

and Randy Lohmann engaged in virtually simultaneous interactive communications via Facebook about the business or affairs of the body; these exchanges constituted a meeting as defined by K.S.A. 75-4317a.

- b. The commission failed to provide notice of the February 29, 2020, meeting via Facebook exchanges to those requesting notice as required by K.S.A. 75-4318(b).

4. Based upon the above information, Commissioners Alexis Pflugh and Randy Lohmann individually admit and agree that they violated the KOMA as set out in paragraph 3 above.

5. Commissioners Alexis Pflugh and Randy Lohmann now fully understand and agree that for each meeting held, they intend to comply with the requirements of K.S.A. 75-4318(a) and (b).

6. The Attorney General and Commissioners Alexis Pflugh and Randy Lohmann mutually desire to enter into this Consent Order in lieu of further adjudicative proceedings.

7. Commissioners Alexis Pflugh and Randy Lohmann 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. 75-4320a(a), 75-4320d(a)(2), or 75-4320f concerning this matter.

8. Commissioners Alexis Pflugh and Randy Lohmann 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 Commissioners Alexis Pflugh and Randy Lohmann.

WHEREAS, the Attorney General finds that the above facts have been established by a preponderance of the evidence, and that it is proper for Commissioners Alexis Pflugh and Randy Lohmann to be subject to this Order based on the provisions of K.S.A. 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 Commissioners Alexis Pflugh and Randy Lohmann mutually desire to enter into a Consent Order in lieu of further adjudicative proceedings to resolve the violation.

NOW THEREFORE, Commissioners Alexis Pflugh and Randy Lohmann consent to the following terms and conditions, and the Attorney General orders that:

10. Commissioners Alexis Pflugh and Randy Lohmann agree to and shall:
 - a. Pay a civil penalty of \$50.00 each, individually and not from commission, county, or other public funds. Such payment shall be made payable to the Office of the Attorney General pursuant to K.S.A. 75-760 on or before April 1, 2021, **provided that** the \$50.00 civil penalty assessed to each commissioner shall be waived if (1) each commissioner participates in at least one hour of KOMA training on or before April 1, 2021, and (2) provides a written certification of attendance within ten days of the training; and
 - b. Not engage in any future violations of the KOMA.

11. Commissioners Alexis Pflugh and Randy Lohmann 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. 75-4320d(c) and amendments thereto.

12. Commissioners Alexis Pflugh and Randy Lohmann 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. Commissioners Alexis Pflugh and Randy Lohmann 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. 75-4320b and/or enforcement proceedings conducted in accordance with K.S.A. 75-4320a(a), 75-4320d(a)(2), or 75-4320f.

14. In consideration of these admissions and agreements by Commissioners Alexis Pflugh and Randy Lohmann, and the above-agreed remedies, the Attorney General agrees to forgo further prosecution of the KOMA violations set forth herein.

15. Commissioners Alexis Pflugh and Randy Lohmann 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 Commissioners Alexis Pflugh and Randy Lohmann may have against the Attorney General, his agents or employees, arising out of the investigation of this matter. Commissioners Alexis Pflugh and Randy Lohmann 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. Commissioners Alexis Pflugh and Randy Lohmann 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. Commissioners Alexis Pflugh and Randy Lohmann understand that this Consent Order shall be maintained and made available for public inspection pursuant to the provisions of K.S.A. 75-4320(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 Commissioners Alexis Pflugh and Randy Lohmann consent to these provisions.

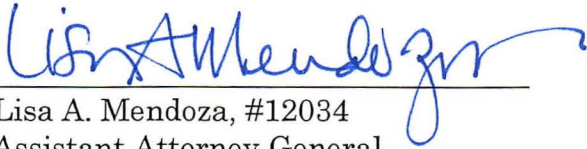
IT IS SO ORDERED.

