



Experience Counts

Attorneys and Counselors

November 24, 2025

Two Pershing Square  
2300 Main Street, 9th Floor  
Kansas City, MO 64108

Via e-mail

Or Main Campus

Mr. David Van Parys  
First Assistant Attorney General  
120 SW 10<sup>th</sup> Avenue,  
Topeka, KS 66612

9393 West 110<sup>th</sup>, Suite 300  
Building 51, Corporate Woods  
Overland Park, KS 66210

TEL 913.339.6757  
FAX 913.660.7919  
WEB [www.fpslaw.com](http://www.fpslaw.com)

Via email: [OGEU@ag.ks.gov](mailto:OGEU@ag.ks.gov)

*A Limited Liability Partnership*

**RE: Bourbon County, Kansas, Response to KOMA complaints**

Dear Mr. Van Parys:

Please accept the following as the Bourbon County Commission’s written response to complaints PP-25-000258, 000268, 000270, and 000277. This Response addresses file numbers PP-25-000268, 000270 & 000277 together as they concern the same meeting and allegations. File Number PP-25-000258 is addressed separately below under its own section header. Finally, the Commission sets out its responses to the specific requests for information contained in your October 21, 2025, letter in the final section below. As a reminder, the Commission’s response was originally due on November 10, 2025, but that deadline was graciously extended by your office to November 24, 2025. If, after reading, you determine something is missing or omitted, please do not hesitate to reach out as we will seek to provide the information forthwith.

**Submissions PP-25-000268, 000270 & 000277**

The Complaints all more or less allege the same thing: “On October 7, 2025, the Commission held an emergency meeting during which they entered into an executive session under the stated exception for non-elected personnel. Upon returning to open session, the Commission discussed matters clearly involving an elected official, the County Clerk, and proceeded to vote to take action requiring that she provide accounts payable (AP) and payroll system login credentials to the County Treasurer.” Submission 436149. Submissions 4381954 and 4378081 appear to take issue with the fact that the Commission “talked about the clerk’s office.”

On the morning of October 7, 2025, the Bourbon County Commission convened for an emergency special meeting. Video of the meeting was made publicly available via <https://www.youtube.com/watch?v=cly-EgHr4wg>. Commissioner Mika Milburn and David Beerbower were present in person.<sup>1</sup> County Counselor Robert E. Johnson and Dr. Steven Cohen, the County’s HR representative, were present via telephonic means. The Commission went into

---

<sup>1</sup> It is worth noting that Bourbon County created two new Board positions in late 2024 due to redistricting and will soon have a five-member board of commissioners.

executive session “pursuant to KSA 75-4319(b)(1)” to discuss matters of non-elected personnel to protect their privacy. The vote was held in public and can be watched at: <https://www.youtube.com/live/cly-EgHr4wg>. The executive session was for 15 minutes.

After 15 minutes, the Commissioners came out of executive session taking no action. The commissioners then went back into executive session “pursuant to KSA 75-4319(b)(1)” to again discuss matters of non-elected personnel to protect their privacy. The same individuals were present at that meeting, via the same means, with the addition of the County’s other attorney Jacob Bielenberg present by telephone. The session was for another 15 minutes, and the vote can be seen on the same YouTube Link as above. The commission then returned to public session with action determined. That action, along with corresponding votes, is stated on the YouTube link as well and involved reassigning payroll duties from the Clerk’s office.

The content of the executive session was premised on an issue that arose concerning the severance pay of an employee of public works. Prior to the meeting, the Commission was in the process of negotiating a severance agreement with the public works employee, which contemplated a payment of \$20,000.00 to the individual in exchange for certain considerations. Prior to the executive session, the commissioners became aware that, despite no severance agreement being reached and considering the ongoing nature of formal negotiations, the assistant clerk directed and made payment to the public works employee without approval from the County leadership. The Public Works Employee was a W-2 employee and not contractually entitled to a payout under the current terms of his employment, and as such there was no legal basis for the disbursement made to the employee and no budgetary authority or commission approved mechanism to justify it. Accordingly, the executive session discussions concerned the facts underlying the payment and the status of payroll in general, which was handled by the clerk’s assistant.

The County Clerk was tangentially related to those discussions as payroll was, at the time, handled by her office. Thus, any discussion of her subordinates inherently includes mention and reference to the Clerk, even if she is not the topic of the discussion. Relatedly, any discussion of removing payroll from the assistant clerk, necessarily included discussion of the Office of the County Clerk.

