



Open meetings decision sparks criticism of district attorney

By Rob Roberts

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Some say Johnson County District Attorney Steve Howe went too far in announcing Mayor Jeff Meyers and members of the Shawnee City Council violated the spirit of the Kansas Open Meetings Act. Others said Howe's long-awaited decision didn't go nearly far enough.

The Jan. 30 decision related to the July 9 appointment of Ward 2 Councilman Alar Willoughby after private council discussions that Howe labeled "backroom deals." Willoughby is the uncle of the mayor's wife.

Howe, calling the case "a close call," did not determine any actual KOMA violations were committed. Thus, his office is not pursuing the civil penalties of up to \$500 per violation authorized by statute. He recommended that all council members and Meyers receive detailed and specific training on KOMA and its application to their roles.

According to KOMA, a majority of a governing body may not engage in private discussions with the intention of reaching agreement on a matter requiring binding action by the body. The act may be violated through private group meetings or serial one-on-one communications.

Calling statutory penalties for KOMA violations "a slap on the wrist," Howe added that "the real power lies where it should: with the electors in the City of Shawnee.

"The electors will ultimately have the ability to judge the actions of the members of the city council and Mayor Meyers," he said.

City Council President Jeff Vaught, one of four council incumbents up for election April 2, asked, "What the hell kind of statement is that from the District Attorney's Office?"

Vaught added that he was "very disappointed" with Howe, who "took seven pages to get to the fact that there was no violation."

Mayor Meyers added that he "would argue strenuously that I did not violate the spirit of the open meetings act either." He said Howe's decision included "mischaracterizations and misrepresentations of conversations" and that he would be seeking retractions and corrections.

The KOMA controversy unfolded after Ward 2 Councilman David Morris' May 24 resignation. The selection of a successor from among five applicants was scheduled for a July 9 special council meeting. But prior to that meeting, the District Attorney's Office found, the mayor and all members of the City Council except for Ward 2 representative Neal Sawyer engaged in conversations about who Morris' successor should be.

After local activist Tony Lauer learned of the pre-vote discussions, he wrote a July 30 letter to Howe that prompted the open meetings act investigation.

While reading the decision that capped the investigation, Lauer concluded "the violations are much worse than I expected."

"(Howe) details there was clear action taken to hide business from the public," said Lauer, who has repeatedly criticized local government for a lack of transparency. "As I read through the report, I felt optimistic Howe would do something."

Then Lauer read the final page, he said, and "my optimism evaporated."

"I am extremely disappointed ... at Howe (for) not standing up for us," Lauer said. "There's no enforcement and zero penalty. ... At the minimum, Howe should require a public apology to each of the (July 9 appointment) applicants for wasting their time."

In his ruling, Howe wrote: "The evidence showed that Meyers had conversations about the open seat with (council members Mickey) Sandifer, (Dawn) Kuhn, (Jeff) Vaught and (Jim) Neighbor. This led to Vaught having similar conversations with Distler and (Dan) Plumm. ... In the end, Meyers and the entire city council, except for Councilman Sawyer, knew how the vote would probably go, prior to the actual special meeting to vote on the vacancy."

Meyers said he made only one phone call on Willoughby's behalf, to Sandifer, whom had already voiced support for Willoughby. He characterized the remainder of his discussions on the matter as remarks made in response to a council member's question or comment. Thus, the mayor said he didn't know how everyone was going to vote before the meeting. Heck, Vaught didn't even know how Vaught was going to vote, he added.

After Vaught came into his office at City Hall one day, the mayor explained, Vaught had said it would be difficult for him to oppose applicant Michael Kemmling, given Kemmling's strong showing in a race against Sawyer last April. But Vaught ended up voting for Willoughby. Others voting for Willoughby were Neighbor, Kuhn and Sandifer.

Meyers also took issue with Howe's characterization of him as a "ringleader, who "at worst, ... utilized his position to bypass KOMA to garner votes for a family member."

"At best," Howe added, "Meyers was simply ignorant of the KOMA law." But Meyers said he is familiar with the act and is "still confident I did not break the KOMA laws."

If the council and mayor did not violate KOMA, Howe wrote, "the members stood at the top of a very steep slippery slope with a KOMA violation at the bottom."

"I have been involved in city government for the last 24 years," Meyers responded, "and I have proven myself time and time again to be honest and trustworthy. ... I will continue to be a strong advocate for open government, and if any citizen would like to talk to me personally about this issue, I would be glad to talk to them."