OFFICE OF THE ATTORNEY GENERAL



Derek Schmidt
Kansas Attorney General

Prepared By:



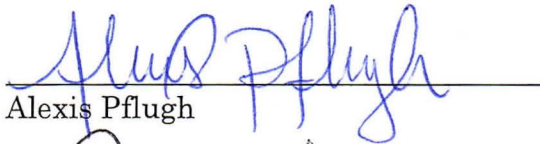
Lisa A. Mendoza, #12034
Assistant Attorney General
Director, Open Government Enforcement Unit
Office of the Kansas Attorney General
120 SW 10th Avenue, Second Floor
Topeka, KS 66612-1597

Approved By:

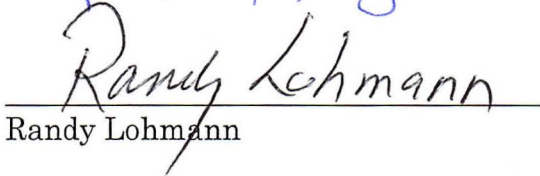


Jennifer O'Hare
Lincoln County Attorney
216 E. Lincoln
Lincoln, KS 67455

Lincoln County Commission:


Alexis Pflugh

1-4-21
Date


Randy Lohmann

1-4-21
Date

ATTEST:


Dawn Harlow, Clerk

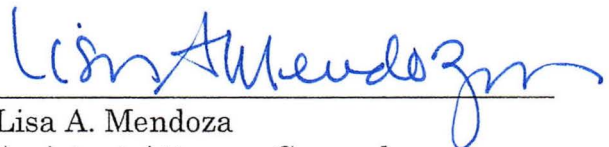


1-4-21
Date

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2021, a true and correct copy of the foregoing Consent Order was deposited in the United States mail, first class postage prepaid, addressed to:

Jennifer O'Hare
Lincoln County Attorney
216 E. Lincoln
Lincoln, KS 67455



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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December 28, 2020

Sent via email to lcattorney@nckcn.com
A hard copy of this letter will *not* follow

Jennifer O'Hare
Lincoln County Attorney
216 E. Lincoln
Lincoln, KS 67455

RE: KOMA Complaint – Lincoln County Commission
Our File Number CV-20-000736

Dear Ms. O'Hare:

We are writing to you in your capacity as county attorney for Lincoln County. You also represent the Lincoln County Commission as a county counselor in civil matters. We request that you forward a copy of this letter to each commissioner.

This office received a complaint from Nelson Casteel alleging the commission violated the Kansas Open Meetings Act (KOMA).¹ According to Mr. Casteel, Commissioners Alexis Pflugh and Randy Lohmann essentially held a meeting by engaging in a discussion of county business while making Facebook posts on February 29 and March 28, 2020. As a remedy, Mr. Casteel believes training would be appropriate: "[I]t is evident that [the commission does] not understand KOMA at all. Since it is truly ignorance . . . I think an extensive presentation and not just the annual training might be best."

This office has concurrent jurisdiction with the county/district attorney over investigation and enforcement of the KOMA.²

We note that at the time of this complaint, the commission was comprised of the following individuals: Commissioner and Chairman Randy Lohmann, Commissioner and Vice-Chairman James Gabelmann, and Commissioner Alexis Pflugh.

Mr. Casteel's complaint involved two separate Facebook exchanges between Commissioners Lohmann and Pflugh. We address each one in turn.

¹ K.S.A. 75-4317 *et seq.*

² See K.S.A. 75-4320(a), 75-4320a, 75-4320b, 75-4320d, and 75-4320f.



February 29, 2020, Facebook Exchanges

On Monday, February 24, 2020, Commissioners Gabelmann and Pflugh voted to appoint four (4) new members to the Lincoln County Hospital Board. Commissioner Lohmann was absent, having previously planned to be absent. The commission's appointments were made pursuant to its authority set out in K.S.A. 19-4601 *et seq.*, and specifically K.S.A. 19-4605(f), which provides the commission with authority to fill vacancies on a county hospital board. The commission had previously scheduled a discussion and vote on the appointments for Friday, February 28, 2020, when Commissioner Lohmann would be present.