Background information is also relevant here. Under a previous Commission, three individuals were employed by the County on a contractual basis: Eric Bailey with Public Works, Shane Walker with I.T. and Susan Walker, who at the time was the County’s CFO. These individuals were made W-2 employees and their contracts terminated. Eventually, Susan Walker, now the elected County Clerk, sued the County alleging wrongful termination and breach of contract. The Clerk and her husband Shane Walker each currently have two pending Human Rights/EEOC complaints against the County.

Shane Walker, the husband of the County Clerk and one of the Complainants here, was eventually laid off by the Commission. Shortly after, an improper and substantial overpayment was made to Shane Walker resulting in a payout that exceeded what was rightfully owed to him. At the time, the assistant clerk who was under the control of the County Clerk was aware of Mr. Walker’s actual termination date but remitted the money anyway. Accordingly, with this instance

and the payment to the public works employee, the Commission identified an obvious pattern of manipulation of payroll functions without authority, inappropriate disbursements of County funds, and willful ignorance of internal controls.

Accordingly, the Commission held the emergency meeting on October 7, 2025, to address the payroll issues referenced above. Because payroll was being completed by the assistant clerk, the actions taken by the Commission necessarily implicated the Clerk's Office, even if the County Clerk was not the focus of those discussions.

As you are aware, K.S.A. 75-4319 authorizes closed sessions to discuss matters of non-elected personnel. (b)(1) Also, though not used for justification in the motion here, KOMA also authorizes closed sessions for "Consultation with an attorney for the public body or agency, which would be deemed privileged in the attorney-client relationship." K.S.A. 75-4319(b)(2). Accordingly, based on the facts above, it is clear the content of the session was justifiable under KOMA. The fact the discussions necessarily included reference to the Clerk's office, does not in and of itself mean there was a violation of KOMA. Kansas case law further supports this conclusion.

In *Olathe Hospital Foundation, Inc., v. Extencicare, Inc.*, the Kansas Supreme Court recognized the purpose of the KOMA requirements is to "make public every official's vote on the public's business" in order to prevent secret balloting." 217 Kan. 546, 562 (1975). In that case, the Supreme Court found it dispositive that the public body there voted unanimously and as part of the public record. *Id.* The Court found that the meeting could have been lawful but all that was missing was a formal motion to that effect, but nevertheless the meeting was not "subterfuge to defeat the purposes of the act." *Id.* Accordingly, there was no violation of the spirit of the Act and there was nothing indicating the Court should void the actions taken in a meeting that was in substantial compliance with the act. *Id.*

Further, in *State v. Board of Educ. Of United School Dist. No. 305*, the Kansas Court of Appeals took up the issue of whether there was a violation of KOMA when discussions in a closed meeting go beyond the stated reasons for going into the session, which was for discussion of non-elected personnel. 13 Kan. App. 2d 117, 118 (1988). The court recognized that while KOMA does not define "personnel matters," it is generally accepted the purpose of the exception is to "protect privacy rights of employees, save personal reputations, and encourage qualified individuals to remain in government employ." *Id.* at 119. There, the court recognized that "if segregation of exempt and nonexempt topics would make coherent discussion impossible, then it may be reasonable to close an entire meeting." *Id.* at 120. Accordingly, the court determined there was no KOMA violation because the segregating the topics into open and closed sessions would have been burdensome, impractical, and indeed impossible given the common thread connecting all the individuals, whose privacy should be protected. *Id.*

The events alleged in the complaint fall directly under these two holdings. First, the motions for the closed sessions, and the ultimate actions taken, were held in full public view available to anyone with an internet connection to YouTube. There was no secret balloting or subterfuge, and the spirit of KOMA was maintained. The content of the discussion, while focused on non-elected personnel, carried inextricable links to the Clerk's office and other non-elected

employees such that it would have been impossible to segregate the material and maintain privacy and a coherent discussion of the issue. It is also worth noting that while KOMA prevents discussions about an elected official in executive session, nothing in the Act contains a prohibition on talking generally about an elected official's *office* and general duties. As such, the actions taken were justifiable under KOMA and legal under Kansas law. *See, e.g., Perry v. Board of County Commissioners*, 281 Kan. 801 (2006).

