment as city clerk. Additionally, we have no evidence that the council routinely takes binding action in executive session. Likewise, we have no evidence that the council's actions were meant as a subterfuge to avoid the transaction of business in the public eye; in fact, it sought legal advice before taking its action to terminate the city clerk's appointment. Finally, the council has been cooperative and forthcoming in its responses to our inquiries.

Nevertheless, after considering the totality of the circumstances, we find that taking binding action in executive session impinges on the public right to know, even where the action is later publicly announced and ultimately ratified. Thus, we believe this is more than a technical violation of the KOMA. Because of this, remedial action is required.

We noted separate issues concerning the council's failure to comply with the statutory requirements for recessing into executive sessions, as well as the use of the nonelected personnel justification to discuss an appointed city officer. Because Ms. Stoppel did not raise these matters in her complaint, we decline to address them here. However, under separate cover, we have written to bring these matters to your attention so that the council may take remedial action to address them.

Penalties under the KOMA

The KOMA provides civil penalties in an amount not to exceed \$500.00 for each violation of the act.²² Additionally, completion of training concerning the requirements of the KOMA may be required.²³ Any member of a public body subject to the KOMA who knowingly violates any provisions of the act, or intentionally fails to furnish information as required by K.S.A. 2018 Supp. 75-4318(b) concerning notice, may be subject to these penalties. "To 'knowingly' violate the act means to purposefully do the acts denounced by the Kansas Open Meetings Act and does not contemplate a specific intent to violate the law."²⁴ In other words, the violation need not be willful or intentional. Rather, if

²² K.S.A. 2018 Supp. 75-4320(a).

²³ See K.S.A. 2018 Supp. 75-4320a(a); see also K.S.A. 2018 Supp. 75-4320d(a)(1)(A)(ii); and see K.S.A. 2018 Supp. 75-4320f(b).

²⁴ K.S.A. 2018 Supp. 75-4320(a); see also *State el rel. Murray v. Palmgren*, 231 Kan. 524, Syl. ¶ 10, 646 P.2d 1091 (1982).

the KOMA prohibits the action or conduct, and the public body engages in the conduct, that is a knowing violation of the law.²⁵ “Ignorance of the law is no excuse.”²⁶

Conclusion

In light of the foregoing, we find by a preponderance of the evidence that the Kanopolis City Council knowingly violated the KOMA when it reached a consensus in executive session to terminate the city clerk’s appointment, and then immediately implemented its decision without taking a public vote. We also find that remedial action is required to ensure compliance with the KOMA.

Based on the facts of this case, we have determined that the imposition of a civil penalty²⁷ as authorized by the KOMA is not warranted. This is due in large part to the council’s prompt acknowledgment that a public vote was required to terminate the city clerk’s appointment, and its eventual ratification of its action. We have also considered that the council relied on legal advice when making its decision to terminate the city clerk’s appointment without a public vote. We have also considered that the council “is more than willing to learn the proper way to move forward in the future.” The council has no prior violations, and we have no evidence that its actions were a subterfuge to defeat the purposes of the KOMA.

For the above reasons, we are seeking the council’s voluntary compliance through the means of a Consent Order as provided for by the KOMA.²⁸ We have enclosed the Consent Order for the council’s review. The Consent Order requires the council to acknowledge violation of the KOMA and to attend at least one hour of training on the provisions of the KOMA presented by an attorney experienced in dealing with open meetings issues within 90 days. Although not required, we strongly urge the council to require its staff and the new city clerk to attend training as well to help ensure the council complies with the KOMA.

Because council member Daniel Stroede was absent from the August 4, 2018, meeting, we are not requiring his signature on the Consent Order. However, we strongly encourage him to attend KOMA training along with the rest of the council.

Our offer of a Consent Order as authorized by K.S.A. 2018 Supp. 75-4320d(a)(1) is effective up to **5:00 p.m. on Friday, November 16, 2018**. Because the council meets on the second Tuesday of each month, we believe this will offer you sufficient time to confer with it about this matter. If additional time is needed to discuss this matter, the council may wish to call a special meeting.

²⁵ *Id.*, 231 Kan. 536-37.

²⁶ *Id.*, 231 Kan. 536.

²⁷ K.S.A. 2018 Supp. 75-4320d(a)(1)(A)(ii).

²⁸ K.S.A. 2018 Supp. 75-4320d(a)(1).

Letter to Patrick G. Hoffman
October 25, 2018
Page 8

If the Consent Order is approved, please secure the necessary signatures and return it to me. I will obtain the necessary signatures from our office and provide a copy for your files. You do not need to complete the dates on the first page or the certificate of service on the last page. We will insert the dates when the Attorney General executes the Consent Order.

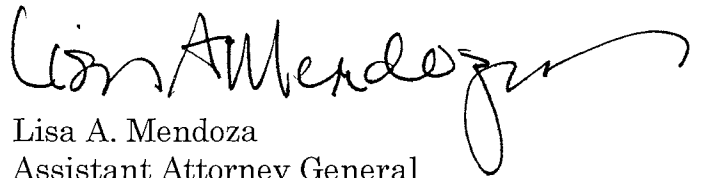
If we do not receive the signed Consent Order by **5:00 p.m. on Friday, November 16, 2018**, we will consider our offer of settlement to be declined, and proceed as authorized by K.S.A. 2018 Supp. 75-4320a, 75-4320d, and/or 75-4320f.

We note that this office periodically offers KOMA training. This training is free and open to the public. You may find more information about any upcoming training on our website: <http://ag.ks.gov/open-government/upcoming-training>. The League of Kansas Municipalities also offers KOMA training.

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

Sincerely,

OFFICE OF KANSAS ATTORNEY GENERAL
DEREK SCHMIDT

A handwritten signature in black ink, appearing to read "Lisa A. Mendoza", with a long, sweeping flourish extending to the right.

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

Enclosure (Consent Order)