On Saturday, February 29, 2020, Commissioner Lohmann made several posts on Facebook to "express[] his discontent about the action of the board at the prior Monday meeting. . . ."³ Commissioner Lohmann's comment was posted to the Lincoln County Concerned Citizens (LC3) Facebook page.⁴ Because it is relevant to understanding the exchange between the two commissioners, we set out Commissioner Lohmann's original post in its entirety:⁵

On Monday February 24 Lincoln county commissioners Gabelmann and Pflugh appointed four new members to the Lincoln county hospital board. I was not in attendance. I had previously planned to be gone that day. The BOCC had previously planned to make these appointments and other appointments to other boards on Friday, February 28.. Why the rush to make these hospital board appointments in my absence? The answer is I wanted to reappoint two existing board members because of their knowledge and experience of hospital finances and operations . The other commissioners did not want to reappoint them. My issue is, is that we should have had a discussion concerning all of these individuals. Four new people, more than half the board, were appointed without discussion concerning these individuals. The hospital board controls a \$7,000,000 plus budget. Currently the hospital is in a serious financial situation.. the new hospital CEO needs board guidance and direction to make decisions about the future of the hospital. I hope the newly appointed board members will be able to assist her. . . .⁶

Following Commissioner Lohmann's post, Commissioner Pflugh made some fifteen (15) posts explaining her vote and responding to comments made by other members of the group. Thereafter, the following exchange took place between Commissioner Lohmann and Commissioner Pflugh:

. . . **Randy Lohmann** I am not necessarily upset Jim and Alexis appointed four new people. They have that right. I just wished we would have had a discussion about it during the appointment process, which I was not involved in. We had talked about Mr. Broberg, but really none of the other applicants. We should have had more of a discussion appointing 4 new people at once to a 7 million dollar business.

³ See Commission response dated April 27, 2020, p. 2.

⁴ This Facebook group has more than 800 members. It appears that Commissioner Pflugh regularly posts and comments on LC3; Commissioner Lohmann occasionally posts and comments on LC3.

⁵ The Facebook posts set out in this letter are shown as they originally appeared on Facebook.

⁶ Facebook, Lincoln County Concerned Citizens (LC3), a public group, Randy Lohmann, February 29, 2020 (accessed May 11, 2020.)

Alexis Pflugh Randy Lohmann I'm sorry Randy. You have a right to discussion . . .

Randy Lohmann Our new hospital CEO needs guidance about the direction we want our hospital to go in. Major changes may be made involving alot of money. We all need to work together to help this process

Alexis Pflugh Randy Lohmann I hope the old board members will divulge all their knowledge to the CEO so she can understand what happened as she tries to turn the ship around!

Randy Lohmann I agree Alexis. I just want the hospital to survive .

Alexis Pflugh Randy Lohmann it has been around a long time, the closest ruin it ever had was just recently. It can bounce back! We need to remain open to the ideological changes that will keep it afloat.

. . .

Randy Lohmann We had planned to do all of these appointments Friday February 28. They did them Monday February 24. Why the rush? They couldn't wait four more days?

Alexis Pflugh Randy Lohmann all I can say is I'm sorry for the action.

Randy Lohmann And I thank you for that. I consider this over and we should move on. I will support all of our hospital board members and look forward to working with them. . . .

Commissioner Gabelmann did not participate in these Facebook exchanges.

The KOMA applies when a public body, such as the commission, holds a meeting as defined by the Act. 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.”⁷ A public body must provide notice of the date, time and place of any regular or special meeting it holds to any person requesting such notice.⁸

In its response, the commission argued that it did not violate the KOMA because “[W]hile there was clearly an interactive communication by a majority of the body, there was absolutely no action for ‘the conduct of governmental affairs and the transaction of governmental business’, which is prohibited by law. . . .”⁹

⁷ K.S.A. 75-4317a.

⁸ K.S.A. 75-4318(b).

⁹ See Commission response dated April 27, 2020, p. 3.

Our analysis is straightforward. First, the commission conceded a majority of the commission—two of the three members—were involved in the Facebook exchange. Next, it also conceded that the two commissioners engaged in an interactive communication when they made comments to each other through their Facebook entries. These exchanges were virtually simultaneous. The first two elements of a meeting are met.