The reality is likely the Clerk and her husband (both complainants of the current issues here and both suing the county for personal benefit) worked together to manipulate public funds through the clerk's assistant and undergo inappropriate payroll actions. They then disliked the actions taken by the Commission and are now contriving open records and open meetings complaints as a means to gain leverage in the underlying litigation.

Nevertheless, regardless of the motives, it is clear there was no violation of KOMA, and the closed meetings were proper under the Act. The Commission maintains the content of the closed sessions was appropriate. Even if there is a technical violation, however, it is abundantly clear any such violation was neither knowing or purposeful. Accordingly, no further action should be taken in response to the complaints.

#### **Submission PP-25-000258**

Submission 4363427, submitted by County Clerk Susan Walker, states "This particular issue was a commissioner sending email correspondence to me and CC'ing the other two commissioners." The Submission also generally complains vaguely about "incorrectly" making motions to go into executive session.

It is admittedly difficult to address the allegation that the Commission makes motions incorrectly to go into executive session as the Complaint is devoid of any detail or fact. Accordingly, the Commission maintains the position it has always made proper motions and no KOMA violation has occurred.

Concerning the primary allegation related to emails that include more than one commissioner, there is no violation on the face of the documents presented. It appears the Complainant takes issue with unsupported notion that the emails attached show a "meeting" of the BOCC, which was not properly noticed and was conducted in secret. Kansas law, however, refutes this preposterous assertion.

K.S.A. 75-4317a defines a "meeting" as "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.*" (emphasis added). Your office opined in 2009, that "'Interactive communication,' for the purposes of the Kansas Open Meetings Act (KOMA), requires a mutual or reciprocal exchange between members of a body or agency subject to KOMA." A.O. 2009-22. There, the Attorney General opined on an instance where a constituent emailed a Board Member and that Board Member shared "both the original message and the comments with" other board members. The Attorney General's office based its opinion on a

previous Attorney General's opinion recognizing that "simply sending a message to other board members would not constitute interactive communication within the meaning of KOMA." A.O. 95-13. Ultimately, your office concluded, "'interactive communication,' for the purposes of KOMA, requires a mutual or reciprocal exchange between members of a body or agency subject to KOMA." A.O. 2009-22.

Here, there is nothing in the emails attached to the Complaint evidencing a mutual or reciprocal exchange between members of the Board of County Commissioners. As such, the emails do not constitute an "interactive communication" under KOMA. The emails were between Commissioner Milburn and the County Clerk, Susan Walker. Admittedly, Commissioners Tran and Beerbower were also included in the emails. However, there is no indication Tran or Beerbower responded in any way, nor is there any indication the emails concerned a discussion of the affairs of the public body other than a mere recitation of what was said at a previous public meeting. At best, Commissioners Tran and Beerbower were passive recipients of the emails. Importantly, the email chain here appears to have originated from an email sent by the County Clerk (the complainant here) to all three of the commissioners. *See* email sent September 22, 2025, at 8:49 a.m.. It perplexes the undersigned that the Complainant would file the Complaint on the basis that the commissioners were all included on the same emails, when she herself created the situation.

As noted above, this Complaint is simply an act in furtherance of the Clerk's attempts to gain leverage in her pending litigation. The emails subject to the complaint do not rise to the level of a KOMA or KORA violation and no further action should be taken.

### **Specific Requests for Information**

The undersigned acknowledges your office requested specific information beyond a narrative explanation of the events alleged. Those requests are answered below.

1. The names, positions/titles, terms of office, and contact information for the Bourbon County Commission.

**County Commissioner Mika Milburn, 620.215.5880**  
**County Commissioner David Beerbower, 620.215.5821**  
**County Commissioner Samuel Tran, 575.430.5186**

**All can be reached at 210 S. National Avenue, Fort Scott, KS, 66701**

2. Have any of the individual commission members or the Bourbon County Commission as a whole, ever been found in violation of the KOMA? If so, please describe the circumstances under which the violation was found to have occurred. How was the violation resolved? Provide a copy of any resolution.

**Not that the undersigned or the Commissioners are aware of. Moreover, the clerk could not locate any other historical instance where the commission was found to violate KOMA.**

3. Have any of the commission members attended training about the KOMA? If so, when was the training conducted and by whom? Please provide a copy of any handouts or training materials provided during the training.

