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**AG Derek Schmidt: New guidance now available to keep meetings open to the public during COVID-19 ‘social distancing’ limitations**

TOPEKA – (March 20, 2020) – The attorney general’s office has proposed formal rules for state and local governments to ensure their meetings remain open to the public during ‘social distancing’ emergency restrictions on gathering in person, Attorney General Derek Schmidt announced today.

“During a time of declared emergency when lives are disrupted, many people are apprehensive, and rumors can run rampant, the importance of ensuring openness and transparency in the government decision-making process is even greater than usual,” Schmidt said. “An important way for public bodies to provide reassurance is to go the extra mile to ensure their actions are transparent during the time of emergency. This new guidance will help state and local government bodies throughout Kansas operate transparently even when the public cannot gather in person for meetings.”

The Kansas Open Meetings Act (KOMA) requires public bodies to be “open to the public.” Ordinarily, that requirement is met by allowing members of the public to enter the room where the meeting is taking place so they can listen and observe. But public-health requirements to slow the spread of COVID-19, including the Centers for Disease Control recommendation not to gather in groups of more than 10 people, makes many in-person gatherings impossible or inadvisable.

The new regulation for complying with the KOMA during an emergency provides as follows:

- The KOMA remains in full force and effect unless explicitly suspended by emergency order of the governor. The governor has not currently suspended any requirement of the KOMA.
- If the members of the public body themselves are not physically gathered in one place – for example, if the meeting itself is conducted by telephone or videoconferencing – then members of the public must be able to join in the electronic conferencing in order to listen to or observe the meeting.
- If the members of the public body are physically gathered for a meeting but cannot allow members of the public to be present because of emergency limitations, then the public body must take steps to allow members of the public to listen to or observe the meeting by telephone, videoconferencing, television broadcast, or similar method.
- When the public is participating in a public meeting by telephone or other medium of interactive communication, members of the body must take steps to help the public understand the proceedings despite not being physically present. For example, each speaker in the meeting should identify herself by name before speaking or voting so remote listeners or observers can more readily know who is speaking; likewise, each motion should be clearly stated and each vote tally clearly announced.
- The procedure for any executive session must be clearly explained at the outset of a meeting.
- There must be no cost for the public to participate.

- There must be a method for distributing any agenda or other written materials that ordinarily could be picked up in person by members of the public attending the meeting. Those procedures must be explained to the public before the meeting begins.

In addition to the regulation itself, which will be legally binding, the attorney general also has issued a Best Practices document with additional actions that are strongly recommended. These recommendations include:

- Before shifting to new meeting procedures that do not allow in-person public attendance, produce and widely disseminate to the general public through news media, social media, email and other means a notice explaining why and how the ordinary meeting procedures will change, how the public may receive notice of meetings, and how the public may continue to participate in meetings.
- Audio or video record the meeting and post to the public body's website so members of the public who could not participate later can review what occurred.
- Post to a public website any materials that will be distributed during the meeting, such as any agenda, agenda packet, or presentation.

Overall, the new guidance advises public bodies to keep the need for transparency prominently in mind when adapting to social-distancing requirements during the COVID-19 response. Public bodies subject to the KOMA should "take any actions as may be necessary and reasonable under the circumstances of the emergency declaration to advance the state policy that 'meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public.'"

Schmidt advised public bodies and agencies immediately to begin following the new guidance, although the regulation will not be legally binding until approved by the State Rules and Regulation Board and filed with the Secretary of State. The proposed new regulation today was submitted for approval as a temporary regulation and will become legally binding once that approval process is completed. After that occurs, Schmidt said he will propose the regulation be permanently adopted, which will start a process that will allow for public input and comment on the regulation.

"We need to get this in place to provide immediate guidance for state and local governing bodies throughout the state," Schmidt said. "But we know there may be other good ideas or suggestions from public comment, and we are certainly willing to refine the regulation in the future."

A copy of the proposed regulation, K.A.R. 16-20-1, and the Best Practices document are available on the attorney general's website at [www.ag.ks.gov/open-government](http://www.ag.ks.gov/open-government).

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