As to the third element, the discussion of the business or affairs of the body, the commission argued this element is missing: “[T]he online discussion between commissioners that is alleged to have triggered an open meeting on February 29th, 2020, was not related to the business of appointing board members, rather a correspondence about the choice to take action with one member absent, and general sentiments about hope for the security of our county hospital. No topics of discussion during the interactive communication of the commissioners were to come before the board for a decision since the decision had already been made, and the discrepancy was over the timing of the past action.”¹⁰

The commission misconstrues the KOMA. Simply because the vote to appoint hospital board members had already occurred does not mean that the commissioners were not talking about the business or affairs of the commission when they engaged in these virtually simultaneous interactive communications via Facebook. It is not necessary that any action or votes be taken for a meeting to occur; discussion alone triggers the KOMA. Here, the matters that were discussed—hospital board appointments, who Commissioner Lohmann would have preferred to see appointed, the need for a more thorough discussion of the merits of the candidates, and questioning the reason for the change in the previously scheduled time to discuss the appointments—were clearly the business or affairs of the governing body. The third element of a meeting is met.

Having established the Facebook exchanges were a meeting, the commission required to provide notice to any individual who had requested notice of its meetings. Were there any such individuals? According to County Clerk Dawn Harlow, at least two (2) individuals have requested notice of the commission’s meetings. Still others have requested notice of special meetings and copies of the commission’s agenda. The individuals requesting or receiving notice include interested citizens and members of the media. The clerk explained that she maintains a continuing list for notice of meetings; once the request is made, the clerk continues to provide notice, and does not ask the requester to resubmit the request for notice.¹¹ There is nothing to suggest that any of these individuals received notice of the Facebook exchanges on February 29, 2020.

A meeting may also occur by means of a serial communication.¹² There were a series of Facebook exchanges between the commissioners, which took place outside of an open meeting. These exchanges were virtually simultaneous, although in writing, in that there was a contemporaneous “back and forth” exchange between a majority of the commissioners. However, there is no evidence that these Facebook exchanges were intended by any or all of the participants to reach agreement

¹⁰ See Commission response dated April 27, 2020, p. 2.

¹¹ See K.S.A. 75-4318(b)(3).

¹² K.S.A. 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.”).

on a matter that would require binding action to be taken by the commission—in fact, binding action had already taken place. Because this element is missing, the exchanges were not serial communications.

Based on the commission's admissions, as well as the facts we have gathered, it is clear that the February 29, 2020, Facebook exchanges between Commissioners Pflugh and Lohmann constituted a meeting as defined by the KOMA, and that no meeting notice was provided to the individuals who requested notice. Because the elements of a meeting were met and the commission did not provide notice of the meeting, the commission violated the KOMA.

March 28, 2020, Facebook Exchanges

On Saturday, March 28, 2020, Commissioner Pflugh “posted a personal video discussing the validity and importance of the Constitution for the United States of America. Under this video, there were several comments, all pertaining to state and federal reactions to the coronavirus outbreak and related constitutional issues. There is nothing here that would come before the board for consideration. . . .” Commissioner Pflugh then posted several entries about COVID-19 and the economic impact of the stay home order, and responded to comments from other members of LC3.¹³

Eventually Commission Lohmann chimed in after a post by Commissioner Pflugh:

. . . **Alexis Pflugh** Anyone in retail nonessential business is at risk of losing their entire operation. Cash flow is all that you rely on in that industry, and you will see many people unable to open their doors after this. It is possibly going to cause more damage than the virus itself.

Jyll Mason Phillips Alexis Pflugh I agree with that. There are likely to be an increase in bankruptcy cases.

Jyll Mason Phillips Alexis Pflugh I agree with that. If a company closes the employees are entitled to unemployment though, and that program has been changed for this situation. IN no way are these workers going to thrive, but hopefully they can keep their heads above water. It's not going to be easy for sure.

Randy Lohmann If everyone self quarantined and not go to work than all business would shutdown anyway. If you look at the list of essential jobs versus non essential, it seems about all the jobs around Lincoln are essential. So this Governor shutdown

¹³ On March 28, 2020, Governor Kelly issued Executive Order 20-16 “Establishing a statewide ‘stay home’ order in conjunction with the Kansas Essential Function Framework for COVID-19 response efforts,” <https://governor.kansas.gov/wp-content/uploads/2020/03/EO20-16.pdf>, accessed December 16, 2020. This order directed, in part, that all citizens stay home to help mitigate the spread of COVID-19 unless performing an essential activity as described in the order. The order was effective March 30 through April 19, 2020. It was not until 2020 Special Session House Bill 2016 passed in June 2020 that a Board of County Commissioners could issue public health orders that were less stringent than any statewide executive order issued by the Governor, or allow a county commission to review, amend or revoke any order issued by the county health officer. Kansas Legislative Research Department, 2020 Special Session Summary of Legislation, p. 3-4, http://www.kslegislature.org/li_2020s/b2020s/measures/documents/summary_hb_2016_2020special, accessed December 17, 2020.

may not change much of what we do. Now if the government mandated a stay at home quarantine for everyone and enforcement it by arrest than that would be serious.