**The undersigned is not aware of any, except commissioner Beerbower attended the Kansas Association of Counties New Commissioner Orientation from January 15, 2025 to January 17, 2025. The New Commissioner Orientation included a session entitled "The Commission(er)'s Role in Ensuring Transparency, Complying with the Kansas Open Meetings Act, and Running/Participating in Effective Meetings."**

4. To your or any commissioner's knowledge, have there been any formal or informal complaints or concerns regarding improper use of executive session? If so, how was the complaint(s) or concern(s) resolved?

**None other than the complaints at issue here.**

5. To your or any commissioner's knowledge, have there been any formal or informal complaints or concerns regarding serial communications or discussion outside of an open meeting? If so, how was the complaint(s) or concern(s) resolved?

**None other than the complaints at issue here.**

6. Copies of any policies, decisions, directives, or other written documents that describe the executive session procedures used by the county commission from January 1, 2025, to the present. If there are no written documents, provide a detailed explanation of the process the county commission uses to recess into executive session.

**The undersigned is aware of no written procedures. The Commission follows the procedures proscribed by the Kansas statutes and the advice of counsel to legally recess into executive session.**

7. Copies of any notes taken by the clerk, any deputy or assistant clerk, county commissioners, or any other county appointee or employee during the October 7, 2025 executive session.

**There were no notes taken.**

8. Copies of any draft or final approved meeting minutes for the October 7, 2025, county commission meeting. Additionally, please provide copies of final approved meeting minutes for all county commission meetings from January 1, 2025, to the present.

**See attached.**

9. If different from the motion(s) reflected in the meeting minutes, a copy of the complete motions for each executive session held on October 7, 2025. Be sure to identify who made and seconded the motion for executive session, how the county commissioners voted, the subjects to be discussed and justification, as well as the place and time that the open meeting would resume

**The votes can be viewed at: <https://www.youtube.com/watch?v=clv-EgHr4wg>**

10. Identify each person present (including the individual's title or job) during each executive session held on October 7, 2025, and the reason for the individual's presence during the executive session. Please also provide the individual's contact information, including address and phone number.

**County Commissioner Mika Milburn, 620.215.5880. Commissioner Milburn was there pursuant to her duties as County Commissioner.**

**County Commissioner David Beerbower, 620.215.5821. Commissioner Beerbower was there pursuant to her duties as County Commissioner.**

**County Counselor Robert Johnson, 620.365.3778, P.O. Box 866, Iola, Kansas, 66210. Mr. Johnson was present for the purposes of overseeing the commission and giving advice pursuant to his role as Bourbon County County Counselor.**

**Attorney, Jacob Bielenberg, 913.386.7720, 9393 W. 110<sup>th</sup> Street, Suite 300, Building 51, Corporate Woods, Overland Park, Kansas 66210. Mr. Bielenberg was present given his knowledge of the pending litigation and in his advisory capacity regarding the negotiations over the Public Works employee's severance negotiations.**

**HR director Dr. Steven Cohen. 816.600.04215, 210 SW Market Street, 101, Lee's Summit, Missouri 64063. Dr. Cohen was present in his capacity as Director of Human Resources for input on the ongoing negotiations with the Public Works employee and to lend advice concerning payroll issues.**

11. A detailed description of any and all communications between the commissioners or the commissioners and Ms. Walker outside of an open meeting concerning the procedure for drafting meeting minutes and approval or suggestions for meeting minutes from January 1, 2025 through the date of this letter.

**The Clerk prepares draft minutes and emails them to the commissioners, Then the Commission emails the Clerk any proposed changes. The Clerk prepares the final minutes based on Commission feedback, then the Commission approves them in open session.**

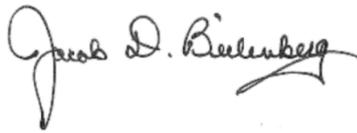
12. Does the commission or commissioners discuss any other county business or make decisions outside of an open meeting? If so, explain what business is discussed or decisions are made, why the business is discussed or acted on outside of an open meeting, and when this happens. Are any of these matters ever eventually discussed, reported or acted on in an open meeting.

**Not that the undersigned is aware of.**

The information contained in this request is true and correct. It has been reviewed by all individuals providing information, and the Commissioners have reviewed it, and attest to its truth and veracity.

If you have any follow-up questions or concerns, please do not hesitate to contact me.

Regards,

A handwritten signature in black ink that reads "Jacob D. Bielenberg". The signature is written in a cursive style with a large, stylized initial "J".

**JACOB D. BIELENBERG**  
PARTNER  
jbielenberg@fpsslaw.com  
| O | 913.386.7720