Alexis Pflugh Randy Lohmann while I love Lincoln County, I am in contact with people from ALL over, some which will not make rent or mortgage payments over this. Who will pay, and what is next? There will always be a new scare. I believe in recommendations. We learn. . .¹⁴

Alexis Pflugh Randy Lohmann you can not tell me that you would be okay in these circumstances under the last president.

Randy Lohmann I agree with you Alexis and also care about the constitution and worry about our freedoms. You know I always say what makes America great is our personal freedom stated in the Bill of Rights. I am concerned also with you that this is a power grab by the government.

Jyll Mason Phillips Alexis Pflugh that's why the governor can't actually enforce the order. If they did she would be invoking Marshall law and she said that she had no intention of doing that. So the order is basically a very strong recommendation and presumably h... See More¹⁵

Randy Lohmann But there is a Covid 19 virus out there and it does spread easily. It can kill people. Are we overreacting? I don't know. What steps should we take to deal with this.

Jyll Mason Phillips Randy Lohmann someone said we may never know if we are over-reacting but if we under-react we'll know within 2 weeks. The death toll has doubled in less than a week (US numbers, which change constantly, so I'm for being as careful as I can.

Randy Lohmann I also worry about the businesses being shut down destroying our economy. . . .

Thereafter, it appears Commissioner Lohmann left the conversation. Commissioner Pflugh continued to comment. Commissioner Gabelmann did not participate in these Facebook exchanges.

Once again, the commission concedes that these Facebook exchanges meet the first two elements of a meeting: they were interactive communications by a majority of the membership of the body. However, it argues that the matters discussed were "opinions about state and national issues," "not related to county matters," and thus not the business or affairs of the body.

Having reviewed the exchanges in context, we ultimately conclude they were of a more generalized nature, related to personal opinions about the governor's stay home executive order that had just

¹⁴ The remainder of this entry is cutoff in the version provided for our review.

¹⁵ The remainder of this entry is cutoff in the version provided for our review.

been issued and its impact on personal rights. Moreover, at the time of these Facebook exchanges, the commission was not required to consider or take action on the "stay home" order issued by the governor. Because these comments were of a more generalized nature about the governor's executive order and related to personal opinions, they did not constitute the business or affairs of the body. Because they were not the business or affairs of the body, the third element of a meeting is not met.

As mentioned previously, a meeting may also occur by means of a serial communication. There were a series of Facebook exchanges here between the commissioners, which took place outside of an open meeting. These exchanges were virtually simultaneous, although in writing, in that there was a contemporaneous "back and forth" exchange between the two commissioners. However, there is no evidence that these Facebook exchanges were intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the commission. Thus, all the elements of a serial communication are not met.

We must emphasize that although all the elements of a meeting or serial communication were not present in the March 28, 2020, Facebook exchanges at the time they were made, it is possible that we would reach a different conclusion if they were made today under existing circumstances. This is due, in part, to the recognition that the commission has certain powers and duties related to its ability to issue local disaster emergency declarations.¹⁶ Additionally, following the enactment of 2020 Special Session House Bill 2016, the commission now has authority to act on executive orders issued by the governor, as well as health orders issued by a county health officer.¹⁷

Mr. Casteel's complaint aptly demonstrates the danger that awaits members of public bodies who communicate with each other outside of a public meeting. Many matters fall within the purview of the commission and thus constitute the business or affairs of the body, making it remarkably easy for the members of a public body to fall over the line into a KOMA violation. Such communications are thus a cause for concern and should be avoided.

Because all the elements of a meeting or serial communication were not present in the March 28, 2020, Facebook exchanges, the commission did not violate the KOMA.

Conclusion

In light of the foregoing, we conclude by a preponderance of the evidence that on February 29, 2020, the commission violated the KOMA when Commissioners Pflugh and Lohmann engaged in Facebook exchanges that constituted a meeting, and then failed to provide notice of this meeting to individuals requesting notice.¹⁸ We further conclude that remedial action is required to resolve this violation.

¹⁶ See K.S.A. 48-904 *et seq.* (concerning emergency preparedness for disasters).

¹⁷ See Footnote 12.

¹⁸ See K.S.A. 75-4320(a) and 75-4320d(a).

The commission has a prior technical violation of the KOMA involving the failure to observe the statutory requirements for recessing into executive session.¹⁹ On January 17, 2019, we advised the county attorney of this violation and requested that she advise the commission to take immediate steps to ensure it complied with the statutory requirements for recessing into executive session.²⁰ While it is unclear when this occurred, we noticed from a review of its meeting minutes that beginning with its January 22, 2019, meeting, the commission's motions for executive session complied with the KOMA.

In its response, the commission indicated that "[I]t is our intent to request KOMA training for our area, and advise multiple public bodies to attend and become more adept in the process." In response to a separate KOMA complaint, the commission advised this office that the commissioners have not yet had KOMA training. We recognize that identifying, scheduling, and participating in such a training would likely have been difficult given the existing pandemic.

After due consideration of the facts, we believe remedial action is required to ensure compliance with the KOMA. We have concluded the imposition of a civil penalty²¹ as authorized by the KOMA is warranted. However, we have determined not to impose the maximum amount permitted by law. This is due in part to the commission's recognition that it needs KOMA training. However, we believe the imposition of a civil penalty is an important reminder to the commission of the significance of the KOMA and its obligations under the Act.

Therefore, we are seeking the commission's voluntary compliance through the means of a Consent Order as provided for by the KOMA.²²

We have enclosed the Consent Order for the commission's review. The Consent Order requires the commission to acknowledge the KOMA violation. It also requires Commissioner Pflugh and Commissioner Lohmann to pay a civil penalty in the amount of \$50.00 each; this amount is to be paid individually and not from commission or county funds. The commission also agrees to comply with the KOMA. The \$50.00 civil penalty assessed to Commissioner Pflugh and Commissioner Lohmann will be waived if they receive KOMA training on or before April 1, 2021, and provide written proof of attendance within ten days of the training.

Given recent election results, it appears that in the near future, the composition of the commission will change.²³ Commissioner Lohmann will be the only member remaining on the commission who was present when the KOMA violation described above occurred. However, the need for training will remain. Because of this, we also encourage the newly elected commissioners, the clerk, staff and others who provide support to the commission to participate in the training. Because

¹⁹ At the time of this earlier violation, the commission was comprised of Commissioner Pflugh (Chairperson), Commissioner Lohmann, and Commissioner and Vice-Chairman Al Joe Wallace.

²⁰ We note that in response to a separate KOMA complaint, the commission asserted that it was unaware of this prior KOMA violation.

²¹ K.S.A. 75-4320(d)(a)(1)(A)(ii).

²² K.S.A. 75-4320d(a)(1).

²³ It appears on or about the second Monday in January 2021, there will be two new commissioners. In District 2, Dennis D. Ray will replace Commissioner Gabelmann, and in District 3, Darrell K. Oetting will replace Commissioner Pflugh. *See* K.S.A. 19-219.

Letter to Jennifer O'Hare
December 28, 2020
Page 9

Commissioner Gabelmann was not involved in the February 29, 2020, KOMA violation, he is not required to participate in the KOMA training, but we do encourage him to do so.

Our offer of a Consent Order as authorized by K.S.A. 75-4320d(a)(1) is effective up to **5:00 p.m. on Monday, January 11, 2021**. Because it meets regularly, we believe this will offer the commission sufficient time to review this matter. If additional time is needed to discuss this matter, the commission may wish to call a special meeting.

If the Consent Order is approved, please have Commissioners Pflugh and Lohmann sign where indicated and return the Order to me. I will obtain the necessary signatures from our office and provide you with a copy for the commission's 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.

We note that this office periodically offers training on the KOMA. You may find more information about upcoming training on our website: <https://ag.ks.gov/open-government/upcoming-training>. The Kansas Association of Counties also offers KOMA training.

We thank you and the commission in advance for your continuing cooperation. 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



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

Enclosure (Consent Order)